

IN THE CITY COMMISSION
CHAMBERS OF THE CITY OF
DELRAY BEACH, FLORIDA

CONDITIONAL USE REQUEST FOR AN INCREASE IN BUILDING HEIGHT
FOR FOURTH AND FIFTH DELRAY (iPic Movie Theater)

ORDER OF THE CITY COMMISSION
OF THE CITY OF DELRAY BEACH, FLORIDA

1. This conditional use request came before the City Commission on August 18, 2015. This conditional use request is to allow an increase in building height to 59.5 feet for Fourth and Fifth Delray (iPic Movie Theater) located south of Atlantic Avenue between SE 4th Avenue and SE 5th Avenue.

2. The City staff and Applicant presented documentary evidence and testimony to the City Commission pertaining to the conditional use request for an increase in building height for Fourth and Fifth Delray (iPic Movie Theater). All of the evidence is a part of the record in this case. Required findings are made in accordance with Sections I and II.

I. COMPREHENSIVE PLAN

a. Comprehensive Plan – Future Land Use Element Objective A-1: This objective requires that the property be developed or redeveloped in a manner so that the future use and intensity is appropriate and complies in terms of soil, topographic, and other applicable physical considerations, is complimentary to adjacent land uses, and fulfills remaining land use needs.

Is Future Land Use Element Objective A-1 met?

Yes X

No

b. **Future 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 Future Land Use Map. The subject property has a Future Land Use Map designation of Commercial Core and a zoning designation of Central Business District.

Is the project's proposed location consistent with the Future Land Use Map?

Yes X No

c. **Concurrency**: Facilities which are provided by, or through, the City shall be provided to new development concurrent with issuance of a Certificate of Occupancy. These facilities shall be provided pursuant to levels of service established within the Comprehensive Plan.

Concurrency as defined pursuant to Objective B-2 of the Land Use Element of the Comprehensive Plan must be met and a determination made that the public facility needs of the requested land use and/or development application will not exceed the ability of the City to fund and provide, or to require the provision of, needed capital improvements for the following areas:

Are the concurrency requirements met with respect to water, sewer, drainage, streets and traffic, parks, open space, solid waste, and schools?

Yes X No

d. **Consistency:** Will the granting of the conditional use be consistent with and further the goals and policies of the Comprehensive Plan?

Yes X No

II. LDR REQUIREMENTS:

a. **LDR Section 2.4.5(E) Required Findings (Conditional Use):** Pursuant to Section 2.4.5(E)(5), in addition to the provisions of Chapter 3, the City Commission must determine that the conditional use will not:

- i. Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;
- ii. Hinder development or redevelopment of nearby properties.

Are the requirements of Section 2.4.5(E)(5) met?

Yes X No

b. **LDR Section 4.3.4(J)(4)(b) Required Findings (Increase in Height):**

Pursuant to LDR Section 4.3.4(J)(4)(b)(i)(9), an increase to a maximum height of 60' may be approved by the City Commission as a conditional use for property within the Central Core portion of the CBD (Central Business District), except for that portion within 150' of any zoning district which has a maximum height limit of 35', measured from the property line of the CBD zoned property.

The City Commission may approve an increase in height to a maximum height of 60' based upon a finding of compliance with each of the enumerated criteria listed below.

- (ii) That the increase in height will not provide for, nor accommodate, an increase in the floor area (within the structure) beyond that which could be accommodated by development which adheres to a height limitation of 48 feet, except for the following situations:
 - (1) An increase in height is allowed when the increase from 48 feet to 60 feet is for the purpose of accommodating residential use on the top floor of the structure; however, the increase in height is only for the added residential use area.
- (iv) That the increase in height shall be allowed if two or more of subsections 4.3.4(J)(iv)(1), (2) or (3) are met:
 - (1) That for each foot in height above 48 feet, an additional building setback of two feet is provided from the building setback lines which would be established for a 48-foot tall structure. The additional setback is required from all setback liens (i.e., front, side, and rear) for the portion of the building that extends above 48 feet. In lieu of this setback requirement, buildings in the CBD zone shall adhere to the setback requirements of that district;
 - (2) That a minimum of 50% of the ground floor building frontage consist of nonresidential uses (excluding parking);
 - (3) That open areas, such as courtyards, plazas, and landscape setbacks, be provided in order to add interest and provide relief from the building mass.

Are the requirements of LDR Section 4.3.4(J)(4)(b)(ii) and (iv) met?

Yes X No

3. The comments and notes set forth in the staff report are hereby incorporated herein.

4. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the conditional use request was submitted.

5. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained

in the record including but not limited to the staff reports and testimony of experts and other competent witnesses supporting these findings.

6. Based on the entire record before it, the City Commission approves X denies the conditional use request set forth above subject to the conditions set forth in Exhibit A, attached hereto and made a part hereof, and hereby adopts this order this August 18, 2015 by a vote of 3 in favor and 2 opposed.

ATTEST:


Chevelle Nubin
City Clerk

Approved as to legal form
and sufficiency:


City Attorney

Department Head:

 8/31/15
Tim Stillings


Cary D. Glickstein, Mayor

Exhibit A

1. Approval of a site plan by SPRAB that is in general conformance to the concept plan approved as part of this Conditional Use. Any changes in site layout, access, or use configuration will require amendment to the conditional use and approval by the City Commission.
2. That the applicant address Palm Beach County Traffic Engineering Division's review of the revised traffic analysis prior to approval of the site plan.
3. That the property immediately south of the subject development be acquired and redeveloped with vehicular access to the north/south alley, include a public access easement, and additional landscape area prior to issuance of a building permit.
4. That the applicant provide measures to prevent the dropping off of patrons on Federal Highway prior to site plan approval.