

RESOLUTION NO. 03-23

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING A WAIVER REQUEST TO SECTION 4.4.13(E)(4)(f)(1)(f) OF THE LAND DEVELOPMENT REGULATIONS, APPROVING A THIRD STORY WITH ROOFTOP PARKING FOR AN ARCADE EXTENDING OVER THE PUBLIC RIGHT-OF-WAY FOR THE PROJECT KNOWN AS PIERRE DELRAY II, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Pierre Delray II, LLC (“Owner”), is the owner of the parcel of land located at 298 East Atlantic Avenue and the unaddressed parcel of land located directly south of 298 East Atlantic Avenue (“Property”); and

WHEREAS, the Owner recently acquired ownership of the unaddressed parcel of land located directly south of 298 East Atlantic Avenue; and

WHEREAS, prior to acquiring ownership of the unaddressed parcel, Owner obtained a Class V Site Plan approval (“Project”), including a waiver to Section 4.4.13(E)(4)(f)(1)(f) of the Land Development Regulations (“LDR”), approving a third story with rooftop parking for an arcade extending over the public right-of-way for the property located at 298 East Atlantic Avenue; and

WHEREAS, Owner, represented by Dunay, Miskel, and Backman LLP (collectively referred to as the “Applicant”), submitted a Class IV Site Plan Modification application (File No. 2022-080) to incorporate the unaddressed parcel into the Project and extend the approved three-story building southward; and

WHEREAS, the Property is zoned Central Business District (“CBD”) and is located within the Central Core Sub-district; and

WHEREAS, for properties zoned CBD, Section 4.4.13(E)(4)(f)(1)(f) of the LDR limits arcade areas extending over the public right-of-way to two stories; and

WHEREAS, LDR Section 4.4.13(K)(5) authorizes the City Commission to consider a waiver request to CBD development standards after recommendation by the Site Plan Review and Appearance Board; and

WHEREAS, at its October 12, 2022, regular meeting, the Site Plan Review and Appearance Board voted 6 to 0 to recommend approval of the requested waiver to the City Commission; 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, on January 10, 2023, the City Commission considered the waiver request to LDR Section 4.4.13(e)(4)(f)(1)(f) to allow the arcade area extending over the public right-of-way to include a third story with rooftop parking and 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. That the foregoing 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, such as exposing parking garages or large expanses of blank walls, (2) does not allow the creation of significant incompatibilities with nearby buildings or uses of land, (3) does not erode the connectivity of the street and sidewalk 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(E)(4)(f)(1)(f) to allow the arcade area extending over the public right-of-way to include a third story with rooftop parking for the Pierre Delray II project.

Section 5. The City Clerk, or designee, is directed to send a certified copy of this Resolution to Dunay Miskel and Backman LLP at 14 S.E. 4th Street, Suite 36, Boca Raton, FL 33432

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 \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
Katerri Johnson, City Clerk

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Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

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Lynn Gelin, City Attorney