



Cover Memorandum/Staff Report

File #: 23-1610

Agenda Date: 12/5/2023

Item #: 8.A.

TO: Mayor and Commissioners
FROM: Anthea Gianniotis, Development Services Director
THROUGH: Terrence R. Moore, ICMA-CM
DATE: December 5, 2023

ORDINANCE NO. 36-23: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ANNEXING INTO THE CITY OF DELRAY BEACH A PARCEL OF LAND MEASURING APPROXIMATELY 4.87 ACRES LOCATED AT 5185 ATLANTIC AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN, SITUATED CONTIGUOUS TO THE EXISTING MUNICIPAL LIMITS OF THE CITY OF DELRAY BEACH, PROVIDING FOR INCLUSION OF THE PARCEL INTO AND REDEFINITION OF THE CITY BOUNDARIES PURSUANT TO SUBSECTION 171.044(2), FLORIDA STATUTES; PROVIDING FOR CONFORMANCE WITH ALL VOLUNTARY ANNEXATION PROCEDURES AS SET FORTH IN SECTION 171.044, FLORIDA STATUTES; PROVIDING FOR FILING WITH PALM BEACH COUNTY AND THE DEPARTMENT OF STATE; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

Recommended Action:

Review and consider Ordinance No. 36-23, a privately initiated request for annexation of a parcel of land located at 5185 Atlantic Avenue, subject to Florida Statutes Section 171 and the City of Delray Beach Land Development Regulations Section 2.4.4(A).

Background:

The applicant has requested annexation of a vacant 4.87-acre parcel from unincorporated Palm Beach County to the City of Delray Beach. The annexation request is accompanied by a request for Land Use Map Amendment from Palm Beach County Residential High to City of Delray Beach Medium Density Residential, a rezoning from Palm Beach County Agriculture Residential to City of Delray Beach Multiple Family Residential, and a privately-initiated amendment to the Land Development Regulations to adopt The Flo Delray Overlay District for the purpose of establishing a revitalization incentive density bonus of up to 24 dwelling units per acre at the subject property. The annexation request shall be considered prior to the land use designation and rezoning requests.

LDR Section 2.4.4(A), Annexations: General, *"any property owner with land located in an unincorporated area that is contiguous to the municipal boundary of Delray Beach may request that his or her property be annexed. Additionally, the City may initiate an annexation of private property if a water service agreement has been executed, and as otherwise allowed pursuant to Florida Statutes."*

Section 171.044, Florida Statutes establish that *"the owner or owners of real properties in an unincorporated area of the County, which is contiguous to a municipality and reasonably compact, may petition the governing body of said municipality that said property be annexed to the*

municipality."

The voluntary annexation petition was submitted by Sandra Megrue of Urban Design Studio (Agent) on behalf of Alice Clayton, LLC (Property Owner) in accordance with Chapter 171, Florida Statutes, and complies with the State and City requirements for annexation.

Section 171.044(5) of the Florida Statutes state, *"land shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves."* Pursuant to **Section 171.031, Definitions - (13)** defines "Enclave" as *"(a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or (b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality."*

The subject property shares a boundary with the City of Delray Beach to the east and south; the approval of the annexation will not create an enclave.

While the property will not create an enclave, access to the parcel is substandard. The property is landlocked by the existing Marketplace of Delray West plaza to the south (within the City limits). It is important to note, legal access to the parcel is currently provided via an access agreement recorded in 1981 (ORB 3602, Page 0273). The access easement is only 25 feet wide, crosses over existing parking in the adjacent plaza, and provides access to the southeast corner of the parcel. The current easement is proposed to be amended to allow for direct ingress and egress to the southwest corner (in addition to the current access point on the southeast corner for emergency vehicles); however, no increase in width to accommodate pedestrian or bicycle routes to West Atlantic Avenue has been submitted at this time. It is also important to note, changing the access easement requires the participation and consent of the adjoining property owner(s), which is not confirmed at this time. The applicant has indicated access will be resolved as part of the future site plan review.

Comprehensive Plan Regulations Governing Annexation

Pursuant to the Always Delray Comprehensive Plan, the site is within the City's planning area (Map AD-1, attached), which is the City's ultimate anticipated boundary. The requested annexation is consistent with Neighborhoods, Districts, and Corridors Element Objective NDC 3.3, which says that the City should *continue to annex unincorporated areas within the City's Planning Area*. Map AD-23 (below) includes the subject site within an area with an advisory land use designation of MD. Therefore, based on the analysis at the time the advisory land use was adopted, MD land use was identified as the most appropriate land use based on the surrounding development.

A detailed review of all required findings and relevant information for review is provided in the attached Planning and Zoning Board staff report.

The Planning and Zoning Board reviewed Ordinance No. 36-23 at the September 26, 2023 meeting and recommended approval by a vote of 6 to 0 (Joy Howell absent). The concerns raised were generally related to the income and affordability mix proposed in the concurrent amendment to the Land Development Regulations to establish The Flo Delray Overlay District. The Board requested that the applicant amend the overlay requirements to require the low income affordability category (in addition to moderate income affordability), and to include a requirement that one three-bedroom unit be designated as affordable.

The City Commission voted 5 to 0 to approve Ordinance No. 36-23 on first reading at the November 14, 2023 meeting.

City Attorney Review:

Ordinance No. 36-23 was approved to form and legal sufficiency.

Funding Source/Financial Impact:

Any development of the property will be taxed at the operating millage rate of 6.36 mills and debt millage rate of 0.14 mills. Full discussion of the anticipated financial impact is in the attached staff report.

Timing of Request:

Ordinance No. 36-23 will be effective immediately upon adoption.