



CITY OF DELRAY BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

100 N.W. 1ST AVENUE • DELRAY BEACH • FLORIDA 33444 • (561) 243-7040



HISTORIC PRESERVATION BOARD STAFF REPORT

City Center (Doc's) - 10 N. Swinton Avenue

Meeting	File No.	Application Type
August 3, 2022	2022-060	CBD Waiver Request

REQUEST

The item before the Board is a recommendation to the City Commission for a CBD Waiver request associated with a Class V Site Plan and Certificate of Appropriateness to allow the use of the Porch frontage type instead of the required Storefront frontage type for a new 3-story structure for **City Center (Doc's), Old School Square Historic District**.

GENERAL DATA

Owner: MDG Banyan Delray Partners, LLC

Agent: Neil Schiller & John Szerdi

Location: 10 N. Swinton Avenue

PCN: 12-43-46-16-01-060-0130

12-43-46-16-01-060-0150

12-43-46-16-01-060-0160

Property Size: 0.731 Acres

Zoning: OSSHAD with CBD Overlay

Historic District: Old School Square

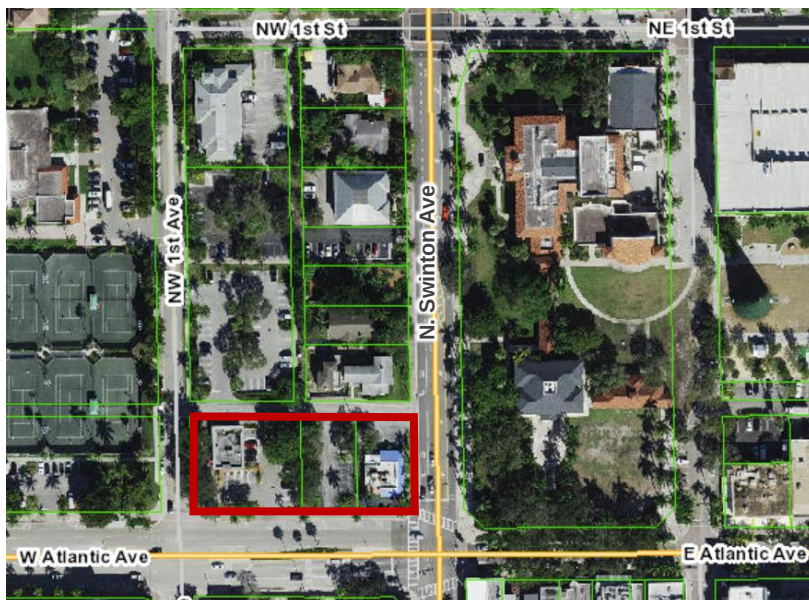
Land Use: HMU (Historic Mixed Use)

Adjacent Zoning:

- OSSHAD (North)
- CBD (West)
- OSSHAD with CBD Overlay (South)
- OSSHAD (East)

Existing Land Use: Commercial

Proposed Land Use: Commercial



BACKGROUND

The property is located at the northwest corner of North Swinton Avenue and West Atlantic Avenue and is within the Locally and Nationally Designated Old School Square Historic District. The subject property consists of 10 North Swinton Avenue (Doc's All American), an unaddressed parking lot located west of 10 North Swinton Avenue, and 37 West Atlantic Avenue (Dunkin Donuts). The property currently contains a non-contributing, Masonry Vernacular style 1951 building that was formerly occupied by a restaurant known as "Doc's All American" with a parking lot to the west and a non-contributing, Masonry Vernacular style circa 1980 building that is occupied by the Dunkin Donuts coffee shop with associated parking.

The Doc's property is listed as a contributing resource within the National Register designated Old School Square Historic District and the property is listed as a non-contributing resource within the Local Register designated Old School Square Historic District. The 2009 Old School Square Historic District Resurvey recommended that the Doc's property be reclassified as contributing, as the Period of Significance was

Project Planner:

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Michelle Hewett, Planner, HewettM@mydelraybeach.com

Review Dates:

HPB: August 3, 2022
CC: To be determined

Attachments:

1. Plans
2. Justification Statements
3. Photos

being expanded to include those eligible resources constructed between 1944 and 1965; however, the owner requested that the subject property not be reclassified. Upon adoption of Ordinance No. 10-10 on June 1, 2010, the Period of Significance for the Old School Square Historic District was expanded to 1965, and 10 of the properties that were recommended for reclassification were not reclassified to contributing, including the subject property, because the property owners were allowed to “opt-out” of this process.

It is noted that the 2020 Historic Resource Resurvey of the Old School Square Historic District recommends the property be reclassified as a contributing structure to the Local Register of Historic Places. While the 2020 Historic Resource Resurvey project has not yet been finalized, it is expected to be scheduled for review by the Historic Preservation Board and City Commission at the end of this year.

The east portion of the property contains a one-story 1951 building that until 2021 had been utilized as a restaurant last known as “Doc’s All American”. A bathroom addition was added to the Doc’s restaurant in the 1980s, as well as a large awning surrounding the front and sides of the structure. The existing neon sign was restored in the 1990s. Four parking spaces are located on the north side of the structure, adjacent to the east/west alley. In 1994, COA 8-217 was approved by the Historic Preservation Board for improvements to the building as well as the addition of new code compliant landscaping, and a new parking lot to the west of the restaurant building.

On June 3rd, 2003, COA 2003-230 received administrative approval for a color change to the fabric awning. In 2006, a sign replacement for Doc’s restaurant was submitted and approved administratively.

In 2020, an application was submitted for a Land Use Amendment to change the 0.76-acre property’s Future Land Use designation from Historic Mixed Use (HMU) to Commercial Core (CC) (Ordinance No. 35-21) and a Rezoning to change the property’s zoning from Old School Square Historic Arts District (OSSHAD) to Central Business District (CBD) (Ordinance No. 34-21). An application was submitted to Individually Designate the Doc’s property (10 N. Swinton Avenue) to the Local Register of Historic Places (Ordinance No. 28-21). Other submittals during this time included a Sketch Plan Review, Class V Site Plan, Certificate of Appropriateness, Waiver, In-Lieu of Parking, and Conditional Use. Below is a summary of application submittal and public hearing reviews:

- July 1, 2020, HPB recommended denial of the Rezoning and Land Use Amendment requests.
- August 17, 2020, the Planning and Zoning Board (PZB) recommended approval of the Rezoning and Land Use Amendment requests.
- October 6, 2020, applicant submitted a request to Individually Designate the Doc’s property (10 N. Swinton Avenue) to the Local Register of Historic Places.
- October 6, 2020, the City Commission approved the Rezoning and Land Use Amendment requests on 1st reading.
- December 8, 2020, the City Commission denied the Rezoning and Land Use Amendment requests on 2nd reading.
- December 11, 2020, the applicant withdrew the historic designation application.
- January 5, 2021, the City Commission discussed and voted to reconsider the Rezoning and Land Use Amendment on a future agenda.
- May 14, 2021, applicant submitted a Sketch Plan Review to the Development Services Department for staff review of a Site Plan and Certificate of Appropriateness for construction of a new commercial structure and modification of the existing Doc’s building. Technical Advisory Committee comments were issued to the applicant on June 23, 2021.
- September 1, 2021, HPB recommended approval of the Individual Designation of the property (10 N. Swinton Avenue – Doc’s) to the Local Register of Historic Places.

- October 5, 2021, the City Commission approved the Individual Designation request on 1st reading.
- October 5, 2021, the City Commission denied the Rezoning and Land Use Amendment on 2nd reading.
- November 2, 2021, the Individual Designation was expected to be scheduled for 2nd reading before the City Commission but was postponed at the request of the applicant.
- December 2, 2021, the applicant submitted a Class V Site Plan, COA, Waiver, and In-Lieu of Parking requests.
- March 4, 2022, the applicant submitted a Conditional Use request to allow outdoor dining which operates at night and is the principal use or purpose of the restaurant formerly known as Doc's (10 N. Swinton Avenue).

The subject request is a waiver from the Central Business District (CBD) zoning district Frontage Type requirement to allow the use of the Porch frontage type rather than the required Storefront frontage type. The request is applicable to the proposed 3-story structure west of the existing Doc's building; it is noted that the proposal is considered a unified development of the 3 properties totaling 0.76 acres.

The proposal also includes an In-Lieu of Parking request and a Conditional Use request to allow outdoor dining, which operates at night and is the principal use or purpose of the associated restaurant. The Waiver, In-Lieu of Parking, and Conditional Use requests must be approved by the City Commission prior to HPB's review of the Site Plan and Certificate of Appropriateness requests.

WAIVER ANALYSIS

WAIVER REQUEST

Pursuant to LDR Table 4.4.13€(3)(a)(2)(a) – **Required Retail Frontage Use Limitations**, the frontage type shall be either a Storefront or Arcade with a Storefront.

The waiver request is to allow a Porch frontage type, instead of a Storefront or Arcade with a Storefront, on the building facing West Atlantic Avenue between North Swinton Avenue and NW 1st Avenue.

The CBD zoning identifies West Atlantic Avenue with "Required Retail Frontage". Pursuant to LDR Section 4.4.13(B)(2), "***Certain Primary Streets within the CBD are intended to be lively, highly active pedestrian environments that support businesses and reinforce local character. Streets designated as with Required Retail Frontage are held to stricter standards regarding allowable frontage types and uses located within side-walk level stories.***"

The types of uses allowed in the sidewalk-level include retail shops, restaurants, personal services, and hotels. The code requires the building's architecture to reinforce these types of uses by using a Storefront frontage type, with a high percentage of glazing, or an Arcade paired with a Storefront. Arcades extend into the public right-of-way, over the sidewalk to provide a covered, shaded environment for pedestrians. In this location, West Atlantic Avenue is not under the City's jurisdiction and is controlled by Florida Department of Transportation (FDOT), which complicates building Arcades in the right-of-way and tends to deter applicants from pursuing Arcades.

The proposal is for construction of a new 3-story building on the west side of the former Doc's building. The new structure proposes use of the Porch frontage type rather than the required Storefront frontage type. It is important to note that the site changes in grade, over 2.5 feet from east to west across the full block, the approved plan absorbs

Figure 4.4.13-E-11 Storefront Frontage Type

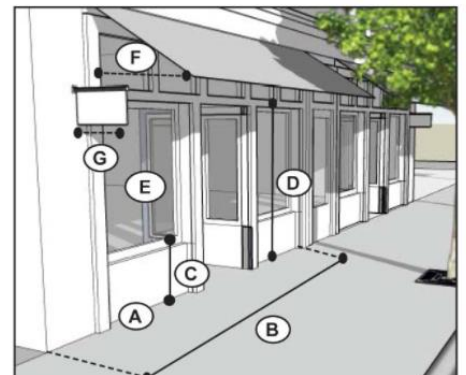
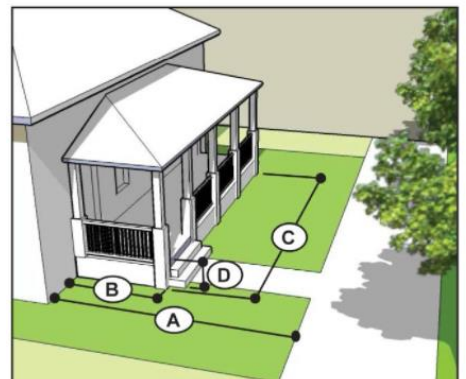


Figure 4.4.13-E-3 Porch Frontage Type



the change in grade in hardscape areas in the front setback area. As a result, the streetscape, which is typically an extension of the City’s sidewalk, has steps, ramps and planters transitioning to the Storefronts, which are not always positioned at the same vertical location as the sidewalk. The grade of the site requires a designed transition.

The proposed Site Plan and Certificate of Appropriateness requests **will be reviewed and acted upon in separate meeting and upon approval of the Waiver by the City Commission**. Under consideration today is a waiver to utilize the Porch frontage type.

While the Porch frontage type is commonly associated with residential uses, the CBD regulations allow the Porch to be incorporated for commercial uses as well; however, it is not identified for use along Atlantic Avenue. The CBD code anticipated a more traditional main street condition and limited the types of uses and possible frontage types to reinforce that character. The uses in the ground floor will be restaurant and retail. The exterior walls of the tenant spaces with the proposed Porches have a high level of transparency, as is required by the Storefront. The rhythm, pattern, and architecture will be evaluated by the board in the larger application action; however, it is important to note the transparency as it supports the retail and restaurant uses similar to a Storefront type.

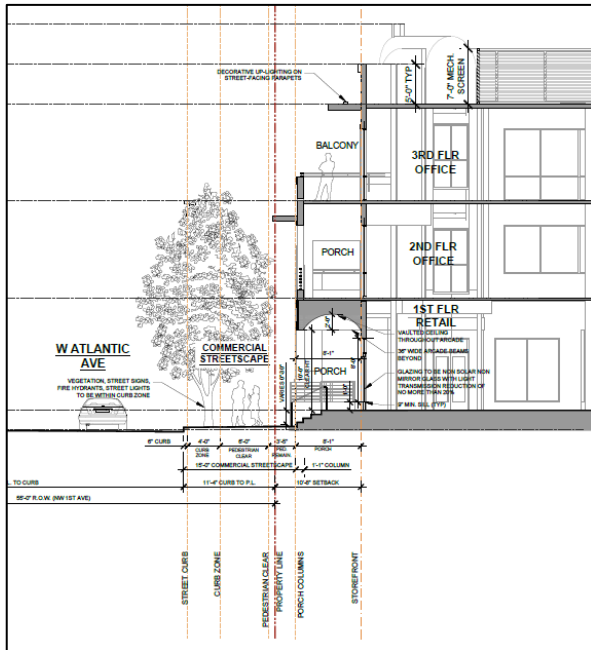
In this case, consideration has to be given as to whether the Porch provides a better option for absorbing the change in grade across the site, as well as reflecting the site’s location within the Old School Square Historic District. The Porch frontage type incorporates a minimum elevation above the sidewalk level. Vernacular architecture elevated porches to capture breezes, as well as provide for areas of social interaction. While porches were a common element of the architecture in the period of significance of the historic district, they were not a common design element incorporated into an Art Deco nor Streamline Moderne architectural style in Delray Beach, which is the proposed architectural style for the new City Center building.

Table 4.4.13(E) Dimensional Requirements for Porches			
		Minimum	Maximum
A	Building Setback	10 ft.	15 ft.
B	Depth	8 ft.	12 ft.
C	Width	40% Facade	100% Facade
D	Floor Elevation	.5 ft.	4 ft.
Allowable Encroachment ¹		-	8 ft.
¹ May not encroach into the curb zone or pedestrian clear zone (See Section 4.4.13(E)(2))			

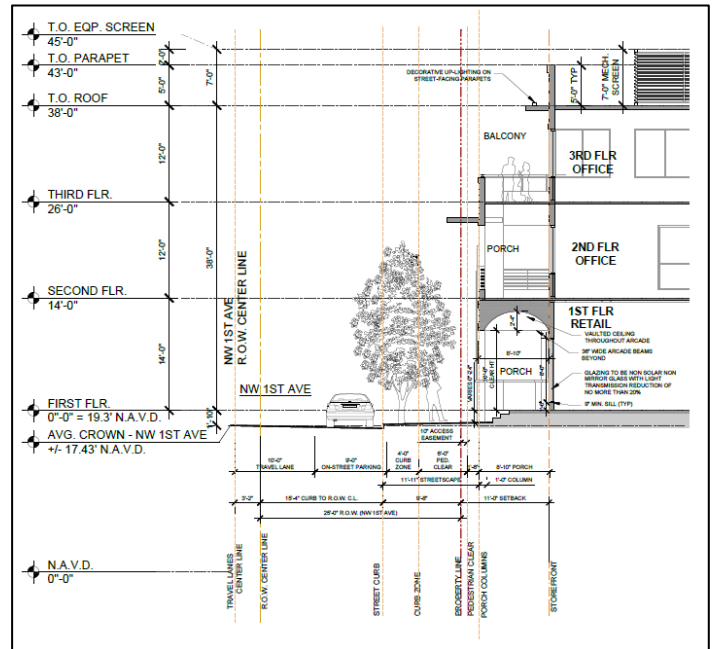
As shown in Table 4.4.13(E) “Dimensional Requirements for Porches” above, porches are allowed to encroach up to 8 feet into the Building Setback provided the curb zone and pedestrian clear zone are maintained. Porches have a minimum depth to provide for an authentic architectural element, rather than a solely aesthetic, un-useable detail. The plans submitted provide for a linear porch along the south elevation of a new 3-story Art Deco/Streamline Moderne building. The proposal labels the area in front of the building along W. Atlantic Avenue as a porch, but it functions more like an arcade, which is described in the LDR as “a covered, unglazed, linear hallway attached to the front of a building, supported by columns or pillars. The CBD regulations state that the Arcade frontage type is permitted when

incorporated with the Storefront frontage type but should be extended over the public sidewalk, and LDR Section 4.4.13(f)1.a. stipulates “A sidewalk should not run parallel to an arcade, allowing pedestrians to bypass storefront windows”. Such configuration and extension are not feasible given the state regulated right-of-way of W. Atlantic Avenue.

Diagrams provided demonstrate the porch does not encroach more than 8 feet into the minimum setback, as the building is setback more than the minimum of 0 feet, and that the minimum curb zone and pedestrian clear zone are met or exceeded, which are critical requirements that must be met in all instances of the proposed waiver. It is noted that architectural features in the diagrams below that extend into the public ROW must be removed and are not part of this consideration.



W. Atlantic Avenue Streetscape Section



NW 1st Avenue Streetscape Section

Waiver requests for properties located within the CBD are subject to two sets of findings. The findings in LDR Section 2.4.7(B) apply to all waiver requests in the city. LDR Section 4.4.13(K)(5) provides additional criteria for properties located within the CBD. The request must satisfy both sections to be approved.

The applicant has provided a justification statement (attached).

WAIVER 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:

- Shall not adversely affect the neighboring area;
- Shall not significantly diminish the provision of public facilities;
- Shall not create an unsafe situation; and,
- 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.

CBD WAIVER CRITERIA

Pursuant to LDR Section 4.4.13(K)(5) - *Waivers*. This section allows consideration of two types of waivers:

- (a) Section 2.4.7(B)(1)(a) authorizes the waiver of certain regulations irrespective of a property's zoning district. Those waivers may be considered within the CBD in accordance with those specific provisions. When reviewing applications that include waivers that can only be granted by the City Commission, the SPRAB and the HPB shall make formal recommendations to the City Commission regarding those waivers prior to site plan consideration.
- (b) Section 2.4.7(B)(1)(b) authorizes the City Commission to waive certain other regulations that no other official or board have the authority to waive.
1. Within the CBD, that authority of the City Commission is limited by the following restrictions:
 - a. **Building Height Waivers.** Building Height Waivers. Waivers to increase the number of stories or maximum height of a building are not permitted.
 - b. **Front Setback Waivers.** Waivers to decrease the minimum front setback depth are permitted if the reduction would not result in a streetscape that does not meet the minimum requirements of Section 4.4.13(E)(2).
 - c. **Sidewalk Width Waivers.** Waivers to decrease the minimum sidewalk width are not permitted in the CBD.
 2. Within the CBD, the following standards shall be used by the City Commission, SPRAB or HPB when considering waiver requests, in addition to the findings in Section 2.4.7(B)(5):
 - 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. The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/ pedestrian master plan.
 - d. The waiver shall not reduce the quality of civic open spaces provided under this code.

LDR WAIVER FINDINGS ANALYSIS:

- a. **Shall not adversely affect the neighboring area;**

The waiver request is for a portion of the buildings, specifically the front along West Atlantic Avenue and NW 1st Avenue, which are removed from other nearby areas. The full block face (Block 60) is part of the same project. No negative effects on neighboring properties are anticipated by the incorporation of Porches.
- b. **Shall not significantly diminish the provision of public facilities;**

The waiver request for a Porch frontage type will not diminish public facilities as the minimum pedestrian clear zone and curb zone areas are maintained, accommodating a high level of pedestrian activity and providing space for streetlights, trees, etc.
- c. **Shall not create an unsafe situation; and,**

The proposal will accommodate ADA compliant improvements to the site and absorb the grade changes on the site; therefore, the request is not anticipated to create an unsafe situation.
- 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 board should consider whether the Porch frontage type is an equal or superior frontage type on West Atlantic Avenue in the Old School Square Historic District, on a site that must absorb over 2.5 feet of grade change along the sidewalk. The uniqueness of the condition does not provide a special privilege in that the same waiver could be granted under similar circumstances as it was directly to the south, across W. Atlantic Avenue for the Sundry Village project.

CBD WAIVER CRITERIA ANALYSIS:

- 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.**

Generally, the CBD code encourages open air elements, particularly at building entries, by allowing frontage type elements like stoops and porches to encroach by specified amounts into minimum setback areas. These elements are intended to help create high quality public/private areas, lending both activity and oversight of the downtown sidewalks as well architectural interest. Porches are allowed to encroach into the front setback up to 8'-0", provided the minimum streetscape, particularly the Pedestrian Clear Zone of 6feet is provided. Utilizing a Porch in this area will not negatively impact the pedestrian experience, provided the proposed plan meets or exceeds the minimum streetscape requirements for the curb zone and pedestrian clear zone. No blank walls or exposed parking garage levels, or back-of-house areas will be located along the Primary Streets.

- b. The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.**

To the west across NW 1st Avenue is the Delray Beach Tennis Center and to the east across N. Swinton Avenue is the Old School Square Complex, neither of which have buildings situated at the front of the property near the sidewalk. While the Porch frontage type is not a typical architectural element incorporated into the Art Deco/Streamline Moderne architectural styles in the area, it is intended to echo the architectural elements of historic structures within the Old School Square Historic District. To the south, the Sundy Village buildings proposed to front on W. Atlantic Avenue were also approved to utilize the Porch frontage type. Those structures were designed with a more traditional porch style, echoing the design of the Cathcart House. The waiver request is intended to improve compatibility with the surrounding area and is not expected to allow the creation of incompatibilities with nearby buildings or uses.

- c. The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan.**

With the minimum streetscape elements provided, the use of the Porch will not negatively impact the sidewalk network and does not affect any adopted bicycle/pedestrian master plan. The proposed plan incorporates infrastructure for cycling, including bike racks, lockers, and shower facilities.

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

The proposal incorporates a new Civic Open space area at the intersection of West Atlantic Avenue and N. Swinton Avenue. In this location, it will be situated adjacent to outdoor dining locations, (provided a companion request for conditional use is approved). The activity lining the open space will provide for natural surveillance of the plaza, increasing safety of the space. The waiver is not expected to reduce the quality of civic open spaces.

The property owner has submitted a justification statement for the waiver request (attached).

REVIEW BY OTHERS

On June 21, 2022, the **Downtown Development Authority (DDA)** recommended approval; the board memo is attached providing the board's comments.

The City Center proposal was forwarded to the **Community Redevelopment Agency (CRA)** in June of 2022 for inclusion on the Development Applications update memorandum.

ALTERNATIVE ACTIONS

- A. Move to continue with direction
- B. Recommend approval to the City Commission of the Waiver request to use a Porch frontage type instead of a Storefront or Arcade frontage type, *provided the Porch encroaches no more than 8-feet into the minimum setback areas and the minimum curb zone and pedestrian clear zones are provided* for the property known as **City Center, Old School Square Historic District** by finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.
- C. Recommend denial to the City Commission of the Waiver to use a Porch frontage type instead of a Storefront or Arcade frontage type, for the property known as **City Center, Old School Square Historic District** by finding that the request and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in the Land Development Regulations.

PUBLIC AND COURTESY NOTICES

☒ Courtesy Notices are not applicable to this request

☒ Agenda was posted on (7/27/22), 5 working days prior to meeting.