



## Cover Memorandum/Staff Report

File #: 22-1649

Agenda Date: 1/10/2023

Item #: 7.D.

**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Department  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** January 10, 2023

RESOLUTION NO. 22-23: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING A WAIVER REQUEST TO SECTION 4.4.13(C)(3)(a)(2)(a) OF THE LAND DEVELOPMENT REGULATIONS, APPROVING A PORCH FRONTAGE TYPE ALONG WEST ATLANTIC AVENUE BETWEEN NW 7<sup>TH</sup> AVENUE AND NW 6<sup>TH</sup> AVENUE FOR THE PROJECT KNOWN AS 7<sup>TH</sup> AVENUE BANYAN, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES (QUASI JUDICIAL).

### **Recommended Action:**

Review and consider Resolution No. 22-23. approving a porch frontage type for the "7th Avenue Banyan" project located between NW 6th Avenue and NW 7th Avenue.

### **Background:**

The subject property, located at 625, 633, and 645 West Atlantic Avenue, is on the southwest corner of NW 7th Avenue and West Atlantic Avenue. The property is located within the Central Business District (CBD) West Atlantic Neighborhood Sub-district. This portion of West Atlantic Avenue is classified and subject to the provisions for a Primary Street and Required Retail Frontage. It is also located within the West Atlantic Neighborhood Commercial Area. A Class V Site Plan request has been submitted for the construction of a 16,298 sq. ft., three-story, mixed-use building, also known as "7th Avenue Banyan."

The subject request is a waiver from the CBD zoning district frontage type requirement (LDR Section 4.4.13(C)(3)(a)(2)(a)) to allow the use of a Porch frontage type in place of the required Storefront or Arcade with Storefront frontage type. The waiver must be acted upon by the City Commission prior to consideration of the Site Plan by the Site Plan Review and Appearance Board (SPRAB).

### **LDR Section 4.4.13(K)(5)(a), Waivers**

*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.*

*Pursuant to LDR Section 4.4.13(C)(3)(a)(2)(a), Required Retail Frontage Use Limitations, streets designated on the Regulating Plan with Required Retail Frontage are intended to be lively, highly active pedestrian environments that support businesses and reinforce local character. Properties on streets designated with Required Retail Frontage have use and frontage type standards that apply to*

*the sidewalk level story.*

- (a) The frontage type shall be either a Storefront or Arcade with a Storefront.*

The types of uses required along the sidewalk level of a street designated as “Required Retail Frontage” include retail shops, restaurants, personal services, and hotels. Therefore, the code requires the building’s architecture to reinforce uses that appeal to pedestrians and engage their interest to support a healthy downtown business environment. A Storefront frontage type has a high percentage of glazing to afford views to merchandise for sale. An Arcade paired with a Storefront provides views into the stores and a covered, shaded environment for pedestrians. Arcades by definition extend into the public right-of-way over the sidewalk to capture passersby to entice potential customers.

The grade along West Atlantic Avenue increases both from east to west along the front of the property, as well as from the public right-of-way to the front of the property. The proposed site plan absorbs the changes in grade through hardscape areas in the front setback area. As a result, the streetscape, which is typically an extension of the City’s sidewalk, has steps, ramps, and planters leading up to the Storefronts and the covered area is configured as a Porch with Storefront windows. A parallel sidewalk is provided along the proposed porch. However, **LDR Section 4.4.13(f)(1)(a)** states “a sidewalk should not run parallel to an arcade, allowing pedestrians to bypass storefront windows.”

Another complication is that FDOT does not allow structures to encroach into their rights-of-way, which limits the ability to incorporate an Arcade frontage type into the design of new buildings in these locations.

The applicant has indicated in the attached justification statement that due to FDOT’s right-of-way restrictions, the change in grade and the expanse of Storefront glass facing direct sun, a Porch frontage type is most suitable as it is accommodated outside of FDOT’s right-of-way, addresses the change in grade, and provides shade and UV protection for the merchants and pedestrians

#### **LDR Section 2.4.7(B)(5), Waiver: 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.*
- 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.*

#### **LDR Section 4.4.13(K)(5)(b)2. CBD Waiver Standards**

*2. Within the CBD, the following standards shall be used by the City Commission, SPRAB or HPB when considering waiver requests, in addition to the findings in Section 2.4.7(B)(5):*

- 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. The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/ pedestrian master plan.*

- d. *The waiver shall not reduce the quality of civic open spaces provided under this code.*

The properties to the east and west of the subject site do not provide the required frontage types along West Atlantic Avenue, as the sites were developed prior to the adoption of the CBD code. If the adjacent properties are developed in the future, they will be subject to the same frontage standards as the subject property. If the required Storefront or Arcade with Storefront are provided for adjacent developments, the streetscape along this portion of West Atlantic Avenue will be inconsistent. However, because FDOT controls this portion of West Atlantic Avenue, it is likely that the adjacent properties will face the same circumstances (changes in grade, limitation of Arcade projection) as the subject site. The Board should consider whether the proposed Porch is compatible with neighboring properties.

This request is the third application (Sundy Village and Doc's/Delray Central) that have requested an adjusted frontage type due to the inability to extend into FDOT right-of-way. Without a building element to absorb the changes in grade in front of the Atlantic Grove project, elevation differences were absorbed within the streetscape area in front of the buildings. Ultimately, the consideration is if it's better to allow a Porch frontage type, with open air covered areas, along West Atlantic Avenue or limit the fronts of new building to only the Storefront frontage type.

### **Review By Others**

The **Community Redevelopment Agency (CRA)** received the full Class V Site Plan with waiver request in its September 10, 2022 CRA report.

The **Downtown Development Authority (DDA)** reviewed the full ClassV Site Plan with waiver request at its meeting of September 12, 2022. A recommendation to approve the proposed Class V Site Plan with waiver was carried 5 to 0. The DDA Memo is attached and provides additional information.

The **Site Plan Review and Appearance Board (SPRAB)** considered the waiver request at its meeting of December 14, 2022. A recommendation to approve the proposed waiver was carried 6-0 (Carol Perez stepped down). The complete review and analysis provided to the SPRAB is in the attached Staff Report.

### **City Attorney Review:**

Approved as to form and sufficiency.

### **Funding Source/Financial Impact:**

N/A

### **Timing of Request:**

Resolution No. 22-23 will become effective immediately upon adoption.