



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

109 SE 5<sup>th</sup> Avenue

Meeting	File No.	Application Type
January 26, 2026	2024-104	Level 3 Site Plan
Property Owner	Authorized Agent	
109 5 <sup>TH</sup> LLC	Neil Shiller, Esq.	

### Request

Consideration of a Level 3 Site Plan Application with Architectural Elevations and Landscape Plan for a four-story, approximately 98,000 square foot, 26-unit multi-family residential development.

### Site Data & Information

**Location:** 109 SE 5<sup>th</sup> Avenue

**PCN:** 12-43-46-16-F1-000-0010

**Property Size:** 0.89 acres, 38,860 sq ft

**Land Use:** Commercial Core (CC)

**Zoning:** Central Business District (CBD) – Central Core

#### Adjacent Zoning:

- **All Directions:** Central Business District (CBD) – Central Core

**Existing Use:** Office

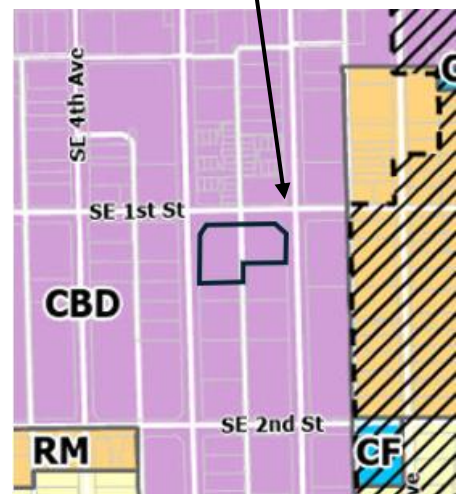
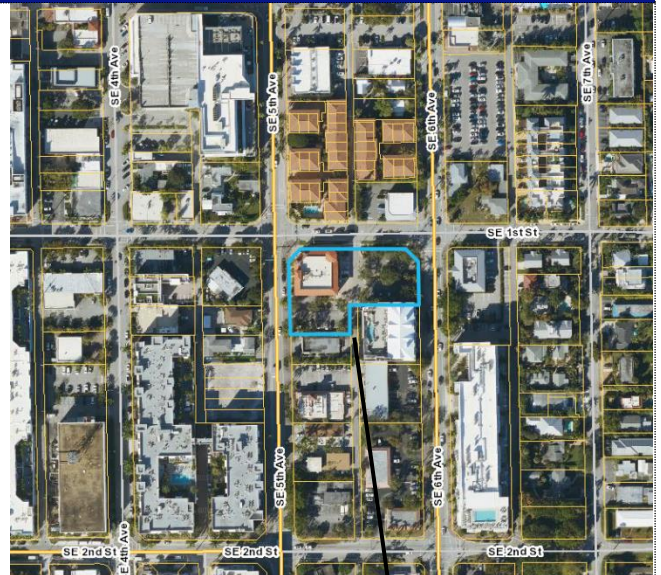
**Proposed Land Use:** Multi-family Residential

#### Floor Area Ratio:

- **Existing:** 0.29
- **Proposed:** 2.52
- **Maximum Allowed:** 3.0

#### Density:

- **Existing:** N/A
- **Proposed:** 29 du/acre
- **Maximum Allowed:** 30 du/acre





## Background Information

The subject property consists of an approximately 11,000 square foot commercial office building in the Mediterranean Revival architectural style that previously included a financial institution and was constructed in 2002. The property is zoned Central Business District (CBD), Central Core Sub-district, with an underlying Land Use Map (LUM) designation of Commercial Core (CC). The intent of the CBD is to foster compact and pedestrian oriented growth that supports the historic moderate scale of downtown. While the architectural style and scale of the existing building is consistent with the intent of the CBD, a majority of the lot area of the parcel is covered with an off-street surface parking lot, which is inconsistent with the vision of the CBD, especially adjacent to NE 5<sup>th</sup> Street and NE 6<sup>th</sup> street which are designated as primary streets. As such, redevelopment of this site is an opportunity to further move the district towards its stated goals and intent for thoughtful urban redevelopment that supports and facilitates walkable neighborhoods.

This site plan application was supplemented with a request to approve an alternative architectural style. The Applicant originally requested use of a style described as "Contemporary Functionalism", and in April 2025 the Planning and Zoning Board recommended approval of the architectural style; however, in June 2025 the City Commission did not approve the alternative style and instead approved use of the Masonry Modern architectural style – a style listed in the CBD Design Guidelines, but which requires specific approval of the City Commission on a case-by-case basis. While the general use of the Masonry Modern style was previously approved, the specific execution of the style is under the purview of this Board and is an element of the scope under this application.

The project has been presented to the Downtown Development Authority (DDA) as well as listed on the Community Redevelopment Agency (CRA) development projects memo.

## Project Description

The proposed development is a four-story, 26-unit multi-family residential development, with gross building area of approximately 98,000 square feet including interior garage area. The 26 units range in size between 1800 square feet and 2900 square feet and are a mix of 2-bedrooms and 3-bedrooms. The project comprises two separate buildings connected through a pedestrian bridge that extends over the private alley. There is a primary lobby as well as an interior parking area provided for each building, with the west building including two floors of parking. The trash and loading area for both buildings is provided within the footprint of the east building accessed from the interior alley. Civic space is provided at the NE and NW corners of the property adjacent to the primary building entrances, with all of the required civic space presented as an urban plaza at the NW corner. Any additional civic space is surplus to minimum requirements. A rooftop amenity deck with pool is proposed on the roof of the western building.



The proposed architectural style is Masonry Modern, a permitted style pursuant to the Delray Beach CBD Design Guidelines. Overall, the project is presented in a way that improves the streetscape by providing expanded sidewalks where feasible, an extended street tree canopy along all frontages - which creates continuous shade coverage that benefits the pedestrian experience, while simultaneously beautifying the corridor and creating buffered protection from the vehicular travel lanes – incorporates civic open spaces interspersed throughout the perimeter of the project, and removes existing nonconforming surface parking lots that are inconsistent with the intent of the CBD. A full architectural analysis will be provided in subsequent sections, as some elements of the masonry modern style could be more effectively implemented in the design. Likewise, while the amount of civic open space provided meets the minimum LDR requirements, diagrammatical and schematic choices of the Applicant may limit the ability of the civic space to function as intended by the CBD standards for active frontages and pedestrian-oriented design, and alternative design solutions could better address these objectives.

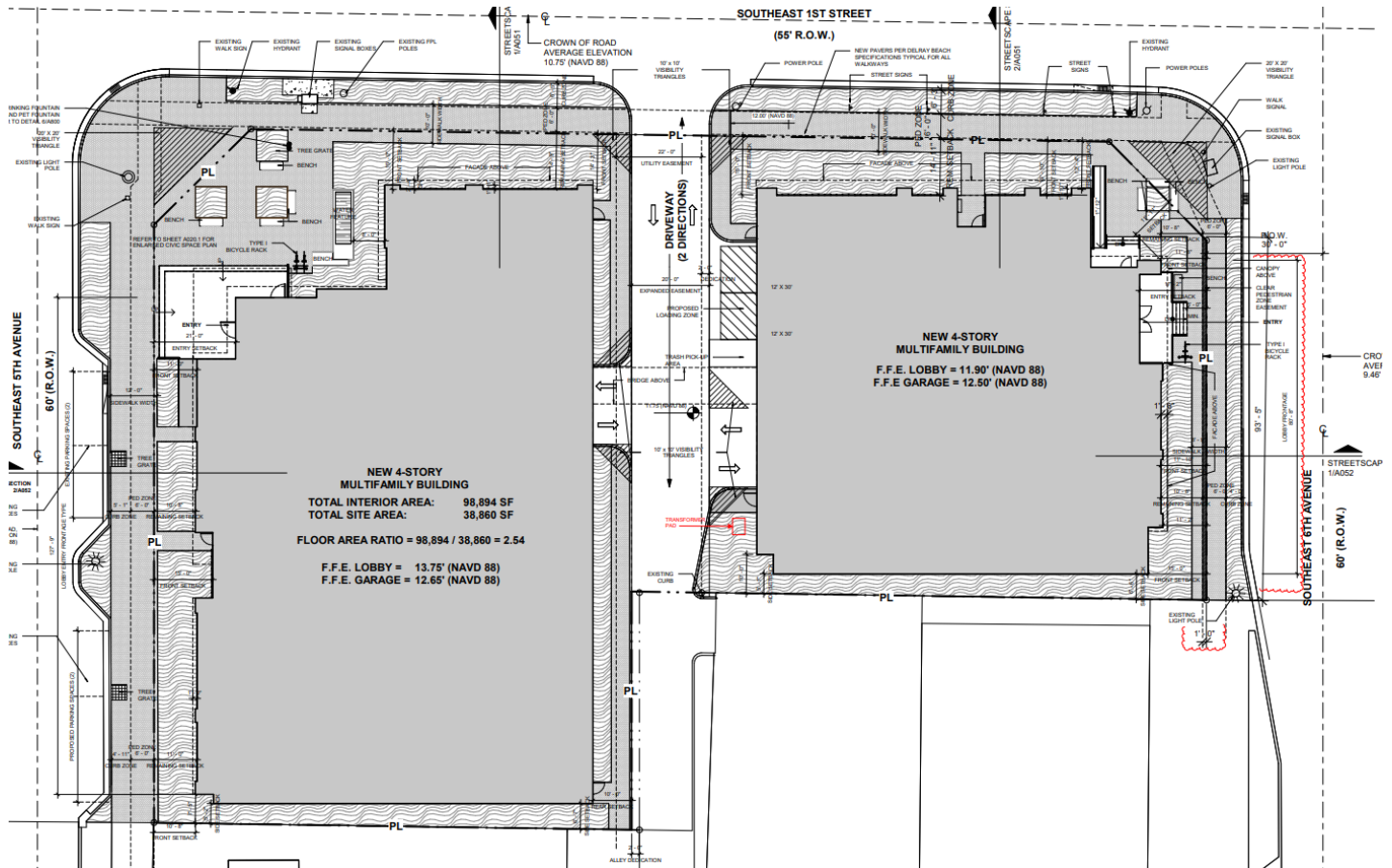


Waivers are not requested as part of this application. The residential units are proposed as market rate, and no workforce housing component is included. The proposed density is at the maximum allowed and likewise, the proposed Floor Area Ratio is approaching maximum levels and is significantly greater than the mass and intensity of the existing building.

### Review and Analysis: Site Plan

Analysis of the project's compliance with relevant Land Development Regulations is discussed in this section.

The project is within allowable intensity thresholds including Floor Area Ratio (2.5 FAR) and Density (29 dwelling units per acre). The project meets the height requirement and all setback regulations. The sole point of vehicle access is shifted to the interior alleyway, and existing curb cuts along 5<sup>th</sup> Ave and 6<sup>th</sup> Ave are removed, positioning the Primary Streets as high-quality pedestrian focused environments with no vehicular conflict.



(Full-sized site plan available as an attachment)

Required parking is provided in enclosed garages which are successfully screened from the primary streets by the residential units, common lobby, and amenity area.

The minimum streetscape dimensions are provided in a way that maintains the maximum feasible pedestrian clear zone, while still allocating sufficient area for foundation landscaping and curb zone landscaping, which helps soften the starkness of the urban environment, and provides buffered protection between the pedestrian and vehicle travel lanes. The applicant and staff have worked closely to ensure that the amount of sidewalk area devoted to pedestrians is substantial enough that the landscaping does not have an unintended consequence of creating a constricted bottleneck or pinch point along a heavily trafficked sidewalk.

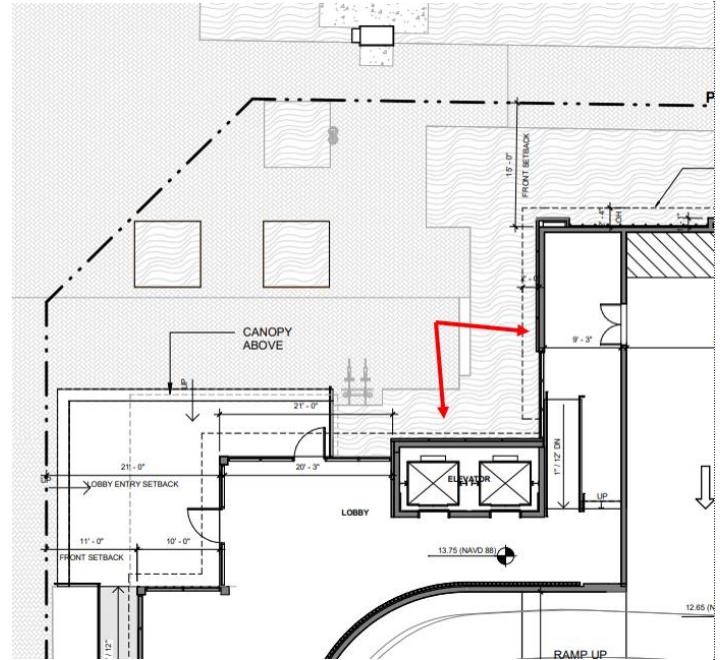


The clear zone has been routed to ensure that existing above ground traffic infrastructure does not obstruct the pedestrian path, and likewise, the expansion of the sidewalk, integration of civic space at the NW corner, and introduction of a shaded tree canopy are substantial amenity improvements within the public realm that will benefit the general public.

That being said, there are issues with the execution of the ground floor design that are detrimental to the quality of the public realm. Specifically, there is absence of a quality active use on the ground floor adjacent to the required civic open space at the NW corner. Principles of urban design require that for public spaces to be utilized to their fullest potential, it is essential that these spaces are lined with active uses within the adjacent structures so that there is an integration between the public realm and private space, where activity is naturally drawn through the public space which encourages further use, and to reinforce the idea of “eyes on the street” which facilitates safer and more vibrant public environments. LDR Section 4.4.13(G) provides specific regulations to ensure the civic space is presented with appropriate qualitative and schematic characteristics to achieve the desired outcome.

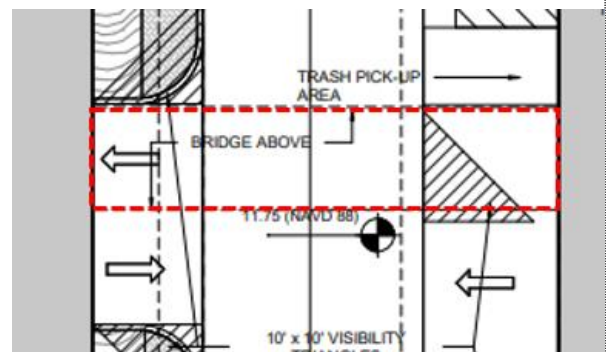
The applicant proposes a problematic ground floor configuration that undermines the purpose of the civic space and is inconsistent with quality urban design. The schematic choices are entirely avoidable, and despite Staff raising concerns from the initial review of this application, the Applicant has been reluctant to make modifications to the ground floor orientation and use-mix to help alleviate these crucial shortcomings.

Rather than lining the civic space with prominent and active uses, the building orients passive elements of the structure – such as the elevator stack and a secondary corridor that leads to the parking area – which are ill-suited to achieve the level of activity generation necessary for high quality public spaces. Best-in-class versions of public space will be lined by residential unit entrances; lobbies with multiple points of ingress/egress; commercial uses such as retail, café, and restaurant; or amenities that can function as gathering places, such as shared workspaces, coffee shops, etc. These types of uses accentuate the urban form by catalyzing the level of activity necessary to incentive use of the adjacent exterior space, as well as instill characteristics that strengthen the foundation of the neighborhood. Staff is concerned that, because of the lack of an active use liner, the required civic space will be an underutilized and inactivated aspect of the public realm.



Specifically, LDR Section 4.4.13(G)(3)(d) states that *Civic open spaces shall be lined by building facades or streets on all sides. In order to provide oversight of the space, buildings facing civic open spaces shall contain active uses.* While the required civic space is lined by extended lobby area, which technically may qualify as part of an active use (Main building lobby), the specific design and configuration of the portion of the lobby that lines the civic space is deficient for the reasons stated previously. Staff encourages the Board to consider whether the qualitative aspects of the ground floor design sufficiently meet the intent of the Central Business District, or if conditions that require revisions to the configuration to better address the referenced concern are appropriate.

The project proposes a pedestrian bridge connecting the two structures which horizontally projects at the 2<sup>nd</sup> floor level over the utility and access easement that leads to the public alley to the south. This bridge is required to maintain a 22-foot vertical height clearance over finished grade to ensure that the existing public utility infrastructure located within the utility easement can be effectively repaired. Likewise, because of the internal design and the fact that compliance with life safety regulations mandates the use of the internal corridors that extend across the pedestrian bridge, the applicant will be required to enter into a Hold Harmless Agreement prior to occupancy which states that any portion of the structure that relies on the availability of the pedestrian bridge to meet Fire and





Life Safety requirements for egress will be unoccupiable for any period of time where the bridge is rendered incapacitated or inaccessible.

As part of this application the existing 16-foot-wide public access easement that connects the public alley to the SE 1<sup>st</sup> Street ROW will be expanded to a 20-foot access easement consistent with the current required width dimension for Alleys. In addition, a two foot right of way dedication will be required along the portion of the property adjacent to the public alley.

**LDR Section 2.4.10(A)(3), Findings.** *All site plan applications require compliance with the applicable regulations and review criteria and shall be consistent with the Comprehensive Plan and other local ordinances.*

*(b) Level 2, Level 3, and Level 4 Site Plan applications require compliance with the findings in Chapter 3, Performance Standards.*

The Site Plan was reviewed according to the performance standards for site plan actions listed in **LDR Section 3.2.3** and these standards have been factored into the technical review of the application. The intent of the standards are to ensure that certain essential criteria and a level of quality are adhered to with regard to new development.

**LDR Section 3.1.1, Required Findings.** *Prior to the approval of development applications, certain findings must be made in a form which is part of the official record. This may be achieved through information on the application, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application.*

These findings relate to the following four areas:

**(A) Land Use Map** *The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Land Use Map.*

As noted previously, the requested approval of a multi-family residential development is consistent with the density and intensity of the land use and permitted uses as established within the Central Business District. The configuration and typology of the development further achieves the goals and objectives of the district, with the exception being the deficiencies in ground floor design as previously stated. Additionally, the redevelopment of the site will eliminate the existing nonconforming surface parking lots adjacent to primary streets.

**(B) Concurrency** *as defined by Objective NDC 3.1 of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CIE, Level of Service Standards, of the Capital Improvements Element of the adopted Comprehensive Plan of the City of Delray Beach.*

Water and Sewer. The development will connect to existing water and sewer networks as approved by the City Utilities Department.

Drainage. Drainage will be accommodated on site. All stormwater runoffs will be collected and contained within the subject property through a drainage system approved by the City Engineer.

Transportation. The provided Palm Beach County TPS approval letter indicates the proposed expansion will generate a net reduction of peak hour trips from the existing commercial use. Therefore, the project meets transportation concurrency.

Solid Waste. The Solid Waste Authority has indicated that its facilities have sufficient capacity to accommodate all development proposals until 2054.

Schools. The PBC SCAD letter confirms that the development will have no negative impact on the existing school system.

**(C) Consistency** *A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.*



The following Comprehensive Plan objectives and policies are relevant to the request:

### Neighborhoods, Districts, and Corridors Element

**Objective NDC 1.3** *Apply the mixed-use land use designations of Commercial Core, General Commercial, Transitional, Congress Mixed-Use, and Historic Mixed-Use to accommodate a wide range of commercial and residential housing opportunities appropriate in scale, intensity, and density for the diverse neighborhoods, districts, and corridors in the city.*

**Policy NDC 1.1.2** *Provide a complementary mix of land uses, including residential, office, commercial, industrial, recreational, and community facilities, with design characteristics that provide: Similar uses, intensity, height, and development patterns facing each other, especially in residential neighborhoods. Uses that meet the daily needs of residents. Public open spaces that are safe and attractive.*

**Policy NDC 1.3.1** *Apply mixed-use land use designations to foster development patterns that support pedestrian and bicycle activity, stimulate public transit ridership, and create a park-like environment.*

**Policy NDC 1.3.2** *Apply the mixed-use land use designation that best maintains the scale, density, intensity, and enhances the character of the surrounding neighborhood, district, or corridor.*

The proposed development maintains consistency and compatibility in terms of scale and intensity with surrounding developments and is presented in a configuration that improves upon the built environment and reinforces key goals of the CBD to facilitate walkable and well-connected development that is respectful to the historic scale and development pattern of downtown.

**(D) Compliance with the LDRs** *Whenever an item is identified elsewhere in the LDR, it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations.*

### LDR Section 4.4.13, Central Business (CBD) District

Standard/Regulation	Required	Proposed:
<b>Height</b> 4.4.13(D) – CBD	<b>Maximum:</b> 54 feet, 4 stories	<ul style="list-style-type: none"> <li>• 52' 6" to top of flat roof</li> <li>• 60 feet to top of parapet* 62 feet to top of elevator overrun and stairways**</li> <li>• *Parapets for roof screening shall be a minimum of 4 feet, maximum of 6 feet in height, but shall not extend beyond the maximum building height of 60 feet.</li> <li>• **Elevator overruns and stairways are not limited by number of stories; however, they shall not exceed 10 feet above the maximum overall building height</li> </ul>
<b>Table 4.4.13(C), Setbacks – CBD</b>	<b>Minimum Required</b> <b>Front:</b> Min. 10 feet – Max. 15 feet <b>Front Above 3<sup>rd</sup> Story:</b> Min. 20 feet <b>Side:</b> 0 feet Interior Side: 5 feet <b>Rear:</b> Min. 10 feet	<b>Front:</b> <b>SE 1<sup>st</sup> Street:</b> <b>1<sup>st</sup> Story:</b> 15 feet <b>2<sup>nd</sup> &amp; 3<sup>rd</sup> Story:</b> 12 feet, 8 inches <b>Front Above 3<sup>rd</sup> Story:</b> 20 feet  <b>SE 6<sup>th</sup> Avenue:</b> <b>1<sup>st</sup> Story:</b> 15 feet <b>2<sup>nd</sup> &amp; 3<sup>rd</sup> Story:</b> 10 feet <b>Above 3<sup>rd</sup> Story:</b> 20 feet



		<u><b>SE 5<sup>th</sup> Avenue:</b></u> <b>1<sup>st</sup> Story:</b> 15 feet <b>2<sup>nd</sup> &amp; 3<sup>rd</sup> Story:</b> 10 feet <b>Above 3<sup>rd</sup> Story:</b> 20 feet  <u><b>Interior Side:</b></u> 5 feet, 1 inch  <u><b>Rear (Alley):</b></u> <b>1<sup>st</sup> – 3<sup>rd</sup> Story:</b> 10 feet <b>Above 3<sup>rd</sup> Story:</b> 20 feet
4.4.13(E)(2), Minimum Streetscape Width	<b>Required:</b> 15 ft <b>Curb Zone:</b> 4 ft (min.) <b>Ped. Clear Zone:</b> 6 ft (min.) <b>Remaining Front Setback Area:</b> up to 15 ft	<u><b>SE 5<sup>th</sup> Avenue:</b></u> <b>Curb Zone:</b> 4 feet, 11 inches <b>Ped. Clear Zone:</b> 6 feet <b>Remaining Front Setback Area:</b> 10 feet, 8 inches <u><b>SE 1<sup>st</sup> Street:</b></u> <b>Curb Zone:</b> 6 feet, 3 inches <b>Ped. Clear Zone:</b> 6 feet <b>Remaining Front Setback Area:</b> 12 feet, 4 inches <u><b>SE 6<sup>th</sup> Avenue:</b></u> <b>Curb Zone:</b> Min 4 ft <b>Ped. Clear Zone:</b> Min 6 ft <b>Remaining Front Setback Area:</b> 10 feet, 8 inches
4.4.13(E), Frontage Type: Stoop, Storefront, Arcade, and Lobby	<b>Lobby Requirements:</b> <b>Building Setback:</b> 10 to 15 ft	<u><b>Lobby Requirements:</b></u> <u><b>SE 5<sup>th</sup> Avenue:</b> 10 ft</u> <u><b>SE 1<sup>st</sup> Street:</b> 15 ft</u> <u><b>SE 6<sup>th</sup> Avenue:</b> 11 feet, 8 inches</u>
4.4.13(G), Civic Open Space	943 square feet	<u><b>Plaza:</b> 1,220 square feet</u>

#### Other Development Regulations

Standard/Regulation	Review	
4.4.13(I), CBD Parking Standards	<b>Required:</b> 1.75 spaces per unit = 46 spaces 0.5 guest spaces per unit = 10 spaces 0.3 guest spaces per unit after 21 units = 1.80 spaces <b>Total Required:</b> 57 spaces	<b>Provided:</b> 59 (40 standard/17 compact/ 2 ADA)
4.6.9, Bicycle Parking	<b>Required:</b> Type I spaces – 1 spaces per 10 units = 3 space Type II spaces – 1 space per 6 units = 5 space	<b>Provided:</b> Type I spaces – 3 Type II spaces – 7

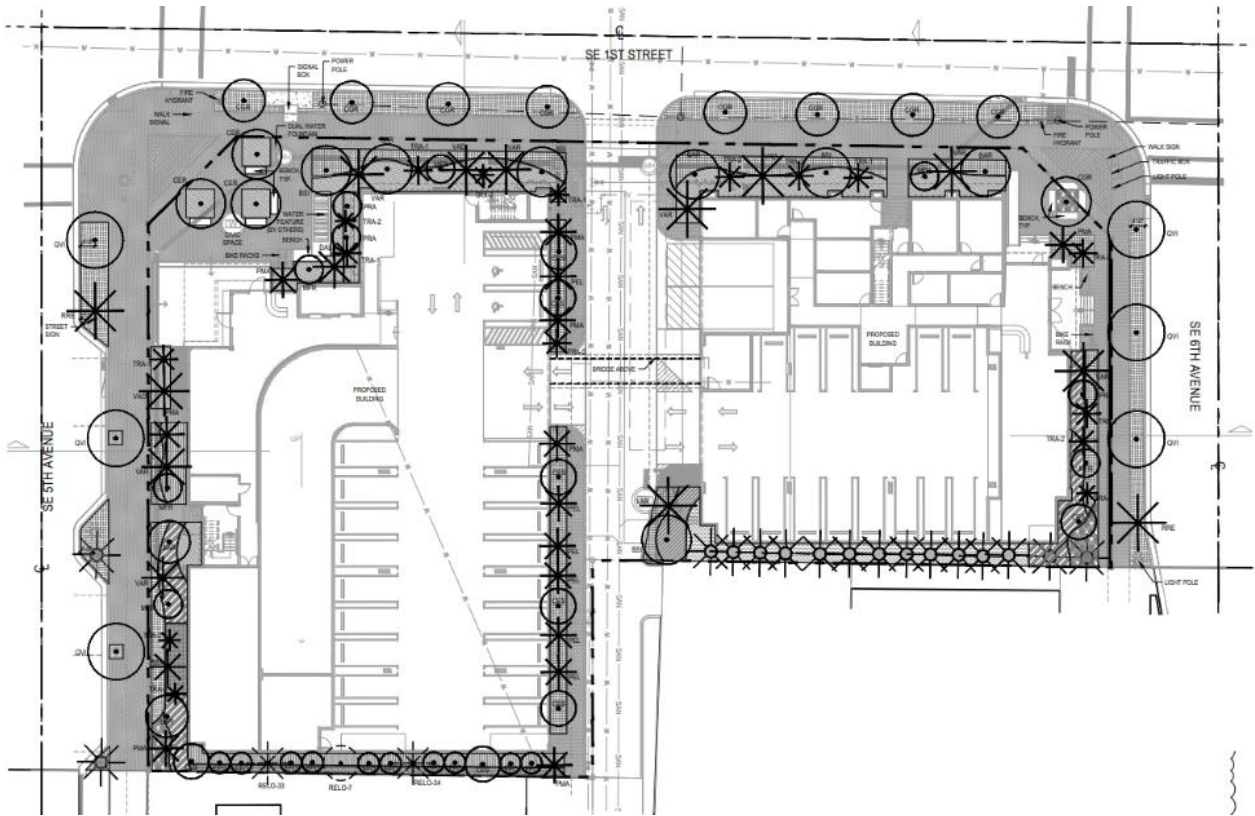
#### Review & Analysis: Landscape Plan

#### LDR Section 2.4.10(A)(3)(c), Findings

*Landscape Plans, including modifications to existing landscaping, shall be consistent with Section 4.6.16, Landscape Regulations.*



A technical review of this site plan has been performed, and a determination has been made that the project complies with all applicable landscape regulations. Landscaping is interspersed throughout the site in a way that is appropriate for the urban setting, where some foundation landscaping is incorporated to soften the mass, while a wide sidewalk is simultaneously paired with street trees to establish a walkable corridor. A significant number of existing trees will be removed; however, the applicant complies with requisite tree mitigation through a combination of new trees to be planted on site and an in-lieu payment of \$102,150.00 due at time of building permit. A full landscape plan is available as an attachment. Tree disposition and mitigation information is available on sheet L-1.



#### Review & Analysis: Architectural Elevations

##### LDR Section 2.4.10(A)(3)(d), Findings

*Architectural Elevations, including modifications to existing building facades, require an overall determination of consistency with the objectives and standards of Section 4.6.18, Architectural Elevations and Aesthetics, and any adopted architectural design guidelines and standards, as applicable.*

##### LDR Section 4.6.18, Architectural Elevations and Aesthetics (E), Criteria for board action

*The following criteria shall be considered, by the Site Plan Review and Appearance Board or Historic Preservation Board, in the review of plans for building permits. If the following criteria are not met, the application shall be disapproved.*

- 1. The plan or the proposed structure is in conformity with good taste, good design, and in general contributes to the image of the City as a place of beauty, spaciousness, harmony, taste, fitness, broad vistas, and high quality.*
- 2. The proposed structure, or project, is in its exterior design and appearance of quality such as not to cause the nature of the local environment or evolving environment to materially depreciate in appearance and value.*
- 3. The proposed structure, or project, is in harmony with the proposed developments in the general area, with the Comprehensive Plan, and with the supplemental criteria which may be set forth for the Board from time to time.*

Further analysis of compliance with the CBD design guidelines is discussed below.



## Delray Beach Central Business Architectural Design Guidelines

The Masonry Modern style of architecture is defined by its rational load bearing construction technique, its system of punched openings (vs. large expansive walls of windows) and its limited ornament. Stucco is the prevalent building finish in the Masonry Modern style. Stone and wood details are used to soften the stark modern forms of the building mass.

While the proposed design may be an interesting and dynamic execution of a general contemporary architectural style, there are issues with the execution of the Masonry Modern style as defined in the design guidelines.

As stated in the design guidelines, *The ratio of glass to wall emphasizes the solidity of the structure. Windows are typically recessed back from the exterior face of the building, producing deep shadows and revealing the thickness of the wall.* In the design presented, the amount of surface area devoted to glass panes appears in excess of what would customarily be expected for a true to style execution of Masonry Modern. Vast extensions of glass across the façade, specifically along the northern and western elevations, are reminiscent of what would be expected in a design intended for an institutional or commercial purpose.



1 NORTH ELEVATION



2 WEST ELEVATION  
SCALE: 3/32" = 1'-0"

Moreover, the design lacks a clearly defined tripartite composition which is a crucial design characteristic of historically scaled and timeless architecture. Designs that choose to forego a tripartite composition risk appearing out of harmony with the established scale and character of the existing downtown fabric. Proportionality and order in design execution is crucial, and while it may be visually interesting, contemporary styles not firmly grounded in compositional hierarchy may appear out of place. Even modernist architectural styles shall be required to execute a tripartite composition according to the design guidelines where it specifically states that *the tripartite composition (lower, middle, upper) characteristic of other styles is present in the Masonry Modern language. The public nature of the ground floor of a commercial building is emphasized with more glass, middle portions of the building are more solid, and the top often incorporates usable exterior spaces including loggias and terraces.*



The Board should consider whether the proposed design effectively achieves the characteristics outlined in the design guidelines for Masonry Modern architecture, which are essential components of the design to ensure the building remains in contextual harmony in the present and future.

Regarding the materiality of the building, the composition uses a predominant stucco finish with faux wood accent materials interspersed, which is compatible with the design guidelines. The color palette is relatively neutral with darker colors proposed at lower levels – again consistent with guidelines. The massing generally emphasizes the solidity of the structure in areas where there is not an over proliferation of glass.

Additionally, through collaboration with staff, the applicant has refined aspects of the design to facilitate a building that is well integrated with the public realm, provides significant outdoor amenity space for residents, and successfully addresses functional and operational elements such as relegating back of house uses (trash, loading) to the interior of the site and preserving the external perimeter for pedestrian use.

#### Options for Board Action

- A. Move **approval** of a Level 3 Site Plan Application request for **109 SE 5<sup>th</sup> Avenue**, including Architectural Elevations and a Landscape Plan, to construct a four-story, 26-unit residential development, finding that the request is consistent with the Land Development Regulations and the Comprehensive Plan.
- B. Move **approval, as amended** of a Level 3 Site Plan Application request for **109 SE 5<sup>th</sup> Avenue**, including Architectural Elevations and a Landscape Plan, to construct a four-story, 26-unit residential development, finding that the request is consistent with the Land Development Regulations and the Comprehensive Plan, **subject to conditions**.
- C. Move **denial** of a Level 3 Site Plan Application request for **109 SE 5<sup>th</sup> Avenue**, including Architectural Elevations and a Landscape Plan and, to construct a four-story, 26-unit residential development, finding that the request is inconsistent with the Land Development Regulations and the Comprehensive Plan.
- D. **Continue with direction.**

#### Public and Courtesy Notices

No Public Notice was required by the LDR for this application.

#### TAC Review Timeline

Review No.	Submittal Date	TAC Comments Transmitted	<p>Total time with Applicant: 461 days</p> <p>Total time under review: 154 days</p> <p>Applicant requested a resubmittal extension due to the complexity of the project, which was accepted, and therefore, the obligation for final action to be granted within 180 days of initial application date was waived by the Applicant.</p>
1	3/12/2024	4/16/2024	
2	6/14/2024	7/23/2024	
3	7/3/25	8/7/2025	
4	9/19/25	10/15/2025	
5	10/29/2025	11/17/2025	

#### Technical Notes:

1. A ROW dedication will be required prior to Building Permit
2. Expansion of the access easement to 20' shall be recorded prior to C/O
3. A landscape maintenance and sidewalk easement agreement will be required