

## RESOLUTION NO. 07-23

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, GRANTING A WAIVER REQUEST TO SECTION 4.4.13(E)(4)(E)(1)(B) OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, APPROVING A DECREASE IN THE PERCENTAGE OF STOREFRONT OPENING REQUIRED ALONG THE NORTH FAÇADE OF THE BUILDING AT 98 NORTHWEST FIFTH AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach, Florida (“the City”) received a Class III Site Plan application (2019-261) associated with the property located at 98 NW 5<sup>th</sup> Avenue (“the Property”), from the Delray Beach Community Redevelopment Agency (“Property Owner”), which involves the rehabilitation, adaptive reuse, and building addition to an existing two-story structure for use as an office/retail building; and

WHEREAS, the Property is located at the northwest corner of the intersection of NW 5<sup>th</sup> Avenue and NW 1<sup>st</sup> Street, within the West Settlers Historic District, is zoned Central Business District (“the CBD”), and is within the West Atlantic Neighborhood Sub-district; and

WHEREAS, Section 4.4.13(E) of the Land Development Regulations of the City of Delray Beach (“LDR”), sets forth frontage standards that define architecture and design components for the entrance(s) to buildings and the area between building facades and streets; and

WHEREAS, LDR Section 4.4.13(E)(4)(e)(1)(b), requires storefront (window and door) openings to extend along at least 80 percent of the width of the façade of the commercial space; and

WHEREAS, given the configuration of the two-story building, the first story does not allow for sufficient space to accommodate the required 80 percent storefront openings; and

WHEREAS, prior to construction, the Property Owner requested waivers to decrease the required percentage of storefront opening along the width of the first story of the building to 75 percent on the east facade and 69 percent on the north facade, which were both approved by the City Commission on September 22, 2020; and

WHEREAS, during construction the applicant discovered the approved waiver reduction along the east side was not sufficient due to the configuration of the existing building; and

WHEREAS, a Waiver request (2023-003) was submitted for an additional decrease in the required percentage of storefront opening along the width of the first story of the north façade of the building from 75 percent to 62 percent; and

WHEREAS, at its meeting of December 7, 2022, the Historic Preservation Board voted 6 to 0 (Lemstrom and Weber absent) to recommend approval to the City Commission of the requested waiver to LDR Section 4.4.13(E)(4)(e)(1)(b); and

WHEREAS, LDR Section 2.4.7(B)(5), which governs waivers from development regulations, requires the approving body to make a finding that the granting of a 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 a similar circumstance on other property for another applicant or owner; and,

WHEREAS, LDR Section 4.4.13(K)(5)(b)(2), which governs waivers from development regulations in the CBD, also requires the approving body to make a finding that the granting of the waiver:

- (a) Shall not result in an inferior pedestrian experience along a Primary Street, such as exposing parking garages or large expanses of blank walls;
- (b) Shall not allow the creation of significant incompatibilities with nearby buildings or uses of land;
- (c) Shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan; and
- (d) Shall not reduce the quality of civic open spaces provided under this code.; and

WHEREAS, the requested waiver from LDR Section 4.4.13(E)(4)(e)(1)(b) to reduce the required percentage of storefront opening along the width of the first story of the north façade of the building for the proposed development was presented to the City Commission at a quasi-judicial hearing conducted on January 10, 2023; and

WHEREAS, the City Commission reviewed the waiver request to LDR Section 4.4.13(E)(4)(e)(1)(b), to allow an additional decrease to the required percentage of storefront opening along the width of the first story of the north façade of the building from 75 percent to 69 percent as described in Exhibit “A” in accordance with the standards listed in LDR Sections 2.4.7(B)(5) and 4.4.13(K)(5)(b)(2), and has considered the respective findings as set forth in the Land Development Regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby incorporated herein by reference and are approved and adopted.

Section 2. The City Commission makes positive findings that the requested waiver (1) does not adversely affect the neighboring area, (2) does not significantly diminish the provision of public facilities, (3) does not create an unsafe situation, and (4) does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on another property for another applicant or owner.

Section 3. The City Commission makes positive findings that the requested waiver (1) does not result in an inferior pedestrian experience along a Primary Street; (2) does not allow the creation of significant incompatibilities within nearby buildings or uses of land; (3) does not erode the connectivity of the street network or negatively impact any adopted bicycle/ pedestrian master plan; and (4) does not reduce the quality of civic open spaces provided under this code.

Section 4. The City Commission approves granting of the waiver to LDR Section 4.4.13(E)(4)(e)(1)(b), to allow an additional decrease to the required percentage of storefront opening along the width of the first story of the north façade of the building from 75 percent to 69 percent as described in Exhibit “A”, which is incorporated herein.

Section 5. The City Clerk, or designee, is directed to send a certified copy of this Resolution to The Delray Beach Community Redevelopment Agency.

Section 6. All resolutions or parts of resolutions in conflict herewith shall be and hereby are repealed.

Section 7. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED in regular session on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
Katerri Johnson, City Clerk

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Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

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Lynn Gelin, City Attorney