



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## SITE PLAN REVIEW AND APPEARANCE BOARD STAFF REPORT

### 354 SE 5<sup>th</sup> Avenue - Waivers

Meeting	File No.	Application Type
November 9, 2022	2022-151-SPF-SPR-CLV	Class IV Site Plan
Property Owner		Agent
Delport Limited Partnership		Jeffrey Silberstein

### Request

Provide a recommendation to the City Commission regarding three waivers to the requirements of the Central Business District in association with a Class V Site Plan application to construct an 8-unit townhouse development.

### Site Data & Information

**Location:** 354 SE 5<sup>th</sup> Avenue

**PCN:** 12-43-46-21-01-104-0070

**Property Size:** 0.58 acres

**LUM:** Commercial Core (CC)

**Zoning:** Central Business District (CBD) - Central Core Sub-district

**Adjacent Zoning:**

- **North, South, and East:** CBD - Central Core Sub-district
- **West:** Single Family Residential (R-1-A)

**Existing Land Use:** Vacant

**Proposed Land Use:** Multi-Family Residential

**Floor Area Ratio:**

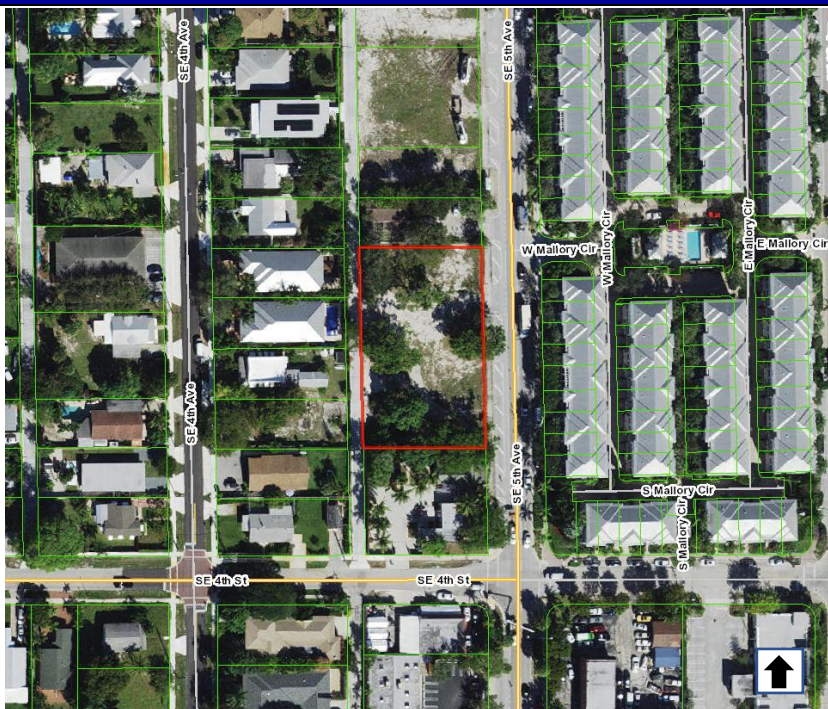
- **Existing:** NA
- **Proposed:** 1.47
- **Maximum allowed:** 3.0

**Density:**

- **Existing:** NA
- **Proposed:** 14 du/acre
- **Maximum allowed:** 30 du/ac

**CBD Central Core Sub-district**

- **SE 5<sup>th</sup> Avenue:**  
-Primary Street



**Project Planner:**

Julian Gdaniec, Senior Planner; [gdaniec@mydelraybeach.com](mailto:gdaniec@mydelraybeach.com)  
561-243-7365

**Attachments**

- Site Plan, Architectural Plans, Landscape Plan, Survey
- Applicant Justification Statement



## Background

The subject property consists of four originally platted lots, unified under same deed, all of which currently sit vacant. The lots previously contained low scale residential structures, some of which were converted to office uses as is typically found for lots fronting a major arterial corridor.

In 2022, a Class V site plan application was submitted for the new construction of a three story, 8-unit, approximate 36,000 sq. ft. townhouse development. During the technical review of the site plan application, multiple items were identified as not in compliance with the Land Development Regulations (LDR). Given that the property is located within the CBD, a determination must be made regarding three requested waivers needed to provide the applicant relief, if deemed consistent with all applicable criteria, in areas where the proposed scope of work does not meet the requirements of the CBD.

## Description of Proposal

The Applicant requests consideration of three waivers to LDR Section 4.4.13, Central Business District. Specifically, relief is sought from the following code sections:

- **Civic Open Space, 4.4.13(G)(1)(b)** – requesting to provide no civic open space within the subject property, whereas 234 square feet of civic open space is required (a minimum of 5% of the total lot area above 20,000 sq. ft.).
- **Architectural Standards, Façade Composition, 4.4.13(F)(2)(a)(1)** – requesting a design be approved that delivers façade composition and building articulation that exceeds the accepted maximum façade proportion height to width ratios of 3:1 or 1:3, by proposing a façade proportion ratio of 5:1.
- **Supplemental Use Standards, Swimming Pools on Rooftops, 4.4.13(C)(4)(h)4.c.** – requesting to provide no walkway on the sides and rear of each pool, effectively providing no setback from the edge of deck, whereas a 5-foot wide walkway is required to surround rooftop pools on all sides.

Following the Board's recommendations, the waiver requests will be scheduled for City Commission consideration and final action. The Class V Site Plan, Landscape Plan, and Architectural Elevation, which are dependent on the outcome of the waiver requests, will then require final approval by SPRAB, provided that any outstanding technical items have been addressed.

## Review & Analysis: Waivers

### LDR Section 4.4.13(K)(5)(a), Waivers

*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.*

Waiver requests in the CBD are subject to both the criteria applicable to parcels citywide, as well as those to properties in the CBD. The Board must consider how the request meets the criteria

### Waiver Criteria

#### LDR Section 2.4.7(B)(5), Waiver: 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.*

#### LDR Section 4.4.13(K)(5)(b)(2), CBD review and approval process: Waivers

*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).*

- 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.*
- 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

**Waiver #1, Reduction in the amount of Civic Open Space required**

Pursuant to **LDR Section 4.4.13(G)(1)(b), Civic Open Spaces: Amount required**, sites between 20,000 and 40,000 square feet are required to provide five percent of the site's area that is above 20,000 square feet as civic open space.

The CBD regulations provide detailed and specific parameters for the configuration and programming of civic open space so that larger developments incorporate open space in a way that elevates the pedestrian experience, integrates the private development area with the public streetscape, creates natural breaks in structures with larger massing, and improves the overall quality of the project. The figure to the right illustrates the many civic open space types required by the LDR, all of which are base on the prescribed calculation.

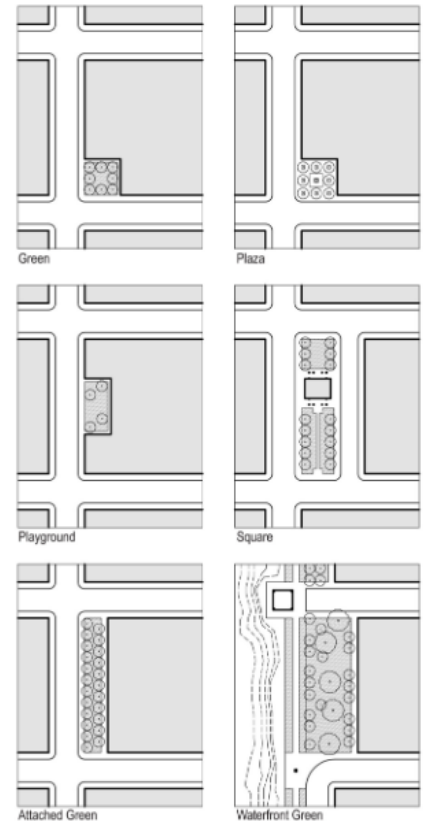
The LDR states that, for civic open space requirements less than 250 square feet, the **Public Art** civic open space typology should be utilized. The Public Art civic open space shall incorporate a fountain, living wall, mural, or sculpture and shall be provided facing a street or a pedestrian passageway. Rather than provide the minimum required amount based on the overall square footage of the subject property (234 sq. ft.) the applicant has instead elected to propose a site configuration that provides no civic open space.

The applicant justification statement suggests that the tree lined streetscape and landscaped curb zone create a quality pedestrian experience to a point wherein the provision of additional civic open space would be redundant. The applicant has also indicated that modifying the massing of the building to accommodate the civic open space would interrupt the architecture and compromise the design.

The Civic Open Space is meant to improve the pedestrian experience and “serve as an amenity for the city as a whole, as well as for occupants of the building which the civic open space serves.” As a result, the LDR is clear in directing that minimum required setback areas and minimum required streetscape standards shall not be credited towards civic open space requirements. These requirements are separate and distinct, and the provision of the tree lined streetscape is included within the scope of the project because the applicant is also required to do so pursuant to a different CBD LDR requirement. The provision of the street trees, a requirement applicable to all development within the CBD, shall not be seen as a tradeoff for diminishing the amount of, or eliminating, the civic open space.

Civic open space allows for larger structures to integrate into the built environment in a way that does not detract from the public realm. In addition, one of the foundational purposes of requiring that civic open space be integrated into developments with larger total lot area is so that natural breaks and articulations are integrated into the building massing to mitigate potential negative impacts from large scale structures with considerable bulk. As a result of these important design details, the pedestrian experience is greatly enhanced by the softening of harsh facades that may otherwise appear to dominate the public space.

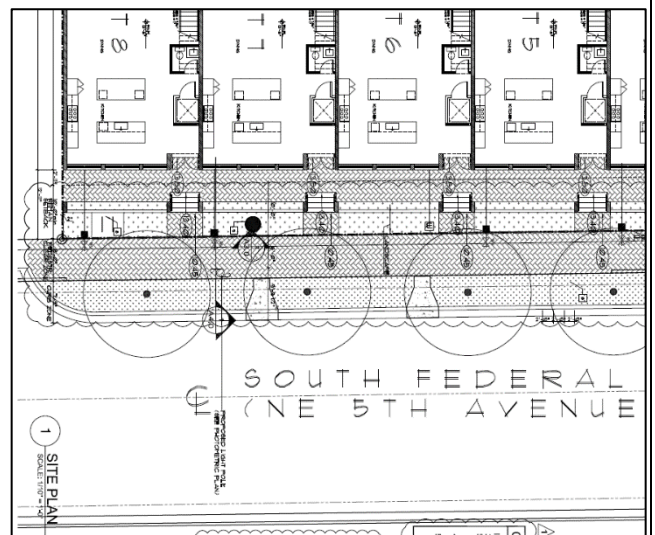
Figure 4.4.13-G-3 Civic Open Spaces







Regarding the waiver criteria, the Board should consider if the proposed omission of civic open space is directly at conflict with many of the findings. By way of eliminating the provision of civic open space, both the provision of public facilities (i.e. a public space) is diminished and the quality of civic open space is reduced. SE 5<sup>th</sup> Avenue is a primary street, and the diminishing of public facilities and reduction in the quality of civic open space along the street frontage will result in an inferior pedestrian experience along the street as compared to what would otherwise exist if the required civic space was provided. In addition, part of the Board's consideration is if the request to eliminate the required civic open space is a special privilege. There are no identified hinderances by the configuration of the land, only the proposed development design, that have necessitated the elimination of a civic open space. Therefore, the omission of civic open space should be considered a special privilege. Further, no waivers to allow the elimination of a required civic open space have been considered for any project within the CBD district since the adoption of the subject regulation in 2015.



To further emphasize the importance of incorporating civic space into new developments within the downtown area, the Comprehensive Plan provides specific direction with respect to civic open space.

#### **Comprehensive Plan: Open Space, Parks, and Recreation Element Policy OPR 1.4.7**

*Provide and maintain publicly accessible civic space and associated features within new developments located in the downtown area to enrich the urban environment.*

#### **Policy OPR 3.3.1**

*Provide a range of civic open spaces throughout the downtown through the development review process.*

#### **Policy OPR 3.3.4**

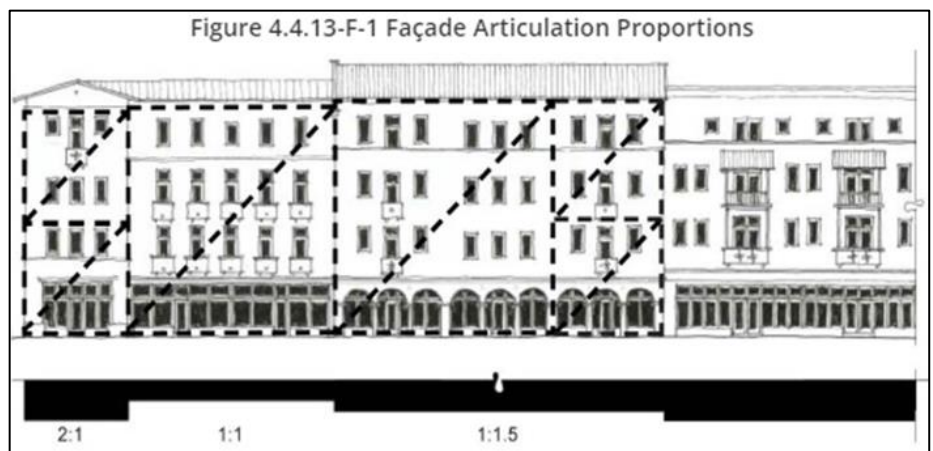
*New developments within the downtown area shall provide and maintain publicly accessible civic open space and associated features to enrich the urban environment.*

#### **Waiver #2, Façade Composition Proportion Requirements**

Pursuant to **LDR Section 4.4.13(F)(2)(a)(1), Architectural Standards: Façade Proportions**, *Building articulations in the form of a change in building height and building placement shall be incorporated so that building façade proportions do not exceed height to width ratios of 3:1 or 1:3*

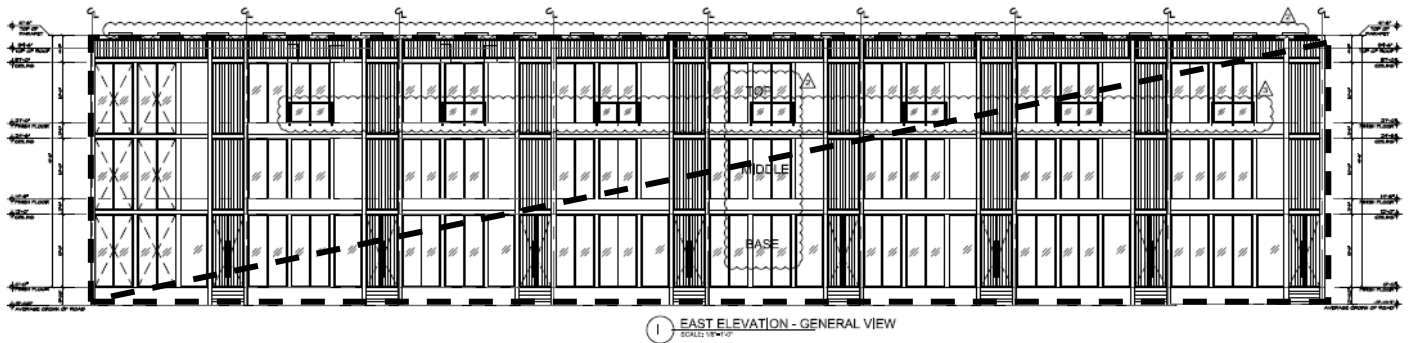
The applicant has requested the ability to propose an architectural design composition that provides a facade proportion that exceeds the established maximum width to height ratio of 3:1 or 1:3, instead proposing a proportion ratio of 5:1. The compositional requirements are established so as to ensure high quality architecture in the downtown area. The composition ratios help facilitate development on properties comprised of multiple consolidated parcels of significant width in a way that is reminiscent of and consistent with the historical development pattern of Delray Beach, which largely occurred on lot sizes of width ranging from 25 feet to 150 feet. By introducing maximum proportion ratios, developments of larger lots that take up significant percentages of a city block, even with homogenous design, can be articulated in a way so as to reflect the scale of the historical and desired development pattern.

Allowing compositions absent of any differentiating articulation or design detail that breaks up the homogeneity of the massing, wherein the width of the façade exceeds the maximum ratios established as contextually appropriate, imparts a negative effect on the public realm wherein the heaviness and





repetition of structure appears out of scale and incompatible with established design and development patterns. The proposed design composition provides a homogenous repetitive façade that extends 204 linear feet, with a height of 41.5 feet, thereby equating to a ratio of five feet of width for every one foot of height.



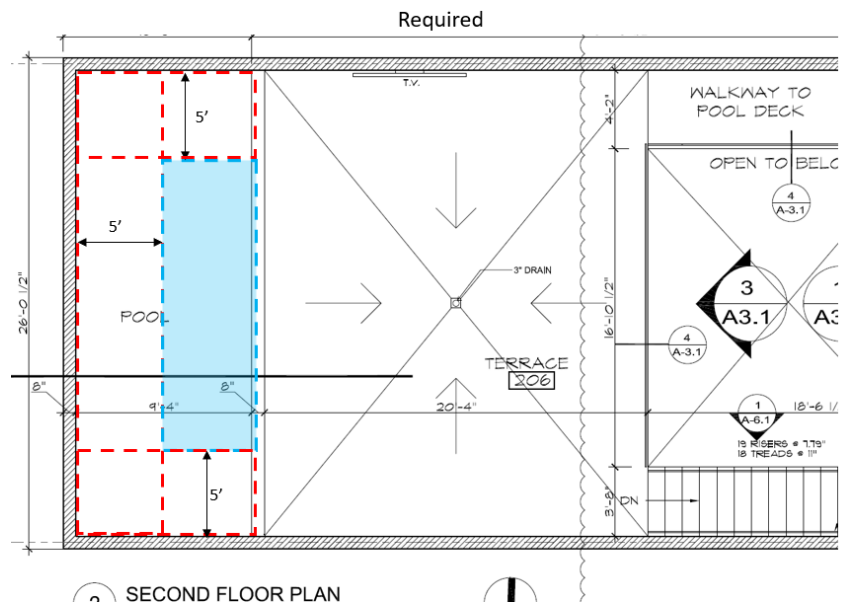
The Board must consider if the request is inconsistent with the applicable findings given that the approval of the waiver would result in a primary façade that is out of scale with the historical and desired development pattern; emphasizes the heaviness of the massing and the structure's imposing relationship with the pedestrian realm, which are both deemed to be detrimental to the quality of the pedestrian experience along a primary street; and further constitutes a special privilege being that there is nothing unique to the property that precludes the applicant from adhering to the compositional requirements, which have been determined through the adoption of the CBD regulations to be appropriate and most successful in achieving a compatible scale of development.

### Waiver #3, Removal of Deck Around Rooftop Pool

Pursuant to LDR Section 4.4.13(C)(4)(h)(4)(c), Supplemental Use Standards: *Swimming pools on rooftops, Swimming pools and/or whirlpools shall be surrounded by a minimum five-foot wide walkway.*

The applicant is proposing a pool configuration on the second floor of each unit that provides no setback on the sides and the rear of each pool, instead of the minimum 5-foot deck that is required around the perimeter of a rooftop pool. The only separation between each pool is a shared CMU wall. Should the waiver be approved, the pool design will still be obligated to comply with all applicable Florida Building Code requirements and any waiver approval would not supersede other applicable requirements. It is the responsibility of the Design Professional to ensure the proposed design complies with all applicable building codes at time of permitting.

It is important to note that the intent of the requirement to provide a five-foot wide (minimum) deck around the perimeter of a rooftop pool is generally based on safety precautions in that there is a clear and accessible means of ingress/egress from the pool area on all sides in the event an emergency were to occur. As proposed, the lack of egress on three of the four sides of the pool creates potential safety issues and is at conflict with the waiver criteria related to creating an unsafe situation. While handrails mounted to the side walls may be a potential strategy to mitigate the fact that there is no point of egress on three sides, the Board should consider whether providing a 5' deck on all sides of the pool creates an environment that is safer than the configuration proposed.



**Optional Board Motions****Civic Open Space, 4.4.13(G)(1)(b)**

- A. Move a **recommendation of approval** to the City Commission for the waiver request to LDR Section 4.4.13(G)(1)(b), requesting to provide no civic open space within the subject property whereas a 254 sq. ft. Public Art Civic Open Space is required, associated with a Class V Site Plan application (2022-151) for the property located at **354 SE 5<sup>th</sup> Avenue**, by finding that the request meets the criteria in LDR Sections 2.4.7(B)(5) and 4.4.13(K)(5)(b)(2).
- B. Move a **recommendation of denial** to the City Commission for the waiver request to LDR Section 4.4.13(G)(1)(b) requesting to provide no civic open space within the subject property whereas a 254 sq. ft. Public Art Civic Open Space is required to be programed as civic open space, associated with a Class V Site Plan application (2022-151) for the property located at **354 SE 5<sup>th</sup> Avenue**, by finding that the request does not meet the criteria in LDR Sections 2.4.7(B)(5) and 4.4.13(K)(5)(b)(2).
- C. Move to **continue with direction**.

**Architectural Standards, Façade Composition, 4.4.13(F)(2)(a)(1)**

- A. Move a **recommendation of approval** to the City Commission for the waiver request to LDR Section 4.4.13(F)(2)(a)(1) requesting a design be approved that provides a façade composition and building articulation that differs from the accepted maximum façade proportion height-to-width ratios of 3:1 or 1:3, instead proposing a façade proportion ratio of 5:1, associated with a Class V Site Plan application (2022-151) for the property located at **354 SE 5<sup>th</sup> Avenue**, by finding that the request meets the criteria in LDR Sections 2.4.7(B)(5) and 4.4.13(K)(5)(b)(2).
- B. Move a **recommendation of denial** to the City Commission for the waiver request to LDR Section 4.4.13(F)(2)(a)(1) requesting a design be approved that provides a façade composition and building articulation that differs from the accepted maximum façade proportion height-to-width ratios of 3:1 or 1:3, instead proposing a façade proportion ratio of 5:1, associated with a Class V Site Plan application (2022-151) for the property located at **354 SE 5<sup>th</sup> Avenue**, by finding that the request does not meet the criteria in LDR Sections 2.4.7(B)(5) and 4.4.13(K)(5)(b)(2).
- C. Move to **continue with direction**.

**Supplemental Use Standards, Swimming Pools on Rooftops, 4.4.13(C)(4)(h)4.c.**

- A. Move a **recommendation of approval** to the City Commission of the waiver request to LDR Section 4.4.13(C)(4)(h)4. c. requesting to provide no setback from the edge of roof deck on the sides and rear of each pool, whereas a minimum five-foot wide setback is required to surround rooftop pools on all sides, associated with a Class V Site Plan application (2022-151) for the property located at **354 SE 5<sup>th</sup> Avenue**, by finding that the request meets the criteria in LDR Sections 2.4.7(B)(5) and 4.4.13(K)(5)(b)(2).
- B. Move a **recommendation of denial** to the City Commission of the waiver request to LDR Section 4.4.13(C)(4)(h)(4)(c) requesting to provide no setback from the edge of roof deck on the sides and rear of each pool, whereas a minimum five-foot wide setback is required to surround rooftop pools on all sides, associated with a Class V Site Plan application (2022-151) for the property located at **354 SE 5<sup>th</sup> Avenue**, by finding that the request does not meet the criteria in LDR Sections 2.4.7(B)(5) and 4.4.13(K)(5)(b)(2).
- C. Move to **continue with direction**.