

RESOLUTION NO. 74-22

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING A WAIVER REQUEST TO SECTION 4.4.13(J)(1)(C) OF THE LAND DEVELOPMENT REGULATIONS, ALLOWING THE SUBMISSION OF A REQUEST TO ABANDON THE RIGHT-OF-WAY LOCATED IN THE 200 BLOCK OF SOUTHEAST SECOND AVENUE IN THE CENTRAL BUSINESS DISTRICT, AS MORE PARTICULARLY DESCRIBED HEREIN, TO ACCOMMODATE NEW DEVELOPMENT; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, SM-CDR Assemblage Delray, LLC, represented by Neil Schiller, Esquire, and Jeff Costello, AICP (collectively referred to as the Applicant), submitted a Class V redevelopment application (File No. 2021-063-SPR) which would require the City of Delray Beach (City) to abandon the right-of-way (File No. 2021-062-ABR) and two sidewalk easements (File No. 2022-061-ABE) located in the 200 block of Southeast Second Avenue (Subject ROW), as more particularly described in Exhibit “A”; and

WHEREAS, the Subject ROW is located within the Central Business District (CBD); and

WHEREAS, Section 4.4.13(J)(1)(c) of the Land Development Regulations (LDR) prohibits the abandonment of streets and alleys to accommodate new development; and

WHEREAS, LDR Section 2.4.7(B)(5) requires the approving body to make a finding that the granting of the waiver:

- (a) Shall not adversely affect the neighboring area; and
- (b) Shall not significantly diminish the provision of public facilities; and
- (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 standards 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; and
- (b) Shall not allow the creation of significant incompatibilities with nearby buildings or uses of land;

and

(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, LDR Section 4.4.13(K)(5)(a), requires the Site Plan Review and Appearance Board to make a formal recommendation to City Commission for any waivers in the CBD that can only be granted by the City Commission; and

WHEREAS, at its meeting of April 27, 2022, the Site Plan Review and Appearance Board was unable to make a recommendation on whether to approve a deny the requested waiver (3 to 3) and subsequently voted 6 to 0 to nevertheless forward its vote as its “recommendation” to the City Commission of the requested waiver to LDR Section 4.4.13(J)(1)(c); and

WHEREAS, the requested waiver of relief from LDR Section 4.4.13(J)(1)(c) would allow the Applicant to submit its formal request to abandon the subject ROW to accommodate new development in the CBD, was presented to City Commission; and

WHEREAS, the City Commission considered the waiver request to LDR Section 4.4.13(J)(1)(c), at a quasi-judicial hearing conducted on June 7, 2022 as well as 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. That the forgoing recitals are hereby incorporated herein by this 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 a similar circumstance on other 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 the waiver request to LDR Section 4.4.13(J)(1)(c)

allowing the Applicant to submit a formal request to abandon the right-of-way located in the 200 block of Southeast Second Avenue in the Central Business District, as more particularly described in Exhibit “A”, to accommodate new development in the Central Business District.

Section 5. The City Clerk, or designee, is directed to send a certified copy of this Resolution to Neil Schiller, Esquire, and Jeff Costello, AICP, at 200 S. Andrews Avenue, Suite 601, Fort Lauderdale, FL 33301; and to Mr. Clifford Rosen, SM-CDR Assemblage Delray, LLC at 2665 S. Bayshore Drive, Suite 605B, Miami, FL, 33133.

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 _____, 2022.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

EXHIBIT “A”

