



## Cover Memorandum/Staff Report

---

**File #:** 23-765

**Agenda Date:** 6/6/2023

**Item #:** 7.C.

---

**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Department  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** June 6, 2023

RESOLUTION NO. 113-23: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REPEALING RESOLUTION NO. 45-23 IN ITS ENTIRETY; GRANTING A WAIVER REQUEST TO SECTION 4.3.4(K) OF THE LAND DEVELOPMENT REGULATIONS APPROVING A DWELLING UNIT WITH 864 SQUARE FEET OF FLOOR AREA FOR THE PROPERTY LOCATED AT 1115 NORTH SWINTON AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES (QUASI JUDICIAL HEARING).

### **Recommended Action:**

Review and consider Resolution No. 113-23, a request for waiver from Section 4.3.4(K), Land Development Regulations (LDR) to allow a dwelling unit with a floor area of 864 square feet on the property located at 1115 North Swinton Avenue.

### **Background:**

The property is located at the southeast corner of N. Swinton Avenue and NE 12th Street and consists of Parcels 1 and 2 of the replat of Lots 13, 14, 15, 16, and 17, Block 6 of Dell Park. The .48-acre site is zoned Single Family Residential (R-1-AA) with a compatible land use designation of Low Density Residential, 0-5 DU / Acre (LD). There is a 3,374 square foot single-family residence on Parcel 2 facing west on N. Swinton Avenue, and a three-bay, two-story, 1,040 square foot garage on Parcel 1 facing north on NE 12th Street. The property is held in a Unity of Title recorded on July 7, 1999 in Official Record Book 11214, Page 965, with the garage as an accessory structure to the primary dwelling unit.

On March 10, 2022, the Board of Adjustment granted a variance from the Land Development Regulations (LDR) Section 4.3.4(K), Development Standards Matrix to reduce the minimum required front setback from 30 feet to 26.5 feet on Parcel 1 - necessary to cure nonconformities with the location of the garage.

On March 6, 2023, the City Commission considered application 2023-056-WAI-CCA seeking a waiver to convert a portion of the existing 1,040 square foot, two-story, three-car detached garage into a dwelling unit with only 864 square feet of floor area for the parcel of land located at 1115 North Swinton Avenue (the "Property"). The Commission denied the request for a waiver by a vote of 2-2 (Resolution No. 45-23).

On May 16, 2023, the City Commission voted to reconsider the waiver request.

**Waiver Request:**

The applicant has requested a waiver with the stated intent to “cure nonconformities on Parcel 1 and 2, dissolve the Unity of Title, and develop a [single family residence] on Parcel 1.” The garage currently has 380 square feet under air (without restroom or kitchen facilities) on the second floor; the applicant has provided a conceptual plan to convert portions of the 3-car garage (Parcel 1) to a residential dwelling unit. In order for an application for a building permit to be approved, however, the property must meet applicable building and zoning standards at the time of filing and the existing structure does not meet the minimum floor area requirements. The minimum floor area for a single-family dwelling unit in R-1-AA zoning is 1,500 square feet; thus, a waiver from LDR Section 4.3.4(K) is required for the applicant to proceed with the dissolution of Unity of Title and building permit approval.

Pursuant to LDR Section 2.4.7(B)(5), prior to granting a waiver, the approving body shall make a finding 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.

The garage structure on Parcel 1 matches the existing development pattern found along the street; the waiver allows the existing structure (less than the minimum required square footage) to legally remain and be occupied. An additional residential is not anticipated to diminish the provision of public facilities, nor is it anticipated to create an unsafe situation.

The applicant has characterized the waiver as “temporary,” because of an intent to eventually expand the footprint of the structure on Parcel 1. While it is correct that the waiver would allow the applicant to apply for a building permit and request the dissolution of unity of title, there is no guarantee or requirement that the applicant will carry through with the stated intent of building a larger structure in the future. The request should be viewed in terms of its compliance with the required findings, should the structure remain 864 square feet in perpetuity.

In single-family zoning districts, two dwelling units are not allowed on a single lot. Therefore, Resolution No. 113-23 establishes a condition of approval to require the dissolution of Unity of Title prior to the issuance of a Certificate of Occupancy for the structure on Parcel 1.

The applicant’s justification letter is included as an attachment.

**City Attorney Review:**

Resolution No. 113-23 is approved as to form and legal sufficiency.

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

N/A