

July 28, 2022

Re: 354 SE 5th avenue, Waiver Request – omit 235 square feet of civic space

To Whom It May Concern

This letter is a waiver request pursuant to Section 2.4.7(B)(5) and Section 4.4.13 civic spaces of the Delray Beach Land Development Regulations ("LDRs"). In this situation the following would apply:

The size of the lot is $121 \times 204 = 24,684$ sf. We are required to provide 5% of the lot area over 20,000 for civic space.

Since we are required to provide only 235 sf of civic space, we cannot seem to find the right place for such a token gesture without harming the architecture. This is an 8-unit townhome development not an office building, civic building, hotel, or condo where open civic spaces of over 500 sf start to make sense. The units are individual homes with porches and gardens in the front. In other words, it is not one use but a project of multiple homes and private entrances.

As per the Land Development Regulations, Section 2.4.7(B)(5) requires that the governing body make positive findings to support the granting of a waiver based on the following:

- a) The waiver shall not adversely affect the neighboring area;
- b) The waiver shall not significantly diminish the provision of public facilities;
- c) The waiver shall not create an unsafe situation; and,
- d) The waiver does not result in the granting of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

Positive findings with respect to LDR Section 2.4.7(B)(5) Waiver Findings, can be made as follows:

- a) *The waiver shall not adversely affect the neighboring area.***

The waiver is internal to the project and will not adversely affect the neighboring area.

- b) *The waiver shall not significantly diminish the provision of public facilities***

The waiver is internal to the project and will not diminish the provision of public utilities

- c) *The waiver shall not create an unsafe situation.***

The waiver is internal to the project and will not create an unsafe situation

- d) *The waiver does not result in the granting of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.***

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The waiver is internal to the project and will not result in the granting of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

Also, within the CBD, the following standards per Section 4.4.13 shall be used by the City Commission when considering waiver requests, in addition to the findings in Section 2.4.7(B)(5) above:

- 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.**

In fact the pedestrian experience is enhanced by the architecture on the west and on the east of the pedestrian walkway. To the west you see the covered porches with planters in front and to the east the curb zone is twice as wide the min. required. The pedestrian walkway and curb zone is aligned with the project to the north

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

It will be 100% compatible with nearby uses of land. The pedestrian walkway and curb zone is aligned with the project under review to the north

- 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 shall not erode the connectivity of the street but continue the connectivity of the street and sidewalk. The pedestrian walkway and curb zone are aligned with the project to the north.

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

The waiver shall not reduce the quality of civic spaces under this code. In fact, the pedestrian experience is enhanced by the architecture on the west and on the east of the pedestrian walkway. To the west you see the covered porches with planters in front and to the east the curb zone is twice as wide the min. required. The design allows for benches and artwork to be placed along the pedestrian walkway. The code does not allow for such elements to be placed in the curb zone, which I hope the city will reconsider. The city has allowed art within the ROW in these photos between NE 1st st and NE 3rd st on NE 2nd avenue:

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*We believe that this approach would have a far better imprint on the development than a small "civic space of 235 sf" vs one that is 204 long x 4 wide or 808 sf of benches, a water feature and sculptures along the pedestrian walkway and curb zone. **The city does not have a definition for civic open space in their appendix Definitions.** According LAW INSIDER the meaning of civic space is: Civic Space means publicly accessible open space in the form of parks, courtyards, forecourts, plazas, greens, pocket parks, playgrounds, etc. They may be privately or publicly owned. For all residential uses, privately accessible open spaces such as courtyards, porches, and balconies may also be considered as Civic Space for the purposes of this ordinance.*

Please note the reference for residential uses. This project has a courtyard for each unit of 481 sf, an open pool deck of 520 sf and a front porch of 156 sf.

Positive findings with respect to LDR Section 2.4.7(B)(5) and Section 4.4.13(K)(5)(b)2 can be made and the request for the above waiver can be approved.

Please feel free to email or call if you have any questions.

Sincerely,
Jeffrey Silberstein, AIA

Silberstein Architecture, Inc