



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## SITE PLAN REVIEW AND APPEARANCE BOARD STAFF REPORT

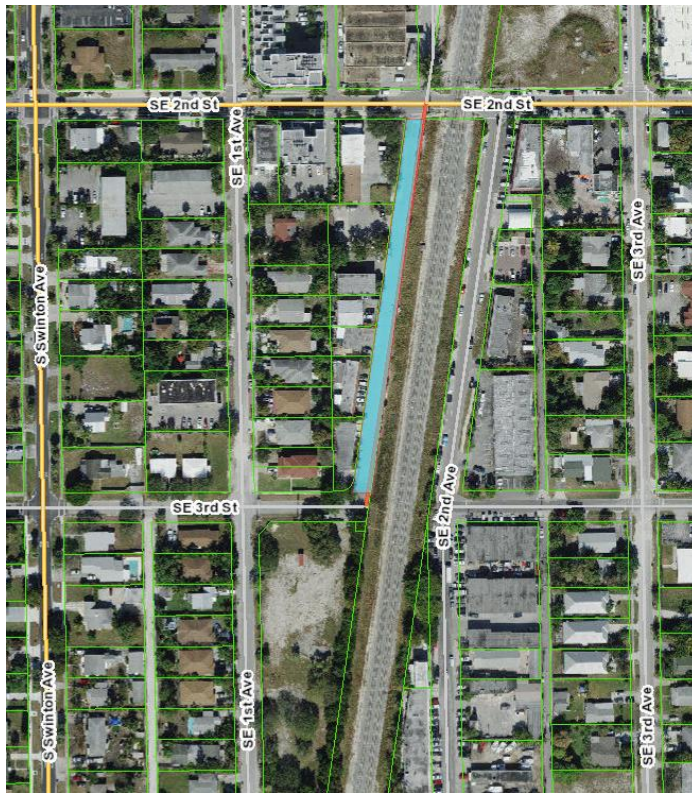
200 Block of SE 2<sup>nd</sup> Avenue,  
Abandonment of Right-of-Way

Agent	Applicant	Owner
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Meeting	File No.	Application Type
April 27, 2022	2022-062-ABR/WAI	Waiver for Abandonment of Right-of-Way

### Request

Provide a recommendation to the City Commission regarding a request to waive the requirements of LDR Section 4.4.13(J)(1)(c), Streets and Blocks, to allow the Planning and Zoning Board to consider the abandonment of the 200 block of SE 2<sup>nd</sup> Avenue, between SE 2<sup>nd</sup> Street and SE 3<sup>rd</sup> Street.

### Background Information



The 200 block of SE 2<sup>nd</sup> Avenue is a public Right-of-Way located between SE 2<sup>nd</sup> Street and SE 3<sup>rd</sup> Street ("subject ROW"). The subject ROW is located within the Central Business District (CBD), Railroad Corridor Sub-district. SE 2<sup>nd</sup> Avenue was originally dedicated as "Tenbrook Street", by Plat of Subdivision of Block 79 of the Town of Linton, now Delray Beach, according to the Public Records of Palm Beach County, Book 10, Page 1 on March 10, 1924.

The 200 block of SE 2<sup>nd</sup> Avenue is situated between the Florida East Coast (FEC) Railway, located to the east, and Block 79 located to the west. The 200 block of SE 2<sup>nd</sup> Avenue is bisected by the FEC Railway resulting in it being located along both sides of the FEC Railway within this block. Along the west side, SE 2<sup>nd</sup> Avenue ends at SE 3<sup>rd</sup> Street. Along the east side of the FEC Railway, SE 2<sup>nd</sup> Avenue continues further south throughout the Osceola Park neighborhood.

The properties along the west side SE 2<sup>nd</sup> Avenue have historically provided a mix of industrial-based commercial uses that backed up to a mix of residential properties located along SE 1<sup>st</sup> Avenue. Until recently, the block was zoned CBD, Railroad Corridor Sub-district along SE 2<sup>nd</sup> Street and SE 2<sup>nd</sup> Avenue and Multiple-family Residential, Medium Density (RM, 5 to 12 units/acre) along SE 1<sup>st</sup> Avenue. In 2021, the City Commission approved a private request to change the zoning of the RM properties to CBD, Railroad Corridor Sub-district. The block to the south, also zoned CBD, Railroad Corridor Sub-district, has had different redevelopment applications approved; in 2021, a new Class V Site Plan was submitted for approval of a predominantly mixed-use development on the entire block.

## Description of Request

The request is for the abandonment of the entire 200 block of SE 2<sup>nd</sup> Avenue and is associated with a Class V Site Plan application for the redevelopment of a majority of Block 79. The development proposal is for the construction of a five-story mixed-use project comprised of 195 residential units, 2,137 square feet of commercial space, and a 305-space parking garage, referred to as "Delray Swan."

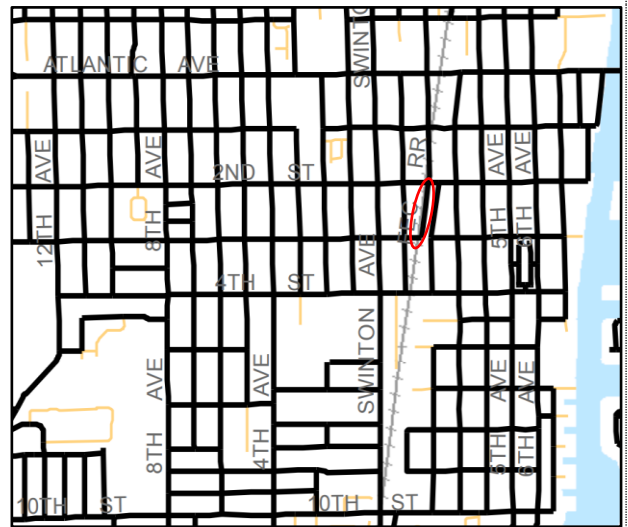
As the application for the abandonment of right-of-way is to accommodate new development, the applicant has requested a waiver to Land Development Regulations (LDR) Section 4.4.13(J)(1)(c), Streets and Block: Streets and Alleys. Pursuant to LDR Section 4.4.13(K)(5)(b)(2), CBD Review and Approval Process: Waivers, the SPRAB is requested to make a formal review of the request to waive the LDR associated with Abandonments of Rights-of-Ways.

Further review and processing of the development application will not move forward as the development cannot propose the development of public property. The Development application, including the additional waiver requests, site plan, and abandonments of right-of-way and easements are not a consideration of the Board when analyzing findings and determining consistency with respect to this waiver request.



## Review and Analysis

The gridded street network is and continues to be a critical part of Delray Beach, particularly the downtown area and surrounding neighborhoods. The map to the right, taken from DIA Map-10, Roadway Connectivity, of the Always Delray Comprehensive Plan, illustrates the remaining grid in throughout the downtown area; the subject area is circled in red. The fine-grained network provides individuals with many route choices to utilize when trip planning. Without such options, people are more inclined to take less sustainable and less active forms of transportation. The network also provides for the city's urban form and function and is also a key tenant of a form-based code.



In 2015, the city adopted amendments to the downtown regulations to reinforce such planning practices to maintain the character of the city while also allowing development to occur in a quality urban form. **LDR Section 4.4.13(J), Streets and Alleys**, was also added in the same update, echoing established Comprehensive Plan policies in the LDR to prohibit street and alley abandonments in the downtown, specifically

*(c) Streets and alleys may not be abandoned, vacated or closed to accommodate new development.*

The existing street is a 30-foot-wide public right-of-way with two sidewalk easements intermittently spread throughout the property. The ultimate right-of-way required for this block pursuant to Table MBL-1 is 40 feet, with 15 feet on the eastern side of the centerline adjacent to the FEC Railway, and 25 feet on the western side of the property. The City has not yet received all dedications for this area, but intends to provide such improvements within the right-of-way once complete.

Abandoning a street right-of-way does not guarantee any adverse effects of surrendering City held property to private landowners; abandoning a street right-of-way does release the ability of the City to control the land and the uses around it, at least in part. These limitations could include traffic circulation, location of waste service or utilities, creation of development programs aimed at specific

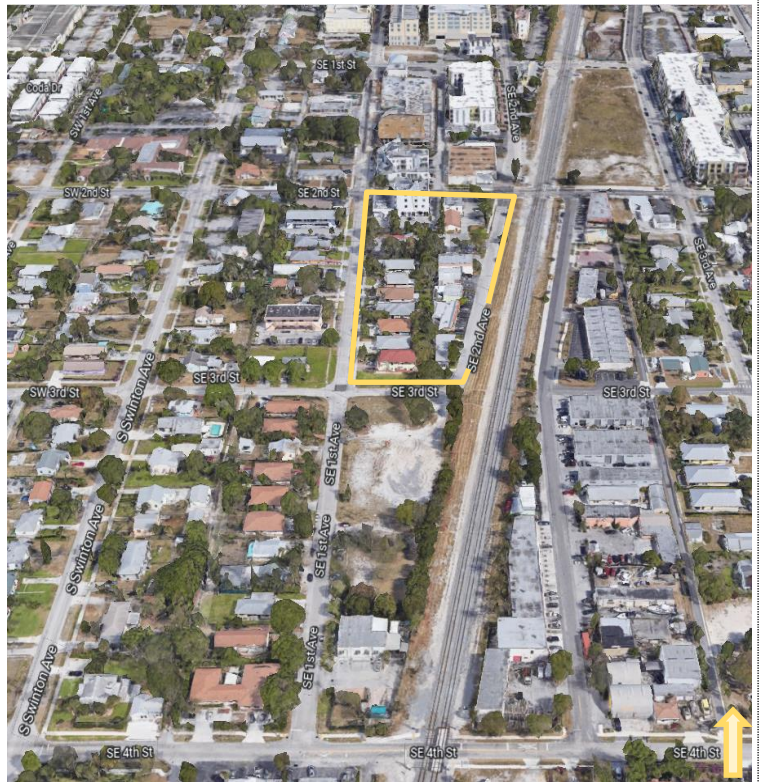


areas within the city, public art programs, and other possibilities not yet known. Additionally, abandoning rights-of-ways is strongly discouraged as there are no guarantees that development will occur, which could create issues of ownership if anticipated development does not occur.

The Planning and Zoning Board are charged with making recommendation regarding proposed abandonments of rights-of-way to the City Commission, who have the ultimate authority to approve or deny such requests. The authority to make a recommendation regarding a waiver to the CBD regulations is with SPRAB. The waiver request must be processed prior to the consideration of the actual abandonment. The findings for each consideration must be based on the findings required within the LDR and are presented below. A summary of relevant Comprehensive Plan policies are also presented for Board consideration.

***Waiver to Prohibition of Abandonment of Street and Alley Rights-of-Ways in the Central Business District (Determination of SPRAB)***

SPRAB is required to determine if the request is consistent with the LDR through findings pursuant to LDR Section 4.4.13(K)(5)(b)(2), CBD Review and Approval Process: Waivers and LDR Section 2.4.7(B)(5), Waivers: Findings. Additional findings will be required if the waiver is approved by the City Commission associated with the Abandonment request. An analysis of the LDR associated with the waiver request is provided below, and the applicant's justification statement is attached.



The following items were reviewed in accordance with the Abandonment of Right-of-Way requirements listed in **LDR Section 2.4.7(B)(5). Findings**, which states *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;*

The Subject ROW and development application is located adjacent to Block 79 of the Town of Linton (now Delray Beach). The Block is adjacent to the FEC Right-of-Way to the east, CBD zoned properties to the north and south, and RM zoned properties to the west. The subject area is approximately 18,600 square feet, a considerable amount of area when added into a new development, particularly in a downtown environment surrounded by established neighborhoods.

The primary neighborhood at risk of adverse impacts resulting from the proposed abandonment, which will allow greater development potential on Block 79, is the residential neighborhood to the west given the difference in zoning and land use designations, which significantly differ in the maximum densities and intensities (floor area ratio – FAR) allowed.. The adjacent neighborhood is primarily single-story, low-scale multiple family residential with an RM zoning allowing 5-12 units per acre. The subject area of the CBD Railroad Corridor Sub-district is eligible to provide a density of 70 dwelling units per acre at an FAR of 3.0. Inherently, if the abandonment of right of way and associated development application are approved, expected changes in the neighborhood would from increased noise, traffic, and dramatic changes in the costs of living in developing and redeveloping areas typically results in increased costs to rent or own.

- b. *Shall not significantly diminish the provision of public facilities;*

The applicant has proposed the provision of public facilities to be provided through easements, including both access and utility easements where necessary. It is not anticipated that the provision of public facilities will be limited through the approval of the waiver or subsequent abandonment request and development application will be required to maintain the provision of public facilities through the TAC process.

- c. *Shall not create an unsafe situation; and,*

If the requested abandonment is approved, an access easement will be required for the entire area and the configuration of the street required to follow the design of other streets in the minimum street widths, CBD standards including, a streetscape, travel lanes associated with vehicular and bicycle travel, and where feasible, on-street parking. The configuration is not anticipated to be different from any other street related situation. By maintaining the required configuration, the creation of an unsafe situation is significantly minimized as the street would be designed in a similar manner as if it were not abandoned.

- 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.*

The clear benefit of the abandonment is to the developer, who will gain land area to be applied towards the density (dwelling units per acre) and intensity (floor area ratio) of the development. No similar condition has been identified as similar to what the applicant is proposing. Of note, the abandonment of right-of-way for NE 7<sup>th</sup> Avenue for Atlantic Crossing is the most similar condition identified by staff based on this circumstance. Alleyways have also been abandoned in the past to accommodate development. However, these abandonments typically provided substantial public benefits to the residents and City. For example, the approval associated with Atlantic Crossing as a result of a settlement agreement between the City and the Developer provided contributions to the Trolley System, Traffic Calming, traffic signal improvements, and others. In summary, a similar condition is not present for the Board to draw upon and this approval would result in a special privilege.

The community has expressed considerable discontent with the resulting changes in character and scale of the redevelopment both approved and under construction, which is why the code has been updated to prohibit abandonments for the explicit nature of development in the downtown.

If the waiver to this LDR requirement is granted by the City Commission, abandonment proceedings shall commence with the Planning and Zoning Board and City Commission ultimately determining the findings for that request.

In addition to the general, city-wide findings analyzed above, the following waiver findings are specific to requests in the CBD.

**LDR Section 4.4.13(K)(5)(b)2. – CBD Specific Waiver Conditions**, 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.*

All streets surrounding the proposed development are secondary streets, this includes SE 2<sup>nd</sup> Avenue, SE 1<sup>st</sup> Avenue, and SE 3<sup>rd</sup> Street. Therefore, granting of the waiver to provide consideration of the abandonment is not anticipated to directly result in an inferior pedestrian experience along a primary street, particularly given that the applicant will be required to provide the typical street section standards and details applicable to the CBD. At present, not all streets have been detailed to the Downtown's specification, a keystone requirement for an action of this type, as details are necessary to ensure the community's assets will be kept in their best interest.

All secondary streets surrounding the project, including, will be required to provide the CBD Streetscape and required minimum widths as required in the LDRs and the City Standard Details, regardless of public or private ownership. If this waiver and subsequent abandonment request are approved, the street must be constructed to the City's Standard Details, compliant with the LDRs, or another configuration as approved by the City Engineer.

The ultimate build out must function and aesthetically resemble a City Street in the CBD, not a private drive typical of suburban areas. The applicant has not provided detail as to the return of all right-of-way to adjacent properties. The property located at 280 SE 2<sup>nd</sup> Street, for example, is a party to the application and was included for the purposes of density and intensity. Yet, the applicant will be expected to consider this measure if the abandonment is approved. See location map with red inset for detail.



- b. *The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.*

**LDR 4.4.13(J)(1)(c) states “streets and alleys may not be abandoned, vacated or closed to accommodate new development”.** The LDR is overly clear as to the prohibition of abandonment of right-of-way. ***The intent of the waiver is to allow the developer to incorporate more developable area into their subject property, and in turn, facilitate more intense use of the land with greater density.*** The developer receives substantial benefits by receiving approximately 18,600 square feet, which will increase to density, intensity, lot coverage and floor area, and have an impact on other base development standards required in LDR Section 4.3.4. **Since the adoption of the Always Delray Comprehensive Plan, no other abandonments of this scale have been approved to contribute to an overall development application.** By allowing greater attrition of the base development standards, an incompatibility of the land and buildings may be permitted.

The subject ROW and development application is located on Block 79 of the Town of Linton (now Delray Beach). The Block is located within the Osceola Park Neighborhood and is adjacent to the FEC Right-of-Way to the east. Block 79 consists of multi- and single-story commercial buildings, and single-family residential homes. The blocks immediately south and north of Block 79 are zoned CBD as well, and the block to the west is zoned Multiple Family Residential (RM). The ***Osceola Park Neighborhood Redevelopment Plan Update (2019)*** has no specific priorities, strategies, or action steps associated with abandonments of rights-of-ways. Nevertheless, the plan does include Strategy 5.3 *“Improve the Appearance along the F.E.C. Railroad Right-Of-Way”*.

Of note – only one other street has been in abandoned in the CBD, NE 7<sup>th</sup> Avenue, to accommodate new development (Atlantic Crossing). This approval was completed prior to the adoption of the most recent Comprehensive Plan. Other alleys have been abandoned but require a separate analysis and set of findings under the Always Delray Comprehensive Plan and LDRs.

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

The applicant is required to provide an access easement and street reconstruction to the same standard of the City if the Waiver and subsequent abandonment request are approved. The access easement would be 40'-feet-wide and helps to define the setbacks from the street and continue legal public access across the property to maintain the street connectivity. The centerline would be divided 15' feet from centerline to the east towards the Florida East Coast Railroad, and 25' feet to the west towards the property lines. The access easement will include sidewalks and vehicle travel lanes. The appropriate access easement is also vital to the city offering parking along SE 2<sup>nd</sup> Avenue, for which the City has an agreement to offer parking along this street with the FEC and a third party (Resolution No. 208-10).

The street connectivity may only be maintained if the applicant provides such the required standards and details, or will otherwise be required to seek an additional waiver. Waivers to street construction standards are only allowable with the support of the City Engineer, who typically will seek a determination through the Development Services Management Group. Some municipalities in Palm Beach County have similar roadway agreements, such as Rosemary Square in the City of West Palm Beach and Mizner Park in the City of Boca Raton. These roadways are leased to private entities from either the respective Community Redevelopment Agency or municipality. In these areas, roads are frequently closed to accommodate special events, as occurs regularly in the CBD. As detailed before, the street must be constructed to the City's Standard Details, or another configuration as approved by the City Engineer. The ultimate build out must function and aesthetically be like a City Street in the CBD and not like a private drive.



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

The CBD requires Civic Open Space be provided for development area over certain thresholds pursuant to LDR Section 4.4.13(G). ***If the abandonment is approved, the open space requirement is only 8,352 minimum square feet, and the applicant has requested 18,600 square feet in street abandonment.*** The applicant will be required to provide such open space as defined in the LDR if the proposed resubmittal does not comply with such requirements, pending approval of the waiver and abandonment of right-of-way request.

**Always Delay Comprehensive Plan Policies pursuant to abandonments of rights-of-ways.**

The policies presented below will be considered by the Planning and Zoning Board pursuant to 2.4.6(M) in the instance that the Waiver request is approved by the City Commission with the Board's recommendation. These policies are provided for informational purposes only.

**Mobility Element**

**Policy MBL 2.7.7** Do not grant abandonment of right-of-way unless conclusively demonstrated that there is not, nor will there be, a need for the use of the right-of-way for any public purpose.

There is a current and future need for the right-of-way as it is currently used for both public street access and for the provision of utility services. Additionally, the City also has an agreement in place to provide on-street parking on the block, which the abandonment may adversely affect as there may be unknown consequences

**Policy MBL 3.2.3** Use traffic calming solutions to limit vehicular traffic volumes and speeds and discourage the closure of existing streets and alleys.

The privatization of streets removes the City as an agent with authority to retain roads being open. The removal of city ownership from the street and allowing private ownership could potentially create issues where the road may be closed, and services not coordinated with the City. This could become a frustration point for residents as road closures of public streets for either construction or special events.

**Neighborhoods, Districts, and Corridors Elements**

**Policy NDC 2.2.1** Maintain and enhance the tightly gridded, interconnected street network that facilitates the dispersal of traffic and contributes to the character of Delray Beach using the following Complete Streets techniques, where appropriate:

- Design streets to be safe, comfortable, and attractive for pedestrians, cyclists, and drivers;
- Do not close or abandon streets or alleys and encourage connectivity of vehicular, pedestrian and bicycle routes.
- Provide links to regional bicycle/pedestrian networks;
- Reinvest in roadway infrastructure, such as intersections, signalization, and turning movements without increasing the number of through vehicular lanes.

The City's policy to maintain and enhance the tightly gridded, interconnected street network that facilitates the dispersal of traffic is diminished by privatizing the street. While the abandonment request may be approved, there is no guarantee the development may move forward as suggested.

**Review By Others**

The Community Redevelopment Agency will be notified of the abandonment request subsequent to City Commission determination of the waiver.

### Action Options

- A. Move a recommendation of **approval** to the City Commission regarding a request to waive the requirements of LDR Section 4.4.13(J)(1)(c), Streets and Blocks, to allow the Planning and Zoning Board to consider the abandonment of the 200 block of SE 2nd Avenue, between SE 2nd Street and SE 3rd Street, by finding that the request is consistent with the Comprehensive Plan and Land Development Regulations.
- B. Move a recommendation of **approval** to the City Commission regarding a request to waive the requirements of LDR Section 4.4.13(J)(1)(c), Streets and Blocks, to allow the Planning and Zoning Board to consider the abandonment of the 200 block of SE 2nd Avenue, between SE 2nd Street and SE 3rd Street, by finding that the request is consistent with the Comprehensive Plan and Land Development Regulations, **as amended**.
- C. Move a recommendation of **Denial** to the City Commission regarding a request to waive the requirements of LDR Section 4.4.13(J)(1)(c), Streets and Blocks, to allow the Planning and Zoning Board to consider the abandonment of the 200 block of SE 2nd Avenue, between SE 2nd Street and SE 3rd Street, by finding that the request is not consistent with the Comprehensive Plan and Land Development Regulations.
- D. Continue with direction.

### Public and Courtesy Notices

☒ Courtesy Notices are not applicable to this request.

☒ Public Notices are not required for this request.

NOTE: If the waiver is approved by the City Commission, all requirements to provide Courtesy and Public Notices will be followed.