



W W W . G O V L A W G R O U P . C O M

Neil M. Schiller, Esq. | (561) 555-1212 office | nschiller@govlawgroup.com

December 3, 2021

Ms. Anthea Gianniotis, AICP, Director
Development Services Department
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

RE: Delray Swan Redevelopment (Block 79, Town of Delray) – Class V Site Plan Application - Narrative Letter

Dear Ms. Gianniotis:

This Narrative Letter associated with the Class V Site Plan Application for properties within Block 79, Town of Delray is respectfully submitted on behalf of Delray Swan Holdings, LLC for the following properties totaling 2.787 acres generally located at the southwest corner of SE 2nd Street and SE 2nd Avenue:

215, 219, 223, 227, 231, 237, 243, 251 and 253 SE 1st Avenue, 118 SE 2nd Street,
240, 258, 264, 280 and 290 SE 2nd Avenue (PCNs: 12434616010790060,
12434616010790080, 12434616010790090, 12434616010790100,
12434616010790110, 12434616010790120, 12434616010790130,
12434616010790141, 12434616010790142, 12434616010790010,
12434616010790210, 12434616010790200, 12434616010790190,
12434616010790170, 1243461601070150).

Brief Description of the Project:

The situs property is located between SE 2nd Street on the north, SE 1st Avenue on the west, SE 3rd Street on the South and the FEC railroad to the east. The Delray Swan project is a residential mixed use residential project that consists of 195 units between efficiencies to three-bedroom. The proposed commercial square footage of 2,137 SF. Additionally, there is almost 10,259 sf. of open and green space included in the project. Parking is primarily provided by a 305-space, parking garage located in the center of the property. There are 30 on-street parking spaces in the FEC right-of-way that were developed and owned by the Applicant.

The development proposal consists of the following:

- Construction of a 5-story mixed-use project containing 2,173 sf of commercial space

fronting SE 2nd Street and 195 apartment units (23 studio, 82 1-Bed, 76, 2-Bed, 14 3-Bed) with a variety of unit types (9) and 39 Workforce Housing units (Very-Low, Low & Moderate Income levels);

- Construction of a 305-space parking garage, 24 on-street parking spaces (SE 2nd St., SE 3rd St., SE 1st Ave.), 8 surface spaces and utilization of 19 off-site parking spaces, recently constructed by the Applicant within the FEC Railroad right-of-way (61 Total), just east of the proposed development, per an agreement between the City and the Applicant;
- Associated amenities, 10,259 sf. of civic open spaces, bike racks, landscaping, lighting, refuse container area, and loading area.
- Reconstruction, upgrades and enhancements to abandoned SE 2nd Avenue with a paverbrick roadway, parallel parking, sidewalk and a public artwalk along with sewer main upgrades, drainage and undergrounding of overhead utilities.

Required Findings – Sec. 3.1.1:

- (A) **Land Use Map.** The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Land Use Map.

The situs property has a Future Land Use Map designation of Commercial Core (CC) and is in zoned Central Business District (CBD) within the Railroad Corridor Sub-District. Table NDC 1 lists CBD zoning as an implementing zoning district for CC land use. The proposed uses, including residential and commercial/retail are permitted uses in the zoning district.

- (B) **Concurrency.** Concurrency as defined by Objective NDC [3.1](#) of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CIE-2, Level of Service Standards, of the Capital Improvements Element of the adopted Comprehensive Plan of the City of Delray Beach.

The Applicant seeks a change of use with new and reconfigured parking areas. Objective 3.1 of the NDC element allows for new development provided that the necessary public facilities and services are available.

- **Schools:** Applicant's School Capacity Availability Determination (SCAD) letter for its recent land use map amendment (2021-052-FLUM) and rezoning (2021-051-REZ) applications indicate that maximum allowable to be built under the current land use map and zoning district, "will not have a negative impact on the school system." A SCAD application, based on the development proposal for 195 units has been transmitted to the School District of Palm Beach County. It is anticipated that there will be no capacity issues/concerns.
- **Water and Sewer:** The Comprehensive Plan states that adequate water and sewer treatment

December 2, 2021

Ms. Anthea Gianniotis, AICP

capacity exists to meet the adopted Level of Service at the City's buildout population. Water and sewer services are available to the site. It is noted, the project includes upgrades to the existing sewer system.

- **Solid Waste:** The Solid Waste Authority of Palm Beach County reports that the landfill servicing this property has sufficient capacity to meet the City's needs until 2054.
- **Drainage:** The site plan will be in compliance with all drainage related requirements, and we do not anticipate an issue obtaining permit from SFWMD.
- **Parks, Recreation, and Open Space:** The Applicant shall provide 8,303 SF of qualifying civic open space as part of the Project, which is consistent with Sec. 4.4.13.G.1 of the LDRs. Additionally, the City's Park Impact Fees will receive \$97,500 as required by Sec. 5.3.2.C of the LDRs.
- **Traffic:** A Traffic Impact Statement was prepared and transmitted to Palm Beach County Traffic Division for review. A Traffic Performance Standards (TPS) letter was provided by Palm Beach County Traffic Division stating the Traffic Division has determined the proposed development meets the Traffic Performance Standards of Palm Beach County. The project will generate 1,163 new daily trips 71 new AM peak hour trips and 94 peak PM hour trips. The letter also states the proposed development is within the Coastal Residential Exception Area and, therefore, the residential portion of the proposed development is exempt from the Traffic Performance Standards of Palm Beach County.

(C) **Consistency.** A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.

Sec. 3.2.3 – Standards for Site Plan Actions:

- (A) Building design, landscaping, and lighting (glare) shall be such that they do not create unwarranted distractions or blockage of visibility as it pertains to traffic circulation.

The proposal meets this standard. The proposed building is of the Anglo-Caribbean Architectural Style, which is one of seven architectural styles identified in the Delray Beach Central Business District Architectural Design Guidelines. Required site visibility will be provided at the intersections and parking garage access. In addition, the building along with the landscaping and site lighting are designed in compliance with the LDRS and will not create and distractions of block visibility as it pertains to traffic circulation. The new building will also act as a buffer for the noise created by the trains on the adjacent FEC tracks.

- (B) All development shall provide pedestrian, bicycle, and vehicular interconnections to adjacent properties, where possible, and include accessible routes from the entry points of publicly accessible buildings to the sidewalk network in accordance with the Americans with Disabilities Act (ADA).

The development proposal meets this standard as the development provides the required interconnections in accordance with the Americans with Disabilities Act. The project includes streetscape improvements consisting of on-street parking, sidewalks, landscaping in compliance with the LDR Section 4.4.13(E)(2).

- (C) Open space enhancements and recreational amenities shall be provided to meet Objective OPR 1.4 and other requirements of the Goals, Objectives and Policies, as applicable, of both the Open Space, Parks, and Recreation Element and Conservation Element.

The proposal meets this standard. The development proposal includes civic open spaces totaling 10,259 sf. available to the public as required per LDR Section 4.4.13(G), which are primarily accommodated via the Plaza and Attached Green design. The project also includes an artwalk open space area. In addition, on site amenities include a 7,130 sf. pool court, 2,038 sf. fitness area, 2,993 sf. club area and two sundecks.

- (D) Any proposed street widening or modifications to traffic circulation shall be evaluated by the City, and if found to have a detrimental impact upon or result in the degradation of an existing neighborhood, the request shall be modified or denied.

The proposal meets this standard. The project does not include any street widening. However, as stated previously, the project includes streetscape improvements consisting of on-street parking, sidewalks, landscaping in compliance with the LDR Section 4.4.13(E)(2). The proposed improvements will enhance the existing neighborhood and provide a pedestrian and bicycle friendly environment.

- (E) Development of residentially zoned vacant land shall be planned in a manner consistent with adjacent development regardless of zoning designations.

This standard is not applicable.

- (F) Property shall be developed or redeveloped in a manner so that the use, intensity, and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourage affordable goods and services; are complementary to and compatible with adjacent land uses; and fulfill remaining land use needs.

The proposal meets this standard. The subject properties are being redeveloped in a manner that the use, intensity, and density are appropriate as the property is located within the CBD Railroad Corridor Sub-District and will assist in the elimination of blighted conditions and will revitalize the Osceola Park neighborhood. The project is designed in a manner that is complementary to and compatible with the adjacent residential neighborhood as most of the building is provided with offsets and increased setbacks above the 3rd floor with a large civic open space at the southwest corner of the site (intersection of SE 1st Avenue and SE 3rd Street). Primary access, service and loading areas (back of house) are located on the east side of the site facing the FEC Railroad and commercial properties. The proposed building will buffer the residential neighborhood to the west from these areas. The project provides 39 workforce housing units (20% of total 195 units) at the very-low-, low- and moderate-income levels with a variety of unit types, fulfilling remaining land use needs. A result will be a more permanent customer base for the area businesses, which will assist in achieving a sustainable downtown consistent with the Downtown Delray Beach Master Plan, Always Delray Comprehensive Plan and Community Redevelopment Plan.

- (G) Development shall provide a variety of housing types that accommodates the City's growing and socio-economically diverse population to meet the Goals, Objectives, and Policies the Housing Element.

The proposal meets this standard. As stated above, the project provides 39 workforce housing units (20% of total 195 units) at the very-low-, low- and moderate-income levels with a variety of unit types, fulfilling housing needs in a manner consistent with the Housing Element of the City's Always Delray Comprehensive Plan.

- (H) Consideration shall be given to the effect a development will have on the safety, livability, and stability of surrounding neighborhoods and residential areas. Factors such as but not limited to, noise, odors, dust, and traffic volumes and circulation patterns shall be reviewed and if found to result in a degradation of the-surrounding areas, the project shall be modified accordingly or denied.

The proposal meets this standard. The proposed development will have a positive impact on the safety, livability, and stability of the surrounding residential neighborhood as well as the commercial area. As previously stated, the project will assist in the elimination of blighted conditions and will revitalize the Osceola Park neighborhood. Primary access, service and loading areas (back of house) are located on the east side of the site facing the FEC Railroad and commercial properties. The proposed building will buffer these areas from the residential neighborhood to the west. Vehicles accessing the parking garage will primarily utilize SE 2nd Street, a City collector roadway, and will not degrade the residential community to the west.

- (I) Development shall not be approved if traffic associated with such development would create a new high accident location or exacerbate an existing situation causing it to become a high accident location, without such development taking actions to remedy the accident situation.

The proposal meets this standard. The traffic study submitted in conjunction with this application does not show any indication that the project will create nor exacerbate an existing situation to become a high accident location.

- (J) Tot lots and recreational areas, serving children, teens, and adults shall be a feature of all new housing developments as part of the design to accommodate households having a range of ages. This requirement may be waived or modified for residential developments located in the downtown area, and for infill projects having fewer than 25 units.

The intent of this standard has been met. The project is a mixed-use development located within the downtown area and includes civic open spaces totaling 10,259 sf. available to the public as required per LDR Section 4.4.13(G), which are primarily accommodated via the Plaza and Attached Green design. The project also includes an artwalk open space area. In addition, on site amenities include a 7,130 sf. pool court, 2,038 sf. fitness area, 2,993 sf. club area and two sundecks, which will accommodate a range of ages. In addition, the Attached Green is designed in a manner that provides recreational opportunities for small children. There are also recreational opportunities at City facilities near the project.

- (K) Development shall not exceed the maximum limits established in the Table NDC-1, Land Use Designations: Density, Intensity, and Implementing Zoning Districts, of the Neighborhoods, Districts, and Corridors Element or specific standards established in the zoning districts that limit density (dwelling units per acre) or intensity (floor area ratio) and must adhere to whichever limit is lower. Development in areas included in density or incentive programs (i.e. workforce housing programs specified in Article 4.7-Family/Workforce Housing) may exceed the Standard density limit, up to the specified Revitalization/Incentive density established for the program: development in all other areas shall not exceed the Standard density.

This standard has been met. The project does not exceed the maximum limits established in Table NDC-1 or the standards in the CBD Railroad Corridor Sub-district.

Pursuant to LDR Section 4.4.13(H) ***Incentive program (1) Residential Incentive Program.***, to encourage a variety of unit types and income ranges within the downtown area, opportunities to increase density are offered in certain CBD Sub-districts. Per LDR Section 4.4.13(H)(1)(d), within the Railroad Corridor Sub-district south of SE 2nd Street, density may be increased over 30 du/ac (up to 70

du/ac). The proposal to construct 195 units is at a density of 70 du/ac.

Per LDR Section 4.4.13(H)(2) ***Performance standards for density increases***, (c) Projects within the Railroad Corridor Sub-district shall provide at least 20 percent of the total units as workforce housing units located on-site with an equal distribution of units for very low, low, and moderate Average Median Income levels for Palm Beach County.

The project provides 39 workforce housing units (20% of total 195 units) at the very-low, low- and moderate-income levels with a variety of unit types, fulfilling remaining land use needs. The workforce housing units will be provided in the same proportion as the market rate housing unit types, the majority of which are one- and two-bedroom units. The project provides a variety of unit types that accommodate the City's growing and socio-economically diverse population and housing needs to meet the Goals, Objectives, and Policies the Housing Element.

- (D) **Compliance with LDRs.** Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in [Section 2.4.5](#) and in special regulation portions of individual zoning district regulations.

Pursuant to LDR Section 2.4.5(F)(5) ***Findings***. In addition to provisions of [Chapter 3](#), the approving body must make a finding that development of the property as represented by the Class V site plan or MDP will be compatible and harmonious with adjacent and nearby properties and the City as a whole, so as not to cause substantial depreciation of property values.

The proposed project is in compliance with the LDRs. The proposed use is allowed in the zoning district as of right. The existing uses and zoning surrounding the proposed development are as follows:

	Land Use Designation	Zoning District	Use
North	CC	CBD	Commercial & Mixed-Use
South	CC	CBD	Vacant Land (Mixed-Use Project In Review Process)
East	CC	CBD	Commercial & Industrial
West	MD	RM	Single & Multi-family

The properties are being redeveloped in a manner that the use, intensity, and density are appropriate as the property is located within the CBD Railroad Corridor Sub-District and will assist in the elimination of blighted conditions and will revitalize the Osceola Park neighborhood. The project is designed in a manner that is sensitive to the adjacent residential neighborhood along SE 1st Avenue as the majority of the building is provided with offsets and increased setbacks above the 3rd floor with a large civic open space at the southwest corner of the site (intersection of SE 1st Avenue and SE 3rd Street). Streetscape improvements consisting of on-street parking landscaping

and sidewalks will also be installed, which will further enhance the area. As required, primary access, service and loading areas (back of house) are located on the east side of the project facing the FEC Railroad and commercial properties. The proposed building will buffer the residential neighborhood to the west from these areas. Vehicles accessing the parking garage will primarily utilize SE 2nd Street, a City collector roadway, and will not negatively impact the residential community to the west. The project provides 39 workforce housing units (20% of total 195 units) at the very-low-, low- and moderate-income levels with a variety of unit types, fulfilling remaining land use needs. A result will be a more permanent customer base for the area businesses, which will assist in achieving a sustainable downtown consistent with the Downtown Delray Beach Master Plan, Always Delray Comprehensive Plan and Community Redevelopment Plan.

Waivers:

A. Diverse Unit Types:

Pursuant to LDR Section 4.4.13 (D) ***Configuration of buildings. (1) Standards for CBD.(d) Dwelling unit standards 1. Diverse unit types***, A number of different unit types, sizes and floor plans shall be available within the development. Two- and three-bedroom units are encouraged, as are a combination of multi-level units and flats. In projects consisting of more than 12 dwelling units, the proportion of efficiency or studio type units may not exceed 25 percent of the total units. One-bedroom units may not exceed 30 percent; however, if no efficiency or studio units are constructed, the cumulative amount of one-bedroom units may not exceed 55 percent. There is no maximum percentage for unit types established for projects having 12 or fewer units, however, a mix of unit types and sizes is encouraged.

The proposed development is to provide 195 units, with a mix of studio, one-bedroom, two-bedroom, and three-bedroom units as indicated in the table below. The waiver request is to increase the percentage of one-bedroom units allowed when studio units are provided from 30% to 42.1%.

Type	Area	# units	% Totals/Type
ST			
ST1	567 sf	23 units	11.79%
<i>Sub-total</i>		23 units	11.8%
1 BD			
A1	685 sf	48 units	24.62%
A2	761 sf	29 units	14.87%
A3 (b1 mod)	671 sf	5 units	2.56%
<i>Sub-total</i>		82 units	42.1%
2 BD:			
B1	985 sf	46 units	23.59%
B2	1,116 sf	9 units	4.62%
B3	1,030 sf	16 units	8.21%
B4	904 sf	5 units	2.56%
<i>Sub-total</i>		76 units	39.0%
3 BD:			
C1	1,294 sf	14 units	7.18%
<i>Sub-total</i>		14 units	7.2%
Total/Building		195 units	100.0%

Waivers Findings:

Pursuant to LDR Section 2.4.7(B)(5)***Findings***. Prior to granting a waiver, the granting body shall make findings that the granting of the waiver:

- (a) Shall not adversely affect the neighboring area;
- (b) Shall not significantly diminish the provision of public facilities;
- (c) Shall not create an unsafe situation; and,
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

As indicated in the table above, the 23 proposed studio units are 11.8% of the total units and less than the 25% allowed. The 82 one-bedroom units consist of 3 different unit types and represent 42.1% of the total number of units, which exceeds the 30% maximum allowed when studio units are provided, even though the combined total of studio and one-bedroom units (105) equals 53.9% of the total number of units. It is noted, there are also 4 different two-bedroom unit types and 1 three-bedroom unit type. It is noted the minimum floor area requirement for a studio unit is 400 sf. and the minimum for a one-bedroom unit is 600 sf. Thus, the proposed 567 sf. studio units are only 33 sf. less than the minimum required for a one-bedroom unit.

It is noted the property is located within the Railroad Corridor Sub-district of the Central Business District (CBD) zoning district. Pursuant to LDR Section 4.4.13(H) ***Incentive program*** (1) ***Residential Incentive Program***., to encourage a variety of unit types and income ranges within the downtown area, opportunities to increase density are offered in certain CBD Sub-districts. Per LDR Section 4.4.13(H)(1)(d), within the Railroad Corridor Sub-district south of SE 2nd Street, density may be increased over 30 du/ac (up to 70 du/ac). The proposal to construct 195 units is at

a density of 70 du/ac.

Per LDR Section 4.4.13(H)(2) ***Performance standards for density increases***, (c) Projects within the Railroad Corridor Sub-district shall provide at least 20 percent of the total units as workforce housing units located on-site with an equal distribution of units for very low, low, and moderate Average Median Income levels for Palm Beach County.

Based upon the above, workforce housing units will be incorporated into that include unit types in the same proportion as the market rate housing unit types, the majority of which are one- and two-bedroom units. The project provides a variety of unit types that are encouraged per the Housing Element of the Always Delray Comprehensive Plan. While the one-bedroom units may be increased to 55% (107 units) with no studio units provided, the provision of a larger variety of housing options is critical to accommodate a diverse rental market with a variety of preferences to reflect the needs of all household types. The provision of a large variety of unit types are encouraged per the Housing Element of the Always Delray Comprehensive Plan to accommodate the City's growing and socio-economically diverse population. While the limitation on the total percentage of studio and one-bedroom units that can occupy a development is understandable, the fact that the proposal introduces another unit type that is slightly less in size as one-bedroom unit in a manner that does not exceed 55% combined total should be encouraged.

The waiver will not adversely affect the surrounding neighborhood, will not diminish the provision of public facilities, and will not create an unsafe situation. The waiver will accommodate a variety of unit types, which are encouraged per the per the Housing Element of the Always Delray Comprehensive Plan. Granting of this waiver will not convey any special privilege in that the same waiver could be granted under similar circumstances on other property for another applicant or owner, especially in circumstances when providing on-site workforce housing equally distributed at the very-low, low and moderate income levels.

In addition to the findings in [Section 2.4.7\(B\)\(5\)](#), pursuant to LDR Section 4.4.13(K)(5)(b)2, within the CBD, the following standards shall be used by the City Commission, SPRAB or HPB when considering waiver requests:

- a. The waiver shall not result in an inferior pedestrian experience along a Primary Street, such as exposing parking garages or large expanses of blank walls.
- b. The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.
- c. negatively impact any adopted bicycle/ pedestrian master plan.
- d. The waiver shall not reduce the quality of civic open spaces provided under this code.

The waiver is to allow an adjustment increase the maximum percentage of one-bedroom units allowed when providing studio units and pertains to the variety of unit types provided internal to the building. Thus, the waiver will not result in an inferior pedestrian experience along a Primary Street, such as exposing parking garages or large expanses of blank walls; will not allow the creation of incompatibilities with nearby buildings or uses of land; will not negatively impact any adopted bicycle/ pedestrian master plan; and will not reduce the quality of civic open spaces

provided under the CBD regulations. Thus, positive findings can also be made with LDR Section 4.4.13(K)(5)(b)2.

B. Dimensional requirements for CBD Sub-districts:

Pursuant to LDR 4.4.13(D)(2)(a)6., Buildings with more than 250 feet of street frontage shall provide a pedestrian/bicycle passageway at least ten feet wide connecting rear alleys and/or parking to the public sidewalk. The passageway elevation(s) shall have storefront windows with a base between nine inches and three feet high with transparent glazed windows extending to at least eight feet high for 50 percent of the length of the wall.

The building has more than 250 feet of street frontage on SE 1st Avenue (Primary Street). The waiver request is to not provide a pedestrian/bicycle passageway with storefront windows.

Waivers Findings:

Pursuant to LDR Section 2.4.7(B)(5)***Findings***. Prior to granting a waiver, the granting body shall make findings that the granting of the waiver:

- (a) Shall not adversely affect the neighboring area;
- (b) Shall not significantly diminish the provision of public facilities;
- (c) Shall not create an unsafe situation; and,
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

The waiver will not adversely affect the surrounding neighborhood, as the project design is sensitive to the residences along the west side SE 1st Avenue and surrounding area, by not providing access to the parking garage for the general public from SE 1st Avenue. The design encourages primary access to the apartments from the main lobby and parking garage on the east side of the building adjacent to the commercial activity with secondary access for residences to the stairwells adjacent to SE 1st Avenue and SE 3rd Street. The waiver will not diminish the provision of public facilities, and will not create an unsafe situation. The waiver will not grant any special privilege in that the same waiver could be granted under similar circumstances on other properties for another applicant or owner. Therefore, positive findings can be made with LDR Section 2.4.7(B)(5).

In addition to the findings in Section 2.4.7(B)(5), pursuant to LDR Section 4.4.13(K)(5)(b)2, within the CBD, the following standards shall be used by the City Commission, SPRAB or HPB when considering waiver requests:

- a. The waiver shall not result in an inferior pedestrian experience along a Primary Street, such as exposing parking garages or large expanses of blank walls.
- b. The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.
- c. negatively impact any adopted bicycle/ pedestrian master plan.

December 2, 2021
Ms. Anthea Gianniotis, AICP

- d. The waiver shall not reduce the quality of civic open spaces provided under this code.

As stated above, the waiver request is to not provide a pedestrian/bicycle passageway with storefront windows, along SE 1st Avenue (Primary Street), as residential units are proposed on the ground floor (no commercial) and faces residential properties on the west side of SE 1st Avenue. The design encourages primary access to the apartments from the main lobby and parking garage on the east side of the building adjacent to the commercial activity with secondary access for residences to the stairwells adjacent to SE 1st Avenue and SE 3rd Street. The project design is sensitive to the residences along the west side SE 1st Avenue, by not providing access to the parking garage for the general public from SE 1st Avenue. The development will provide streetscape improvements per City standards, which will result in a superior pedestrian experience along SE 1st Avenue and will not expose the parking garage or large expanses of blank walls. The waiver will ensure compatibility with the surrounding residential properties; will not negatively impact any adopted bicycle/ pedestrian master plan; and will not reduce the quality of civic open spaces provided under the CBD regulations. Thus, positive findings can also be made with LDR Section 4.4.13(K)(5)(b)2.

Conclusion/Positive Findings:

Based, on the above, positive findings can be made that the project as represented by the Class V Site Plan will be compatible and harmonious with adjacent and nearby properties and the City as a whole so as not to cause substantial depreciation of property values.


Based upon the above, the proposal is consistent with the Always Delray Comprehensive Plan, Osceola Park Neighborhood Plan, Community Redevelopment Plan, and Downtown Delray Beach Master Plan. The proposal is also consistent with Chapter 3 (Performance Standards, LDR Section 3.1.1 (Required Findings), (A) Future Land Use Map, (B) Concurrency, (C) Consistency, and (D) Compliance with LDRs. Based upon the above, approval of the Class V Site Plan is respectfully requested.

Please feel free to contact us should you have any questions or require additional information. Thank you for your consideration.

Sincerely,



Neil M. Schiller, Esq.
Government Law Group



Jeffrey A. Costello, AICP, FRA-RA, Principal
JC Planning Solutions, LLC



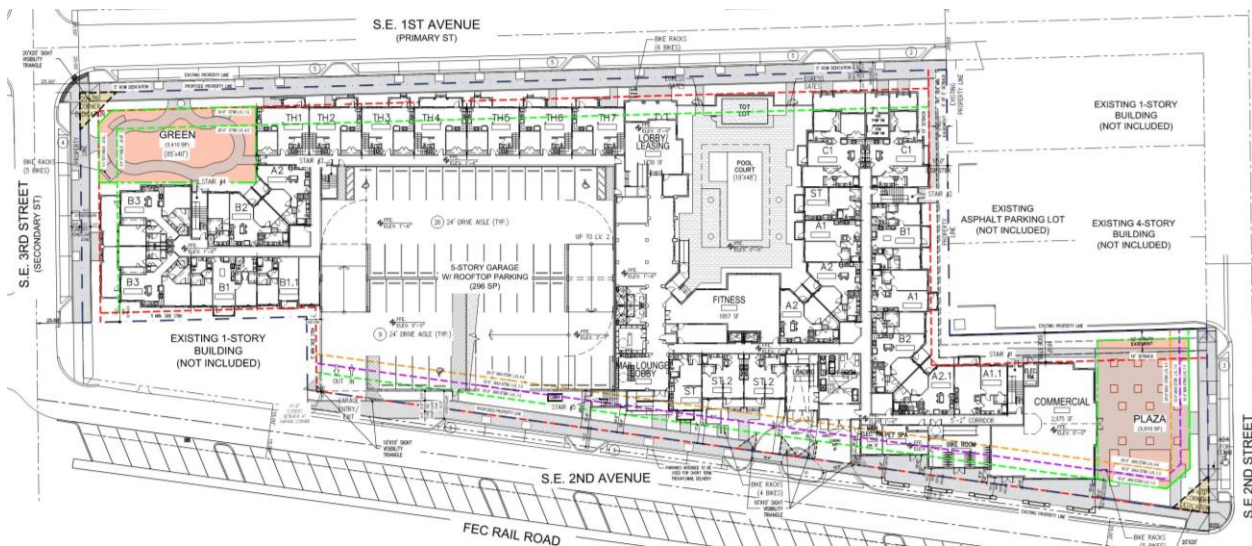
Government
L A W G R O U P

Neil M. Schiller, Esq. | (561) 771-9330 office | nschiller@govlawgroup.com

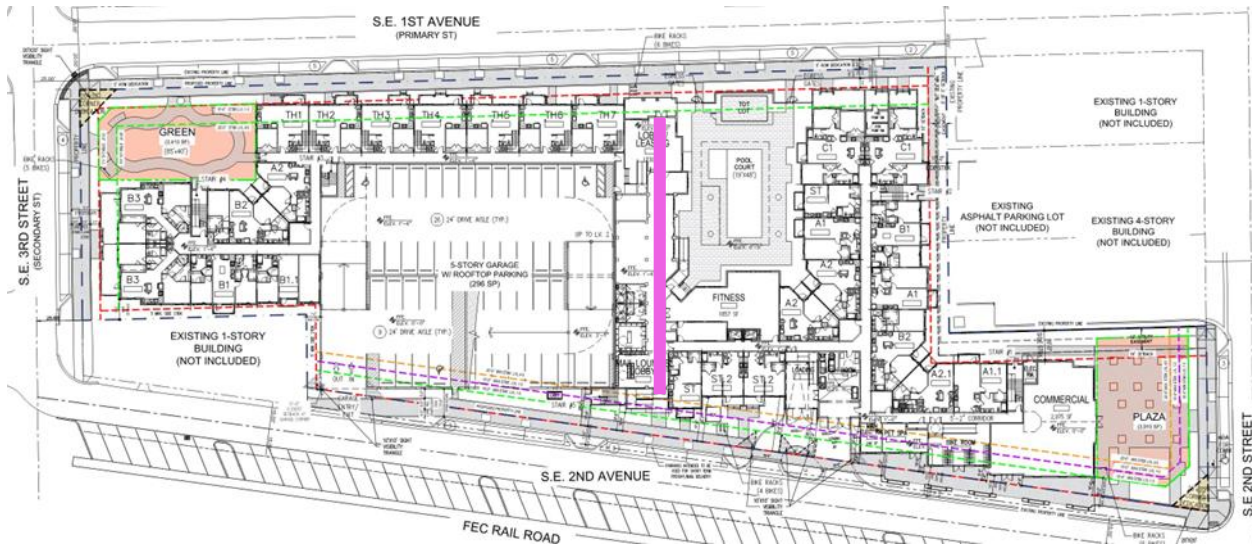
Delray Swan Project
by CDR-SM Delray Swan Holdings, LLC
Revised 7/19/23
Waiver Justifications

Below are the justification statements for three waivers associated with the revised Delray Swan project. The three waivers being requested are: (1) Sec. 4.4.13(D)(2)(a)(6) – pedestrian/bicycle passageway; (2) Table 4.4.13(C) – Front Setback, and (3) Table 4.4.13(C) – Front Setback Above 3rd Story.

The Delray Swan development consists of a 5-story mixed-use building containing 2,975 sf of commercial fronting SE 2nd Street and 165 apartment units [33 of which will be Workforce Housing units (Very-Low, Low & Moderate Income levels)], with 324 parking spaces, amenities, civic open spaces, as well associated bike racks, landscaping, lighting, refuse container area, and loading area. The plans call for upgrades and enhancements to the abutting streets (SE 2nd and 3rd Streets; SE 1st and 2nd Avenues) with paverbrick sidewalks, parallel parking, streetlights and a public artwalk along with sewer main upgrades, drainage and undergrounding of overhead utilities.



sidewalk. The proposed building incorporates a secure passageway where residents can enter the building from the public sidewalks on SE 1st and 2nd Avenues, through the lobbies on both SE 1st and 2nd Avenues, past the package room, club/lounge, and fitness areas. The width of the passageway is a minimum of 10' wide. The pedestrian/bicycle passageway is reflected in pink on the site plan below.



Criteria for Pedestrian/bicycle waiver:

- (a) Shall not adversely affect the neighboring area;

The waiver requested, to provide the required pedestrian/bicycle passageway in a secure fashion. Only the residents and guests of the building will have access to the building. The secure passageway that is 10' wide, allows for easy traversal for pedestrians and bicyclists.

- (b) Shall not significantly diminish the provision of public facilities;

The requested waiver does not impact the provision of public facilities. The secure passageway connects to the public sidewalks on SE 1st and SE 2nd Avenues. The passageway will be solely for the residents of the Delray Swan.

- (c) Shall not create an unsafe situation; and,

The secure passageway connecting public sidewalks of SE 1st and 2nd Avenues, through the Delray Swan building at the bottom floor. The internal passageways will be a minimum of 10' wide to allow for the easy movement of pedestrians and bicyclists.

- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

The incorporation of the secure passageway through the building does not grant a special privilege to the Applicant. Other redevelopments of large portions of or the entire block will likely seek a similar waiver. The Applicant is providing the required pedestrian/bicyclist passageway, which meets the intent of the Code, they are just providing the passageway through the common areas of the building, which will be a minimum of 10' wide.

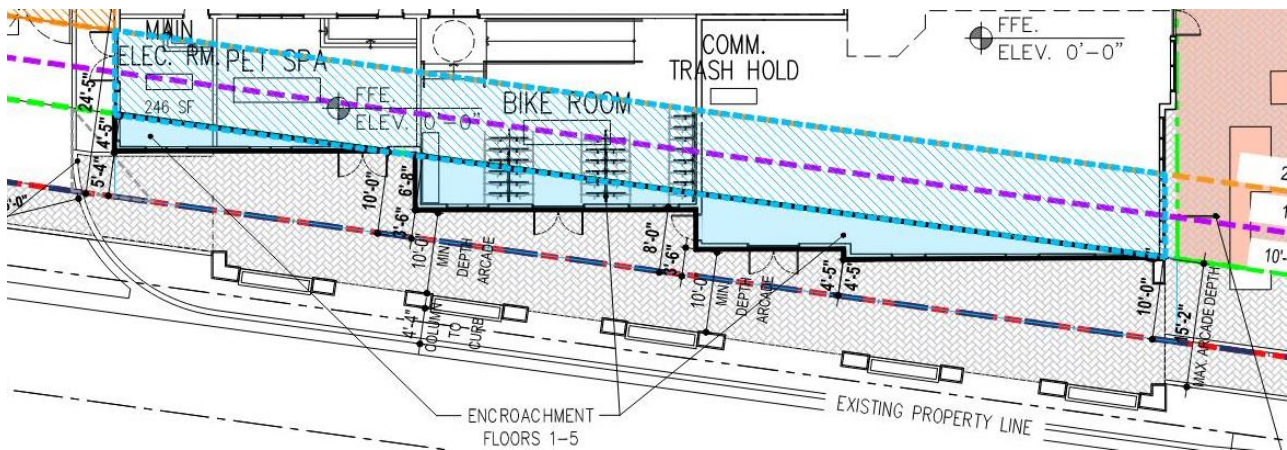
WAIVERS FOR FRONT SETBACKS

Below is a holistic view of the frontage proposed by the Applicant.



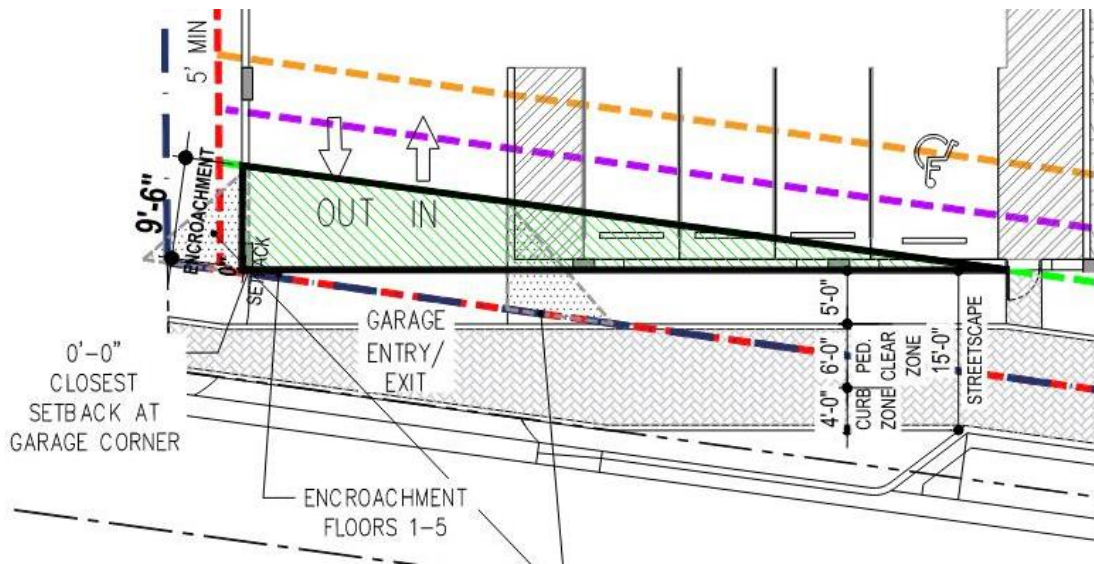
Section 4.4.13(D)(2)(a)(1), Table 4.4.13(C) – Front Setback (1st to 3rd floors)

The Code requires a 10' to 15' front setback on the ground floor up to the third floor. The Applicant is proposing 0' to 30' front setbacks, that average out to 17'. The cohesive development of this unique land assemblage requires some flexibility in the design, including the front setback. The Applicant is being required to dedicate 10' of Right-Of-Way for SE 2nd Avenue, which has contributed to the waiver request. The total length of the frontage is 426'-2" long. There are three areas that need relief. The first area is highlighted in blue below and is located on the northern edge of the building. These light blue triangles depict the building's intrusion into the setback.

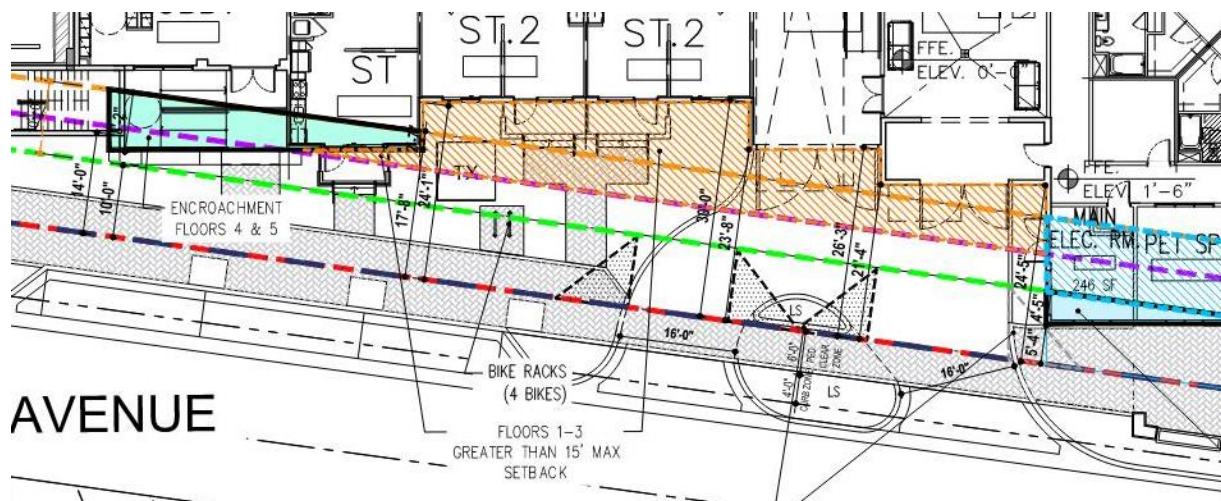


The second area is depicted as green hatching below. This intrusion into the setback area occurs

at the south end of the site with the parking garage. This is less than ten feet from the property line and provides pedestrians with at least 10' from the edge of building to the street.



The final instance of the waiver for this section occurs in the middle of the development where the building is setback more than fifteen feet from the property line for floors 1 - 3. The area referenced above is depicted as beige hatching.



This portion identifies an area where the first three floors of the building are setback more than 15'. One area is the proposed loading zone for the development, which makes sense that the depth of the loading zone is more than 20'. For instance, the size of a UPS truck is 26' long and a typical moving truck is 23' long. The other area is de minimis and provides for articulation in the building design.

Criteria for Front Setback (Floors 1-3) waiver:

- (a) Shall not adversely affect the neighboring area;

The waiver requested, to provide a range of 0' to 20' with an average of 17' does not affect the neighboring area. The front of the building will be located along SE 2nd Avenue, which also borders the Applicant's public parking spaces and the FEC Railroad. Due to the unique layout of the site and the resulting building and requirements thereof, relief is sought from the front setback. The Code requires a minimum of 10' from the property line from levels 1-3. The Applicant's proposed site plan has 197'-3" of frontage that does not meet the Front setback requirements in a range from 0' intrusion to almost 7' into the front setback area. The neighboring area will not be adversely affected by this waiver because it is effectively a surface parking lot adjacent to railroad tracks. The intent of the ordinance is furthered however, as the Applicant is forced to dedicate 10' of Right-Of-Way (ROW) along SE 2nd Avenue, so the new front setback line is 10' closer to the building that it would have otherwise been but for the ROW dedication. Additionally, pedestrian activity is still enhanced by providing the 15' minimum streetscape requirement from the building to the street and proposed on-street public parking spaces.

- (b) Shall not significantly diminish the provision of public facilities;

The requested waiver does not impact the provision of public facilities. The front setback waiver is only for 197'-3" of frontage which is about 46% of the building with an arcade provided along approximately 30% (129'-7") of the building. The Applicant is being required to dedicated 10' of Right-Of-Way (ROW) along SE 2nd Avenue, which provides relief for pedestrian activity along SE 2nd Avenue. The proposed site plan shows a minimum of 10' from the building to the end of the sidewalk. The ground floor portion of the parking garage includes the 24' driveway with the parking structure above. Additionally, there is an arcade, that extends into the front setback area and within the SE 2nd Avenue right-of-way, as permitted by code, that produces shade and encourages pedestrian activity. The waiver's impact on open space along SE 2nd Avenue is de minimis as the adjacent property is not built up and consists of surface parking and the FEC railroad. The proposed waiver does not impact other public facilities including, water, drainage, solid waste, schools and parks.

- (c) Shall not create an unsafe situation; and,

The requested waiver does not create an unsafe situation. As indicated above, the dedication of 10' along SE 2nd Avenue allows for a minimum of 10' between the building and the edge of sidewalk. This pedestrian zone, accommodates walkers, bikers, and skateboarders of all ages by providing sufficient space, while not feeling like the building is "on top" of them. The articulation of the building also allows for wider pedestrian zones at certain areas, and breaks up the mass at grade. The proposed building will be compliant with the Florida Building Code and will be reviewed by Delray Beach Police and Fire Departments as part of the approval process.

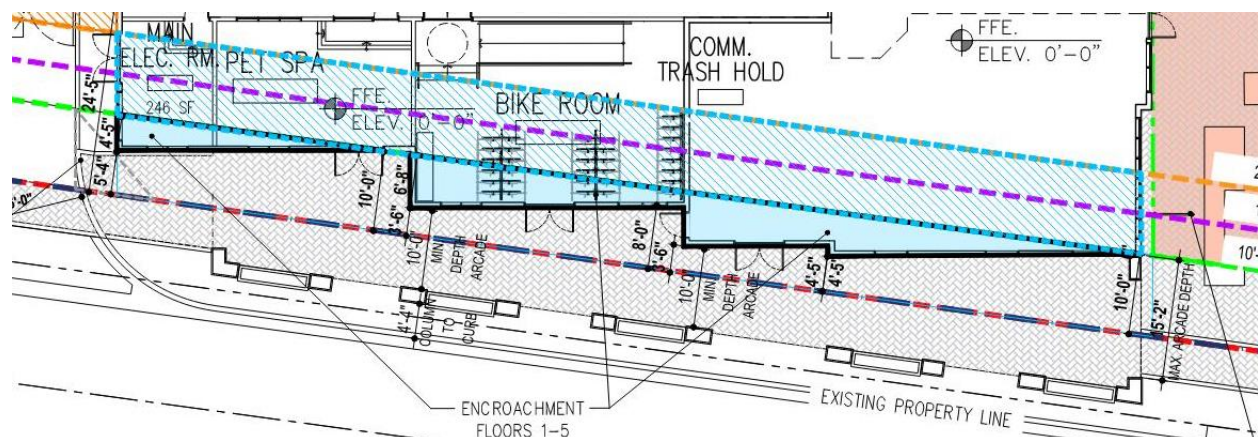
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

The requested waiver does not result in the grant of a special privilege as the lot is uniquely shaped and the Applicant is being required to dedicate 10' of ROW along SE 2nd Avenue. The waiver seeks de minimis intrusions into the front setback which is required to be a minimum of 10' and a maximum of 15' on levels 1-3 of the building. Due to the ROW dedication, there is a minimum of 10' between the edge of the building and the sidewalk, providing a sufficient pedestrian zone along SE 2nd Avenue.

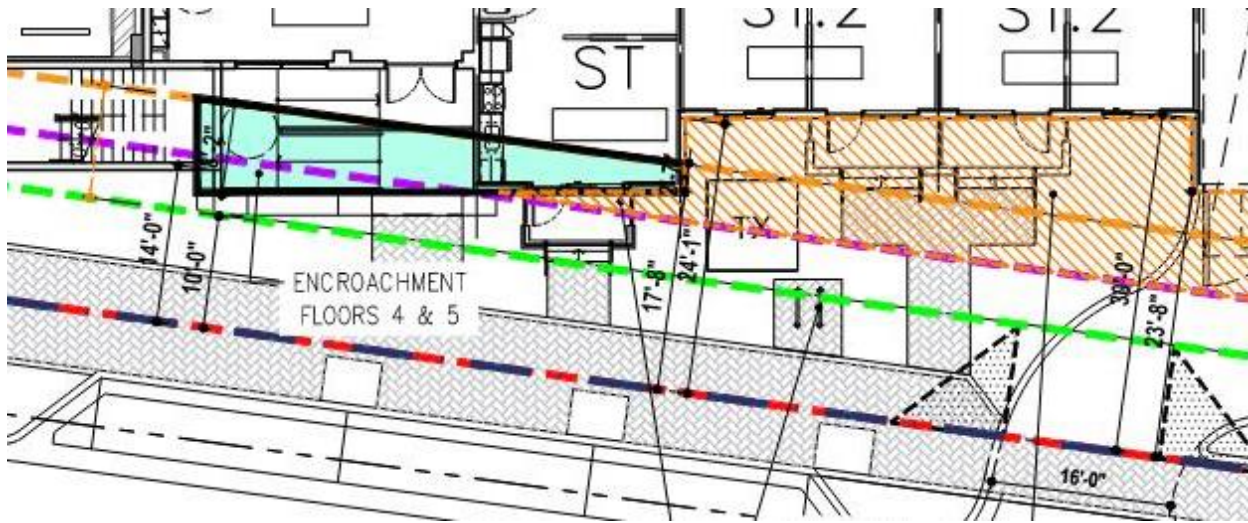
Section 4.4.13(D)(2)(a)(3)(a), Table 4.4.13(C) – Front Setback (Above the 3rd floor)

The Code requires a minimum 20' front setback on floors above the 3rd floor. The Applicant is proposing 0' to 10' minimum front setbacks on the 4th and 5th floors. The cohesive development of this unique land assemblage requires some flexibility in the design, including the front setback. Due to the unique building footprint, the Applicant is seeking a waiver for to allow at least 0' to 10' for the front setback on the floors above the 3rd floor. There are two distinct areas of development that require relief. The north portion of the building depicted as light blue triangles and light blue hatching require relief.

The second area occurs in the middle of the development and is depicted as light blue hatching below.



The second area occurs in the middle of the development and is highlighted in teal below.



Criteria for Front Setback (Above 3rd Floor) waiver:

- (a) Shall not adversely affect the neighboring area;

The waiver requested, to provide a range of 0' to 10' on the floors above the 3rd floor, does not adversely affect the neighboring area. The front of the building is located along SE 2nd Avenue, which also borders the Applicant's public parking spaces and the FEC Railroad. Due to the unique layout of the site and the resulting building and requirements thereof, relief is sought from the front setback. The Code requires a minimum of 20' from the property line on floors above the 3rd floor. The graphic above shows the intrusions to this front setback on floors 4 and 5 with three areas indicated in red. The neighboring area will not be adversely affected by this waiver because it is effectively a surface parking lot adjacent to railroad tracks. The intent of the ordinance is to provide more open space between buildings on floors above the 3rd floor. That intent is furthered with this waiver as there is already significant open space between the proposed building and the next building 200' to the East. Pedestrian activity is not negatively impacted by the waiver, and it could be argued that pedestrian activity is enhanced with the waiver, as the building will create an arcade along SE 2nd Avenue, which is a significant improvement for the area that currently does not have any shade.

- (b) Shall not significantly diminish the provision of public facilities;

The requested waiver does not impact the provision of public facilities. The proposed waiver does not impact the provision of public facilities including, water, drainage, solid waste, schools and parks.

- (c) Shall not create an unsafe situation; and,

The requested waiver does not create an unsafe situation as the request seeks intrusion into the front setback of the building on floors 4 and 5. On a human scale, the impact of this waiver will not be felt as the waivers occur on more than 25' from grade. The proposed

building will be compliant with the Florida Building Code and will be reviewed by Delray Beach Police and Fire Departments as part of the approval process.

- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

The requested waiver does not result in the grant of a special privilege as the lot is uniquely shaped and the Applicant is being required to dedicate 10' of ROW along SE 2nd Avenue which reduces the buildable site area. Due to the location along SE 2nd Avenue and the fact that there are no buildings to the east, the waiver into the front setback on floors 4 and 5, should be granted for other properties with similar circumstances. As the railroad corridor begins its redevelopment other property owners could seek similar waivers, that should be granted.