



Planning Solutions

February 23, 2022

Ms. Anthea Gianniotis, AICP, Director
Development Services Department
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

RE: Abandonment of a Portion of SE 2nd Avenue Right-of-Way – Revised Narrative Letter

Dear Ms. Gianniotis:

This correspondence for the Abandonment of a Portion of SE 2nd Avenue Right-of-Way application is respectfully submitted on behalf of SM-CDR Assemblage Delray, LLC for the portion of SE 2nd Avenue abutting the following properties: 118 SE 2nd Street (PCN#: 12-43-46-16-01-079-0010); 240 SE 2nd Avenue (PCN#: 12-43-46-16-01-079-0210); 258 SE 2nd Avenue (PCN#: 12-43-46-16-01-079-0200); 264 SE 2nd Avenue (PCN#: 12-43-46-16-01-079-0190); 280 SE 2nd Avenue (PCN#: 12-43-46-16-01-079-0170), and 290 SE 2nd Avenue (PCN#: 12-43-46-16-01-079-0150).

PROPOSED ABANDONMENT:

The request is for the City to abandon its interest in the portion of the SE 2nd Avenue right-of-way, between SE 2nd and 3rd Streets, abutting the properties referenced above, and west of the Florida East Coast Railway. The area to be abandoned measures 30.33' X 619.16' and contains 18,669 square feet.

The proposal is to reconstruct the roadway in conjunction with the abutting redevelopment of Block 79 to accommodate the Delray Swan mixed-use project consisting of the following

- Construction of a 5-story mixed-use project containing 2,173 sf of commercial space fronting SE 2nd Street and 195 apartment units (23 studio, 82 1-Bed, 76, 2-Bed, 14 3-Bed) with a variety of unit types (9) and 39 Workforce Housing units (Very-Low, Low & Moderate Income levels);
- Construction of a 305-space parking garage, 24 on-street parking spaces (SE 2nd St., SE 3rd St., SE 1st Ave.), 8 surface spaces and utilization of 19 off-site parking spaces, recently constructed by the Applicant within the FEC Railroad right-of-way (61 Total), just east of the proposed development, per an agreement between the City and the Applicant;
- Associated amenities, 10,259 sf. of civic open spaces, bike racks, landscaping, lighting, refuse container area, and loading area.

The plans call for reconstruction, upgrades and enhancements to abandoned SE 2nd Avenue with a paverbrick roadway, parallel parking, sidewalk and a public artwalk along with and sewer main upgrades, drainage and undergrounding of overhead utilities. The new cross section of abandoned SE 2nd Avenue will be curbless and conducive to programs and events to attractive business and activities to the Osceola Park commercial area. The abandonment will include the dedication of a public access and utility easement to the City of Delray Beach as well as public pedestrian and parking easements.

As stated above, the property will be incorporated into the Delray Swan Site Plan, which includes significant improvements/upgrades to the public ingress-egress easement consisting of sidewalks, landscaping, lighting, parallel parking spaces, and street furniture. With the recent improvements to the Osceola Park Neighborhood, this section of SE 2nd Avenue was not included and is in need of upgrades.

BACKGROUND:

The 30' wide SE 2nd Avenue right-of-way (originally Tenbrook Street) was dedicated 1924 via the Resubdivision of Block 79, in Town of Linton (now Delray Beach) plat recorded in Plat Book 10, Page 1, of the Public Records of Palm Beach County, Florida. The right-of-way was dedicated from the lots within Block 79 that abut the right-of-way (Lots 1, 15, 16, 17, 18, 19, 20, 21, 22 and 23), thus the right-of-way will revert to the referenced lots.

In the past, the City has abandoned rights-of-way in the downtown area, allowing significant roadway improvements while still maintaining connectivity, public access and utility easements. Given these circumstances and as indicated below, previous applications to abandon portions of right-of-way have been approved.

- May 18, 1999 - Resolution No. 26-99 – Abandonment of a 16' north/alley in Pineapple Grove area associated with the Astor Condominium/Villas In The Grove Plat (PB 105/PG 116).
- February 17, 2009 – Abandonment and relocation of a portion of NE 7th Avenue in conjunction with the Atlantic Crossing Development/CDS Delray Redevelopment Plat (PB 116/PG172).
- July 15, 2014 – Uptown Delray Plat (PB 118/PG 175) - Abandonment of a 16' north/alley associated with the Caspian Apartment Complex (190 SE 5th Avenue).

ABANDONMENT ANALYSIS:

Pursuant to LDR Section 2.4.6(M)(1), public right-of-way may be abandoned (returned) to the adjacent property to the same degree in which it was originally obtained, i.e. property dedicated exclusively from a single parcel shall be returned to that parcel; property dedicated through subdivision shall be divided at the center line and returned equally to abutting parcels. Abandonment of right-of-way may be granted by a formal resolution enacted by the City Commission.

This request is for the City to abandon its interest in and to that certain publicly dedicated roadway and retain a perpetual public access and a utility easement while also inclusive of traffic control and enforcement agreements with the City.

Utility Services

Currently, the commercial/industrial properties fronting SE 2nd Avenue within Block 79 are provided water and sewer services via existing mains located within rear yards of the abutting residential properties within Block 79 fronting SE 1st Avenue. The utilities have existed for many years and are not located within utility easements. Water is provided via a 2" main and sewer service is provided via an 8" main, which flows to the segment of sewer main located with the north 140' of SE 2nd Avenue. With the Delray Swan redevelopment initiative, a new 8" sewer main will be extended/installed from the existing sewer main within the north portion of SE 2nd Avenue to provide service to 290 SE 2nd Avenue at the south of SE 2nd Avenue. New water services will be installed for the new development and 290 SE 2nd Avenue. It is noted, the intent is to eliminate or relocate the existing overhead utilities underground.

Utility providers (FPL, AT&T, Comcast, Florida Public Utilities) have been notified of the abandonment and site plan applications. It is anticipated relocation of facilities will be required along with dedication of utility easements (locations to be determined).

Required Findings:

Pursuant to LDR Section 2.4.6(M)(5), prior to any right-of-way abandonment being approved, the following findings must be made:

A) That there is not, nor will there be a need for the use of the right-of-way for any public purpose.

The portion of SE 2nd Avenue proposed for abandonment is 30' wide and part of the grid pattern. The two-way road is substandard in terms of width, as 50' is required for a local street per Mobility Element Table MBL-1 "Street Network and Classification and Improvements", it lacks sidewalks, on-street parking, lighting and landscaping, typically provided within the downtown area. The roadway easement will ensure the street retains its functionality as part of the City's grid system and maintain connectivity, while enabling the street to be significantly improved in a manner that promotes the redevelopment initiatives encouraged and supported by the Osceola Park Neighborhood Plans, Downtown Delray Beach Master Plan, and Delray Beach Community Redevelopment Plan. As previously stated, the plan proposes the dedication of a perpetual public access and utility easement dedicated to the City of Delray Beach as well as public pedestrian and parking easements. Ultimately, the easements will be dedicated via a plat document with the City retaining rights for access and utility maintenance as currently exists. Recently, as part of a public private partnership with the City, the applicant completed the parking lot within the FEC right-of-way along the east side of SE 2nd Avenue with a sidewalk, landscaping and lighting, providing additional parking opportunities with the downtown and Osceola Park commercial area. This investment was a first step to assist in the transformation of the area from blighted underutilized and substandard properties to quality housing and commercial space providing a safe, pedestrian-friendly environment furthering the City's stabilization and revitalization efforts for the area.

A review of the City's Comprehensive Plan was conducted. While the following policies are noted, based on the analysis positive findings can be made that the abandonment is consistent with the Goals, Objectives and Policies of the City's Always Delray Comprehensive Plan.

Healthy Community Element Policy HCE 1.7.5: Promote biking and walking through the provision of context-sensitive Complete Streets, where appropriate, and a connected system of greenways and trails that encourages recreation, physical activity and exposure to the natural environment.

Mobility Element Policy MBL 1.2.2: Implement context-sensitive Complete Streets principles, where appropriate, in the planning, programming, and construction of new City roadways, redesigns, and resurfacing of existing roadways to address the needs of all users, including motorists, bicyclists, transit riders, and pedestrians of all ages and abilities. Provide landscaping, shading, protected lanes, pedestrian scale lighting and speed-reduction measures that support a pleasant environment for pedestrians and bicyclists.

Mobility Element Policy MBL 2.7.7: Do not grant abandonment of right-of-way unless conclusively demonstrated that there is not, nor will there be, a need for the use of the right-of-way for any public purpose.

Neighborhoods, Districts and Corridors Policy NDC 2.2.1: Maintain and enhance the tightly gridded, interconnected street network that facilitates the dispersal of traffic and contributes to the character of Delray Beach using the following Complete Streets techniques, where appropriate:

- *Design streets to be safe, comfortable, and attractive for pedestrians, cyclists, and drivers;*
- *Do not close or abandon streets or alleys and encourage connectivity of vehicular, pedestrian and bicycle routes.*
- *Provide links to regional bicycle/pedestrian networks*
- *Reinvest in roadway infrastructure, such as intersections, signalization, and turning movements without increasing the number of through vehicular lanes.*

Osceola Park Neighborhood Plan – Neighborhood Priorities

1. *Osceola Park residents wish to enhance the neighborhood identity and character by bringing in the local culture, physically improving the area with gathering spaces and buffering the single-family area from the commercial/industrial areas to the west. Owner-occupied residences have declined, and one of the focuses of this plan is to develop conditions that increase homeownership.*
2. *The business community in Osceola Park was developed over time and does not have a cohesive theme. The commercial properties appear to be out of harmony with the adjacent residential community, not only in appearance but also in regard to the specific uses. Property investment and business development priorities in this plan address the disconnection and guide new businesses to serve the neighborhood needs, as well as offer more local leisure opportunities.*
5. *A unique characteristic of Osceola Park is the high value of public art. The community has regular “Art in the Alley” events, where local artists gather to embellish the fences in the alleys with art. Attention to neighborhood beautification that includes public art initiatives is a priority of this plan, including building appearance and murals along the railway corridor. Incorporating public art and streetscape improvements, particularly at the neighborhood entries, the SE 5th Street median, and in the park, compliments the beautification strategies already underway by the residents.*

Osceola Park Redevelopment Plan Strategy 2.1: Create Opportunities for New Commercial Redevelopment and Adaptive Reuse in the Neighborhood (SE 2nd Avenue & SE 5th Avenue).

Action Items:

1. *Encourage redevelopment or adaptive reuse of existing properties in the commercial districts*

As stated above, the abandonment will enable the installation of a unique streetscape improvements in a manner consistent with the policies referenced above while promoting the redevelopment goals and initiatives encouraged and supported by the Osceola Park Neighborhood Plans, Downtown Delray Beach Master Plan, and Delray Beach Community Redevelopment Plan. Positive finding can be made as the, the plan proposes the dedication of a perpetual public access and utility easement dedicated to the City of Delray Beach as well as public pedestrian and parking easements, consistent with the City's policies and standards. The abandonment retains the gridded network in the built environment with the proposed redesign consistent with the City's Complete Streets Policy, providing a more pedestrian and bicycle-friendly system, encouraging slower speeds.

Therefore, positive findings can be made that the proposed abandonment is consistent with the City's Always Delray Comprehensive Plan.

B) That the abandonment does not, nor will not, prevent access to a lot of record.

The abandonment does not, nor will not, prevent access to a lot of record. As previously stated, public access and utility easements in favor of the City will be dedicated as separate instruments and included on the required replat. The Applicant has obtained the consent of its neighbor to the south to the abandonment and has a private agreement to provide perpetual access to the abandoned street.

C) That the abandonment will not result in detriment to the provision of access and/or utility services to adjacent properties or the general area.

The abandonment will not result in detriment to the provision of access and utility services to adjacent properties or the general area, as the roadway and utility services will be upgraded and maintained. Perpetual public access and utility easements in favor of the City will be dedicated as separate instruments and included on the required replat.

WAIVER:

Pursuant to LDR Section 4.4.13(J)**Streets and blocks**. The highly connected street and block structure of the downtown CBD area is a critical component of the cultural and historic character of the city. The network fosters multi-modal options, by reducing bike and walk distances, and allowing traffic to disperse.

- (1) **Streets and alleys**. Within the CBD, the following standards apply to streets and blocks:
(c) Streets and alleys may not be abandoned, vacated or closed to accommodate new development.

Pursuant to LDR Section 4.4.13(K)**CBD review and approval process**. (5) **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.

Waivers 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:

(a) Shall not adversely affect the neighboring area;

The waiver will not adversely affect the surrounding neighborhood. The abandonment will maintain vehicular access, connectivity and the established grid system as well as provisions for utilities, via the public access and utilities easement. The resulting improvements will include significant upgrades to the roadway and pedestrian network, lighting, and landscaping, which revitalize and enhance the surrounding community.

(b) Shall not significantly diminish the provision of public facilities;

The waiver will not diminish the provision of public facilities. As previously stated, upgrades to the utilities are included with the Delray Swan redevelopment initiative. Access and utility services to adjacent properties or the general area, as the roadway and utility services will be upgraded and maintained.

(c) Shall not create an unsafe situation; and,

The waiver will not create an unsafe situation. In addition to access being retained, the associated roadway, pedestrian landscaping and lighting improvements, will create a safe environment.

(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.

Granting of this waiver will not convey any special privilege in that the same waiver could be granted under similar circumstances on other property for another applicant or owner. This is a unique situation where the entire street was dedicated from the abutting properties and the entire street and area is need of significant improvements. The requested waiver is necessary to provide streetscape enhancements with a modified cross section and materials not typical installed nor maintained by the City.

In addition to the findings in [Section 2.4.7\(B\)\(5\)](#), 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:

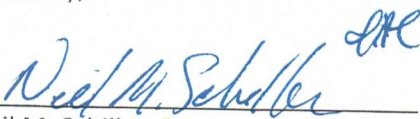
- a. The waiver shall not result in an inferior pedestrian experience along a Primary Street, such as exposing parking garages or large expanses of blank walls.
- b. The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.
- c. Negatively impact any adopted bicycle/ pedestrian master plan.
- d. The waiver shall not reduce the quality of civic open spaces provided under this code.

While the waiver request is not associated with a Primary Street, the result of the proposed improvements will be a superior Complete Street design and pedestrian experience along this long-neglected corridor. The waiver will not create any incompatibilities, but rather significantly enhance nearby building and uses of land. In addition, the waiver will positively impact the pedestrian/bicycle experience and retain the grid pattern and connectivity envisioned per the Always Delray Comprehensive Plan, Downtown Delray Beach Master Plan, Osceola Park Neighborhood Plan and City of Delray Beach Community Redevelopment Plan. The waiver will not reduce the quality of civic open space and will provide additional public space through the construction of an artwalk along with the other improvements consistent with Osceola Park Neighborhood Plan.

Based upon the above, positive findings can be made with respect to LDR Section 2.4.6(M)(5) and consistency with the City's Always Delray Comprehensive Plan. Therefore, approval of the abandonment of the portion of SE 2nd Avenue in conjunction with the Delray Swan redevelopment initiative is respectfully requested.

Please let me know if you have any questions or require additional information. Thank you for your consideration.

Sincerely,


Neil M. Schiller, Esq.
Government Law Group


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