



Cover Memorandum/Staff Report

File #: 25-639

Agenda Date: 6/3/2025

Item #: 7.A.

TO: Mayor and Commissioners
FROM: Anthea Gianniotis, Development Services Director
THROUGH: Terrence Moore, ICMA-CM
DATE: June 3, 2025

RESOLUTION NO. 94-25: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING A WAIVER TO SECTION 4.4.13(D)(1)(b)1. b. OF THE LAND DEVELOPMENT REGULATIONS TO ALLOW AN AWNING TO ENCROACH INTO THE FRONT SETBACK 9 FEET 7 INCHES, WHEREAS THE MAXIMUM ALLOWABLE ENCROACHMENT IS 4 FEET, FOR THE PROJECT LOCATED AT 220 NE 1ST STREET, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (QUASI-JUDICIAL HEARING)

RESOLUTION NO. 95-25: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING A WAIVER TO SECTION 4.4.13(E)(2)(a)1. OF THE LAND DEVELOPMENT REGULATIONS TO REDUCE THE WIDTH OF THE CURB ZONE TO 0 FEET FOR A PORTION OF THE STREETScape, FOR THE PROJECT LOCATED AT 220 NE 1ST STREET, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (QUASI-JUDICIAL HEARING)

Recommended Action:

Review and consider two separate requests for project located at 220 NE 1st Street, known as American Social: Resolution No. 94-25, a request to allow an awning to encroach into the front setback 9 feet 7 inches whereas the allowed maximum encroachment is 4 feet; and Resolution No. 95-24, a request to reduce the curb zone width from the required minimum of 4 feet to 0 feet for a portion of the streetscape.

Background:

In 2023, a Site Plan application for site and architectural modifications, and a change of use property (File No. 2023-057) was submitted to convert the existing office use (Bay 100) into a restaurant. This site plan application was accompanied by an in-lieu parking request for 33 parking spaces that applied to both the required parking for the change of use as well as future outdoor dining elsewhere on the subject. The in-lieu parking application was approved by City Commission on June 13, 2023, and the associated Level 1 Site Plan for site and facade modifications as well as a change of use was administratively approved in July 2024. The proposal did not include an expansion of square footage and was therefore eligible for administrative approval.

The Applicant has submitted a Level 1 Site Plan Application for significant facade and site modifications to the previously approved restaurant. As part of the development applicant, two waivers have been requested from the CBD Development regulations. The subject requests in this item are two independent waivers from CBD zoning district standards, which require City

Commission action prior to site plan consideration. The City Commission will take separate action on each request:

Waiver 1. Awning Encroachment: LDR Section 4.4.13(D)(1)(b)1.b., for properties zoned CBD, the maximum allowable setback encroachment for awnings is 4 feet. The request is to exceed the maximum allowable awning setback encroachment of 4 feet to allow an encroachment of 9 feet and 7 inches. The awnings are proposed to cantilever to the property line.

Waiver 2. Curb Zone: LDR Section 4.4.13(E)(2)(a)1., for properties zoned CBD, the minimum curb zone width within the required streetscape is 4 feet. The request is to omit the required four-foot curb zone, providing a curb zone width of 0 feet for a portion of the streetscape where existing on-street parking spaces are located.

Waiver 1: Awning Encroachment (Resolution No. 94-25)

LDR Section 4.4.13(D)(1)(b)1.b., *Roof Eaves, awnings, and balconies may encroach into the setbacks a maximum of four feet.*

The applicant is requesting to exceed the maximum awning setback encroachment of 4 feet along the north and west façade adjacent NE 1st Street and NE 2nd Avenue. The required setback for the property is a minimum of 10 feet and maximum of 15 feet. The existing structure is nonconforming with a setback that ranges from 8 feet to 8 feet and 1 inch for the north façade, and 9 feet and 6 inches to 9 feet and 7 inches for the west façade. The proposed awning would cantilever over the outdoor dining seating and would extend to the property line, encroaching approximately 8 feet in depth for the north façade and 9 and a half feet in depth for the west façade. The outdoor dining requires review and approval through the sidewalk café permit process.

Pursuant to **LDR Section 4.4.13(E)(4)(e)2.a., Storefront Elements**, awnings are required to project a minimum of five feet from the building facade; no maximum projection is specified, and the projection is only limited by the maximum encroachment. Providing large awnings along a storefront offers an opportunity for pedestrians to interact with the storefront and provides a more enjoyable and shaded experience walking along the sidewalk. The proposed awning is exclusively for the outdoor seating area. Although the awning is not providing coverage for pedestrians along the sidewalk, there is still an interaction with the pedestrians that allows them to view the dining experience, provides connection between the interior and exterior which activates the streetscape, and may possibly encourage passersby to enter the establishment.

It is important to note that the minimum required 6-foot pedestrian clear zone is provided along the full extent of the sidewalk and exceeds the minimum in certain areas. This maintains sufficient clearance for pedestrians to pass, while also allowing for the lively exterior environment that outdoor dining can provide.

Also, due to the required 20' by 20' corner clip dedication at the intersection of NE 1st Street and NE 2nd Avenue, the existing structure will encroach slightly into the public ROW at the corner, and a hold harmless is required for the existing structure and the proposed awning overhang within the public ROW.

The Board should consider whether the proposed encroachment sufficiently meets the applicable criteria such that the extension of the awnings to the property line benefits the overall quality of the

streetscape and does not diminish the pedestrian experience. It is relevant to note that the awning completely cantilevers and there are no structural support columns required. As such, any potential physical conflict with the encroachment may be sufficiently mitigated given that adequate vertical clearance will be provided.

Waiver 2: Curb Zone (Resolution No. 95-25)

LDR Section 4.4.13(E)(2)(a)1., *the curb zone shall be at least four feet wide, measured from the back of curb to the pedestrian clear zone. This zone accommodates street trees and public infrastructure needs such as utility poles, street lights, street signs, parking meters, etc. These elements shall be located as close to the curb as possible; signs and parking meters shall be consolidated as much as possible. Space for pedestrian use is also accommodated in the curb zone.*

Pursuant to **LDR Section 4.4.13(C)(2)**, properties located within the CBD are held to a higher design standard to support a lively, highly active pedestrian environment that supports business and the historic character of the downtown. Primary Streets are intended to develop over time as superior pedestrian environments and, as such, are subject to stricter regulations regarding building placement and frontage. Both NE 1st Street and NE 2nd Avenue are Primary Streets and are held to this higher design standard.

Pursuant **LDR Section 4.4.13(E)(2), Streetscapes**, *front setback areas, which include side setback areas facing streets, shall be detailed to augment public right-of-way design, to establish shaded, continuous routes for pedestrians, and to organize landscaping and other elements to ensure a superior public realm.* The proposed restaurant abuts a ROW on the north and west; therefore, a streetscape design that provides a superior pedestrian experience and incorporates the elements detailed in **LDR Section 4.4.13(E)(2)** is required for each side. The required streetscape width includes a curb zone (4 feet), a pedestrian clear zone (6 feet) and the remaining front setback area (5 feet), equating to a total minimum 15-foot streetscape design.

The request is to omit the required 4-foot curb zone, providing a curb zone width of 0 feet for a portion of the streetscape where existing on-street parking spaces are located, with the balance of the streetscape gained from the omission of the curb zone redistributed to the pedestrian clear zone and remaining front setback area used for expanded outdoor dining. The proposed streetscape meets the minimum dimensional requirements for most of the subject site, providing continuous sidewalk, street trees, and lighting. However, the applicant is requesting to reduce the curb zone width from the required remaining 4 feet to 0 feet adjacent to existing on-street parking spaces. The curb zone is measured from the back of curb to the edge of the pedestrian clear zone and typically accommodates street trees and public infrastructure needs such as utility poles, streetlights, street signs, parking meters, etc. This generally results in 10 feet of right-of-way space to accommodate these needs, including the pedestrian clear zone.

The pedestrian clear zone and the remaining front setback complies with the required dimensions along the areas seeking curb zone relief; the west façade proposes a 6-foot pedestrian clear zone and 9-foot remaining front setback, and north façade proposes a 7-foot 10-inches pedestrian clear zone and 8-foot remaining front setback. The overall streetscape dimensions comply with the required 15 feet throughout the site. Likewise, the Applicant has proposed the addition of three shade trees where none currently exist along NE 1st Street within the portion of the streetscape where the curb zone is provided. This is a clear improvement in quality over the existing conditions.

In consideration of the criteria findings listed previously, it is important to clarify that the Applicant is essentially proposing to reallocate the 4 feet that would be required for the curb zone and is instead distributing the 4 feet to accommodate an expanded dining area, subject to a future sidewalk café permit. While the North side provides a wider pedestrian clear zone than is required, the small areas fully eliminating the curb zone will not provide the relief to the pedestrian clear zone that the curb zone provides. The Board should consider if this is an acceptable trade-off for a property with an existing building in a nonconforming position and if it improves the quality of the pedestrian experience or whether the omission of the curb zone for a portion of the streetscape diminishes public facilities and results in an inferior pedestrian experience. This determination depends on whether the activity and liveliness generated by expanded private outdoor dining significantly benefits the pedestrian experience along the street, as much or more than the public amenity of a wider publicly available streetscape. The Board shall also consider if this is a special privilege or if this relief would be granted in similar circumstances.

Ultimately, the City Commission must consider the requests and determine if the waivers meet the standards and findings.

LDR Section 2.4.11(B)(5), Findings

Prior to granting a waiver, the granting body shall make findings that 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 similar circumstances on other property for another applicant or owner.*
- e. ***Within the CBD, the following additional findings apply:***
 1. *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.*
 2. *The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.*
 3. *The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/ pedestrian master plan.*
 4. *The waiver shall not reduce the quality of civic open spaces provided under this code.*

The Planning and Zoning Board (PZB) Staff Report provides additional background and a complete analysis of each request.

On April 17, 2025, the Downtown Development Authority (DDA) reviewed the Level 1 Site Plan and waiver requests and recommended approval 5-0.

On May 19, 2025, the PZB reviewed the waiver requests and recommended the following:

Waiver 1. Awning Encroachment: Recommended approval on a vote 4-0.

Waiver 2. Curb Zone: Recommended approval on a vote 4-0.

The items before the City Commission are final action on the project. Commission approval of Resolution No. 94-25 and Resolution No. 95-25 for the waiver requests would constitute a determination that the application is consistent with the City's Comprehensive Plan and adheres to

the required standards of the Land Development Regulations. This will not appear as an appealable item on a future agenda.

The project is currently under review with the Technical Advisory Committee (TAC), and modifications may be made to address TAC review comments. Once the City Commission has taken final action on the waiver and all technical comments have been addressed, the Level 1 Site Plan is eligible for administrative approval.

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source/Financial Impact:

N/A

Timing of Request:

Approval of the Waiver is required prior to the review of the Level 1 Site Plan. The Level 1 Site Plan is eligible for administrative approval.