

RESOLUTION NO. 129-22

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, GRANTING A WAIVER REQUEST TO SECTION 4.4.13(C)(3)(a)(2)(a) OF THE LAND DEVELOPMENT REGULATIONS; APPROVING A PORCH AS A FRONTAGE TYPE ALONG WEST ATLANTIC AVENUE BETWEEN NORTH SWINTON AVENUE AND NORTHWEST 1ST AVENUE FOR THE PROJECT KNOWN AS CITY CENTER DELRAY, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, MDG Banyan Delray, LLC, (“Owner”) is the owner of a parcel of land measuring approximately 0.76 acres including all of Lots 13-16, Block 60; and

WHEREAS, the City of Delray Beach, Florida received a Class V Site Plan Modification, Certificate of Appropriateness application (File No. 2022-060) from the Owner associated with the property abutting the intersection of North Swinton Avenue and West Atlantic (“Property”) seeking to construct City Center Delray (“Project”), which includes a new 3-story structure and improvements to the existing Doc’s building; and

WHEREAS, the Property is zoned Old School Square Historic Arts District (“OSSHAD”) with Central Business District (“CBD”) Overlay, within the locally and nationally Designated Old School Square Historic District; and

WHEREAS, for properties zoned OSSHAD with CBD Overlay on streets with Required Retail Frontage, Section 4.4.13(C)(3)(a)(2)(a) of the Land Development Regulations of the City of Delray Beach (“LDR”), requires that the frontage type be either a storefront or arcade with a storefront; and

WHEREAS, West Atlantic Avenue between North Swinton Avenue and Northwest 1st Avenue is designated with Required Retail Frontage; and

WHEREAS, LDR Section 4.4.13(K)(5) authorizes the City Commission to consider a waiver request to CBD development standards; and

WHEREAS, at its meeting of August 3, 2022, the Historic Preservation Board voted 5 to 1 to recommend approval to the City Commission of the requested waiver; and

WHEREAS, LDR Section 2.4.7(B)(5) requires the approving body to make a finding that the 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 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, the requested waiver of relief from LDR Section 4.4.13(C)(3)(a)(2)(a) regarding the proposed porch frontage type was presented to the City Commission at a quasi-judicial hearing conducted on February 8, 2022; and

WHEREAS, the City Commission considered the waiver request to LDR Section 4.4.13(C)(3)(a)(2)(a), to allow a porch frontage type on West Atlantic Avenue between North Swinton Avenue and Northwest 1st Avenue, and has considered 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. The foregoing recitals are hereby incorporated herein by this reference and are approved.

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(C)(3)(a)(2)(a) to allow a porch as a frontage type on West Atlantic Avenue between North Swinton Avenue and Northwest 1st Avenue.

Section 5. The City Clerk, or designee, is directed to send a certified copy of this Resolution to Neil Schiller, Esq. at 200 S Andrew Avenue, Ste 601, Fort Lauderdale Beach, FL 33301.

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