



Cover Memorandum/Staff Report

File #: 19-1161

Agenda Date: 12/10/2019

Item #: 7.B.

TO: Mayor and Commissioners
FROM: Anthea Gianniotis, Development Services Director
THROUGH: Neal de Jesus, Interim City Manager
DATE: December 10, 2019

RESOLUTION NO. 213-19: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, GRANTING A WAIVER REQUEST TO LAND DEVELOPMENT REGULATIONS SECTION 4.4.13(D)(2)(A), WHICH SETS FORTH A MINIMUM 10' SETBACK FOR BUILDING FRONTS AND REARS, TO ALLOW FOR THE FRONT SETBACK OF PHG DELRAY LOCATED AT 200 NE 5TH AVENUE TO ENCROACH 9' ALONG NE 2ND STREET, 8'-2.5" ALONG NE 5TH AVENUE, AND 9.51' ALONG THE WEST SIDE OF THE PROPERTY, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES (QUASI-JUDICIAL HEARING).

Recommended Action:

Review and consider Resolution No. 213-19.

Background:

The 1.186-acre parcel consists of portions of Block 98 of the LR Benjamins Subdivision and portions of Block 98 Town of Delray Subdivision. The property is located on the north side of NE 2nd Street, between NE 4th Avenue and NE 5th Avenue (Southbound Federal Highway). The waiver is for a subgrade parking level to encroach into the required front and rear setback. That portion of building above ground meets the required front setbacks (10' proposed) and exceeds the required rear setback (52.12' proposed). The project consists of a new 143 room hotel with 960 square feet of meeting space. The application includes the subject waiver request which requires City Commission action prior to consideration of the Class V Site Plan by SPRAB. The eastern portion of the property is currently vacant. The western portion of the property contains a two-story 4,731 square foot office building that was constructed in 1941.

Waiver Analysis:

Required Findings:

Pursuant to LDR Section 2.4.7 (B)(5), 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;
- 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.

CBD Waiver Criteria:

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, in addition to the findings in Section 2.4.7(8)(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 use 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.

Applicant and Staff Assessment of the Required Findings and CBD Waiver Criteria per request:

Required Findings LDR Section 2.4.7 (B)(5):

- a. Shall not adversely affect the neighboring area.

LDR Section 4.4.13(K)(5)(a), indicates that the City Commission has the authority to grant waivers to decrease the minimum front setback as long as reduction does not reduce the 15' minimum required streetscape standard. The proposed waiver would not reduce the required 15' streetscape standard. In the areas of the requested front setback waiver (east and south sides of the property), the required curb zone and pedestrian clear zone is provided at grade (above ground) and the building above grade meets the required building setbacks; the waiver is for a subterranean parking level. Since the setback reduction occurs underground, there will be no visible impact to the neighboring area. The rear setback reduction along the west side of the property is only for the subgrade garage. That portion of the building that is located above ground has a 52.12' setback from the rear property line.

While granting the waiver will not create a permanent negative visual impact on the neighboring area, the construction of a building without subterranean setbacks may create disruptions to the neighboring area, such as prolonged roadway closures resulting from equipment and material staging in the public right-of-way. The applicant has provided a statement regarding the construction process, which is attached.

- b. Shall not significantly diminish the provision of public facilities.

The Public Facilities Element in the Comprehensive Plan lists sewer facilities, portable water, and groundwater recharge facilities, solid waste management, drainage, street systems, and public buildings and facilities as public facilities. The sewer and water mains in the areas of the reduction are located in the Federal Highway and NE 2nd Street rights-of-way. The proposed setback reduction for the subgrade parking facility will have no impact on these facilities.

- c. Shall not create an unsafe situation.

Since the setback reduction occurs subgrade, an unsafe situation will not be created for pedestrians, motorist, or 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.

If approved, the proposed waiver request will not grant a special privilege that is not available to another property under the same circumstances. A similar waiver was approved for The Ray Hotel that is currently under construction at the northeast corner of Pineapple Grove Way and NE 2nd Street.

Required Findings LDR Section 4.4.13(K)(5)(b)(2)

- 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.

The waiver is along NE 5th Avenue and NE 2nd Street, which are both designated as Primary Streets. The waiver does not result in the exposure of the subgrade parking garage or the creation of a large expanse of blank walls. The pedestrian experience along both streets is protected due to the adherence of the site plan to the Commercial Streetscape requirements (curb zone, pedestrian clear zone, and remaining front setback area).

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

The proposed waiver request does not create any incompatibilities with adjacent properties. The proposed reduction occurs subgrade and along NE 2nd Street and NE 5th Avenue. The location of the reduction along public streets and subgrade will cause no impacts to adjacent properties 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.

The waiver is to the front and rear setbacks of the subgrade parking area, which will have no impact to the adjacent streets and sidewalks or to the bicycle lane along NE 5th Avenue. The property does not have a rear alley.

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

The required civic open space has been provided at the intersection of NE 5th Avenue and NE 2nd Street. Since the relief to the building setback occurs subgrade, there is no negative effect to the civic open space that is located at grade, provided the landscaping materials can grow appropriately with this subterranean condition.

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source/Financial Impact:

N/A

Timing of Request:

N/A