



Cover Memorandum/Staff Report

File #: 24-424

Agenda Date: 4/16/2024

Item #: 7.A.

TO: Mayor and Commissioners
FROM: Anthea Gianniotis, Development Services Director
THROUGH: Terrence R. Moore, ICMA-CM
DATE: April 16, 2024

RESOLUTION NO. 81-24: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING WAIVER REQUESTS TO SECTION 4.6.5(C) OF THE LAND DEVELOPMENT REGULATIONS TO APPROVE A 9-FOOT 6-INCH MASONRY WALL IN THE WEST INTERIOR SIDE YARD FOR THE PROPERTY LOCATED AT 1234 GEORGE BUSH BOULEVARD AND TO ALLOW A 10-FOOT 7-INCH MASONRY WALL IN THE REAR YARD FOR THE PROPERTIES LOCATED AT 1234, 1240, 1246, 1252, 1258, AND 1264 GEORGE BUSH BOULEVARD, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (QUASI-JUDICIAL).

Recommended Action:

Review and consider Resolution No. 81-24, a waiver request to Land Development Regulation (LDR) Section 4.6.5(C) to construct a 9-foot 6-inch high masonry wall in the west interior side yard for the property located at 1234 George Bush Boulevard and a 10-foot 7-inch masonry wall in the rear yard for the properties located at 1234, 1240, 1246, 1258, and 1264 George Bush Boulevard.

Background:

The subject property is zoned Medium Density Residential (RM) with a Land Use Map designation of Medium Density (MD) and is located south of George Bush Boulevard and west of North Ocean Boulevard. On May 25, 2022, the Site Plan Review and Appearance Board (SPRAB) approved a Class V Site Plan to construct a six-unit townhome development, which included the construction of an eight-foot masonry wall along the side interior (west) and rear (south) portion of the property.

New construction in this location is subject to Federal Emergency Management Agency (FEMA) standards. FEMA identifies the subject property as within the AE (7.0 NAVD), Special Flood Hazard Area (SFHA). This designation requires the finished floor to be no less than 7.0 NAVD in elevation. NAVD is a universal measurement used on surveys to vertically locate grade, improvements, etc.

The Florida Building Code requires an additional foot of elevation. Therefore, the minimum finished floor elevation is required to be 8.0 NAVD.

LDR Section 4.3.4(J)(2)(b) allows an additional 12 inches for freeboard. Freeboard is the allowance for additional height in the base building elevation above minimum requirements solely for the purpose of providing additional floodproofing. The applicant built the finished floor elevation to 10 NAVD, which is permitted provided the addition foot of elevation is part of the overall building height. The approved development meets the LDR building height limitations and meets the current and pending FEMA standards.

However, the builder of the project elected to accomplish some of the elevation of the finished floor by using fill on the site, raising the grade from its original level. Other techniques, such as grading or terracing the lot and/or incorporating more steps to the building, could also be used to elevate the finished floor of a building. Florida builders tend to rely on "slab-on-grade" construction methods, which is resulting in challenges when significant grade transitions occur between properties.

The survey attached indicates the natural grade on the property adjoining on the west gradually increases from north to south from 5.61 to 6.40. The grade on the new project (the other side of the wall) is 5.61 near George Bush Boulevard and ranges from 9.30 to 9.80 for most of the lots. The result is a difference of over three feet between the grade of the western neighbor's lot and the new project.

The survey submitted indicates the natural grade of the properties along the rear of the properties varies from 6.10 to 5.40, and the grade of the new project is 9.67. The result is a difference of over 3.5 to over 4 feet between properties.

Siting a new perimeter masonry wall on the new grade results in walls that exceed the maximum height limit. Pursuant to **LDR Section 4.6.5(C) Height restrictions**, *walls, fences, or hedges located in a required front yard or street side yard shall not exceed six feet in height. Walls, fences, or hedges located in a required interior side or rear yard shall not exceed eight feet in height [...]* For the purpose of this section, height is to be measured from the **undisturbed (natural) grade** of the ground adjacent to the exterior of the fence, wall, or hedge.

During construction, the masonry wall along the west side was built higher than the maximum height of eight feet, as it was taken from the new grade. The rear of the property, labeled cross section B-B in Exhibit C, shows that the proposed wall measures approximately 10 feet seven inches high, and the side interior, labeled cross section C-C, measures approximately nine feet six inches high. Relief is not required along the east side, as the adjoining property is built at a higher elevation.

It is also important to note, the project is utilizing private, third party inspectors rather than City staff, as is allowed by state statutes.

On March 30, 2023 (over a year ago), the adjacent neighbors contacted the City regarding concerns about the height wall appearing over their existing fences (photo attached).

On April 11, 2023, City staff met with the developer to share the neighbor's concerns, clarify the maximum height of the wall that is allowed based on "undisturbed grade" and request they make a good faith effort to work with the neighbors to resolve the compatibility issue.

On December 11, 2023, the applicant submitted a waiver to the maximum fence/wall height.

Pursuant to **LDR Section 4.6.5(C) Height restrictions**, *walls, fences, or hedges located in a required front yard or street side yard shall not exceed six feet in height. Walls, fences, or hedges located in a required interior side or rear yard shall not exceed eight feet in height [...]* For the purpose of this section, height is to be measured from the **undisturbed (natural) grade** of the ground adjacent to the exterior of the fence, wall, or hedge.

Waiver Findings

Pursuant to **LDR Section 2.4.11(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; and,

(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.

In consideration of the criteria, the impact on the neighboring area and safety are both factors. A minimum four-foot enclosing fence or wall is needed to meet FBC requirements for pools, on the new grade. Additionally, the new, elevated grade creates a privacy issue with the adjoining properties, affording a view from the new development into adjoining yards. Providing 6-foot wall as measured from the new development's side, presents a much taller wall from the neighbor's view. Additionally, butting up against existing fences raises questions of reasonable design aesthetics and responsibilities. The wall is visible above the neighbor's privacy fences - and it cannot be fully stuccoed and painted without removing current fencing. It does not appear that an agreement for a final, holistic design that accommodates properties on both sides of the wall has been reached. Without a cohesive design, the neighbors are negatively affected.

The Always Delray Comprehensive Plan, Policy HOU 1.1.6 of the Housing Element Promote encourages *good design in new housing construction and rehabilitation that highlights beauty, flexibility, and innovation, and respects existing neighborhood character.*

City Attorney Review:

Resolution No. 81-24 was approved to form and legal sufficiency.

Funding Source/Financial Impact:

N/A

Timing of Request:

Resolution No. 81-24 will become effective immediately upon adoption. The home is under building permit revision and inspections to receive a Certificate of Occupancy.