



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

Partial Abandonment of Unimproved Alley Located Between Bond Way and Witherspoon Lane

Meeting	File No.	Application Type
July 18, 2022	2021-177-ABR	Abandonment of Right-of-Way (Alley)
Applicant	Property Owner	Authorized Agent
Edwin & Kimberly Lewis; 905 Witherspoon Lane Spencer Noon; 907 Witherspoon Lane GDS Love, LLC; 909 Witherspoon Lane	The City of Delray Beach	Thomas J. Carney, Esq. Carney Stanton P.L.

Request

Provide a recommendation to the City Commission regarding the abandonment of a 2,062.5 square foot area of unimproved City-owned right-of-way (alley) located between Bond Way and Witherspoon Lane ("Subject Area").

Background Information

The subject area is an unimproved alley right-of-way located between Bond Way and Witherspoon Lane, north of 905, 907, and 909 Witherspoon Lane ("Subject Properties"). The alley was created by the First Addition to Kenmont Plat in 1948 as recorded in the Official Records Book (ORB) 22, page 24 of Palm Beach County Clerk of the Circuit Court. The alley, as originally platted, connected Palm Trail to NE 9th Avenue. The partial abandonment of the alley as recorded in ORB 1612, Page 256 abandoned portions of the alley to the west of the subject properties, disconnecting the right-of-way from NE 9th Street. The requested right-of-way abandonment is located adjacent to the prior abandonment and is illustrated on the next page.

The unimproved alley right-of-way contains overhead utilities, owned by the Florida Power and Light Company, to provide power to the adjacent properties. The properties surrounding the alley have either built fences up to the property line or encroached into the alley right-of-way. No City of Delray Beach utilities (stormwater, water, sewer) are located within the proposed abandonment area. The City Engineer has determined that, in the instance of an abandonment, a General Utility Easement to the benefit of Florida Power and Light will be required to consummate the right-of-way abandonment.



The highly intensive landscaping, viewed by aerial imagery, indicates that access for vehicular purposes is not provided to the rear of any property facing the alley. The images below provide visual documentation of the existing conditions in the alley.

Project Planner:

Brian Ruscher, AICP, Transportation Planner
Alexis Rosenberg, Senior Planner
561-243-7000 ex. 7226; rosenberg@mydelraybeach.com

Attachments:

- Resolution No. 99-22
- Survey of Requested Abandonment Area
- Applicant Justification Statement
- Recommendation of the City Engineer

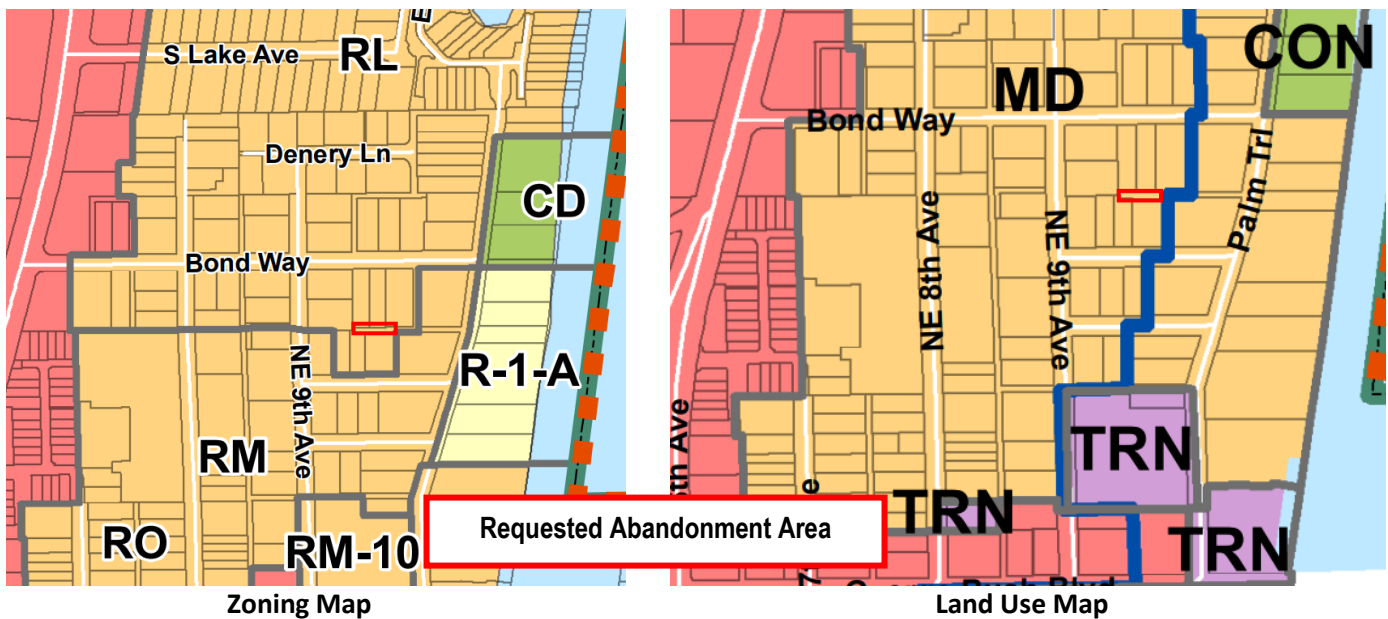


Facing west from behind Witherspoon Lane



Facing east from Witherspoon Lane

The surrounding area's zoning classifications and land uses are depicted below.



No area-specific master plans or redevelopment plans have been identified for the area. The Capital Improvement Plan includes a single project for the Palm Trail Area to coordinate stormwater, tree canopy, and additional roadway medians to calm traffic. The capital improvement project does not include any alley repaving or paving projects that would impact the area requested for abandonment.

A summary of the original Kenmont plat and addition to the plat are provided in the image below (original plats are provided as an attachment).

Original Layout of Kenmont Plat and First Addition to Kenmont Plat



The subject properties, 905, 907, and 909 Witherspoon Lane, are comprised of a Lot 12, Lot 13, and a portion of Lot 14. The legal description for each of the subject properties are detailed below:

- 905 Witherspoon Lane:
KENMONT FIRST ADD W 1/2 OF LT 13 & LT 14 (LESS W 45 FT) & S 1/2 OF 15 FT ABND PT OF R/W LYG N OF & ADJ TO LT 14 (LESS W 45 FT).
- 907 Witherspoon Lane:
KENMONT FIRST ADD LT 12 (LESS ELY 45 FT & N 2.50 FT ALLEY R/W) & E 1/2 OF LT 13 (LESS N 2.50 FT ALLEY R/W).
- 909 Witherspoon Lane:
KENMONT FIRST ADD ELY 45 FT OF LT 12 (LESS N 2.50 FT ALLEY R/W).

Project Description

The request is for the abandonment of approximately 2,062.5 square feet of an unimproved alley right-of-way located north of the single-family properties at 905, 907, and 909 Witherspoon Lane and south of Bond Way (photo below). The subject area varies in width as both abandonments and dedications have occurred in the area. A survey of the subject abandonment area, applicant's justification statement, and engineering recommendation are attached to this report. The Florida Power and Light Company has requested the City reserve a General Utility Easement, which is included in the proposed resolution for consideration by the City Commission, pending the recommendation of the Planning and Zoning Board.

Aerial View of the Area Surrounding the Requested Abandonment Area



Review and Analysis

Pursuant to **LDR Section 2.2.2(E)(3)(e), The Planning and Zoning Board: Duties, powers, and responsibilities**, the Board shall review and make recommendations to the City Commission the abandonment of rights-of-way or public easements excepting single purpose easements.

The City Commission meeting date will be determined following the Board's recommendation.

Pursuant to **LDR Section 2.4.6(M)(1), Abandonment of right-of-way: Rule**, public right-of-way may be abandoned (returned) to the fee description of adjacent property to the same degree in which it was originally obtained, i.e. property dedicated exclusively from a single parcel shall be returned to that parcel; property dedicated through subdivision shall be divided at the center line and returned equally to abutting parcels. Abandonment of right-of-way may be granted by a formal resolution enacted by the City Commission.

The subject right-of-way was created through the First Addition to Kenmont Plat and was annexed into the City on December 13, 1988 via Ordinance No. 145-88. Since then, abandonments have occurred which affect the lots located on the First Addition to Kenmont Plat and the Kenmont Plat. For example, 905 Witherspoon Lane received abandonment area at the northwest corner of the lot through Ordinance No. 55-77, and 907 and 909 Witherspoon Lane have dedicated 2.5 feet to the existing alley via a right-of-way dedication as recorded in ORB 30171, Page 1771.

The alley contains areas where rights-of-ways were created both through means of a plat and dedication by single properties. Therefore, the property at 905 Witherspoon Lane may receive property based on the remaining area of the plat, while 907 and 909 Witherspoon Lane will receive land returned from the dedication by deed and by plat.

Pursuant to **LDR Section 2.4.6(M)(2), Abandonment of right-of-way: Required information**, the following is required for the request to be accepted for consideration.

- (a) An application form as promulgated by the City Engineer
- (b) A survey of the property which is to be abandoned with said survey showing all improvements (including utility locations) which are within or immediately adjacent to the property to be abandoned; and including adjacent property lines and identification of property owners and business located thereon.
- (c) A mailing list containing the information described in Section 2.4.2(B)(1)(m)

The applicant has satisfied the requirements of LDR Section 2.4.6(M)(2).

Pursuant to **LDR Section 2.4.6(M)(3), Abandonment of right-of-way: Procedure**, upon receipt of the above information, the following procedures shall be followed under the direction of the City Engineer:

- (a) Certification that the submittal is complete and accurate;
- (b) Distribution of the application and survey to all utilities who have or may have facilities within the easement or adjacent to it;
- (c) Distribution to appropriate City departments who may have an interest in the property, e.g. Fire Department, Police Department, Parks and Recreation Department;
- (d) Notification pursuant to Section 2.4.2(B)(1)(i).
- (e) Upon receipt of all review comments, the application with the recommendation of the City Engineer shall be forwarded for review at an advertised public hearing before the Planning and Zoning Board. The recommendation of the Planning and Zoning Board shall be forwarded to the City Commission;
- (f) If approved, the abandonment shall be evidenced by a resolution of the City Commission. After adoption, the resolution shall be recorded in the public records of Palm Beach County. Where deemed necessary by the City Engineer, an abandonment shall be consummated through the filing of a boundary plat, or replat, of the property to be abandoned and the receiving properties.

The City Engineer and Development Services Department are responsible for the processing of applications for abandonments of rights-of-ways. Staff has completed the actions as required in (a), (b), and (c). Staff has provided notifications as required under (d) pursuant to LDR 2.4.2 (B)(1)(i). The Planning and Zoning Board will consider (e), the City Engineer's recommendation, which will be forwarded along with the Planning and Zoning Board's recommendation to the City Commission as required under (f).

Pursuant to **LDR Section 2.4.6(M)(4), Abandonment of right-of-way: Conditions**, conditions may be imposed upon an abandonment to:

- (a) Insure timely consummation;
- (b) Insure compliance with required findings;
- (c) Require enhancement of the (to be) former right-of-way in order to accomplish certain objectives and policies of the Comprehensive Plan e.g., street beautification;
- (d) Require replacement easements and/or relocation of existing utilities, as may be appropriate;
- (e) Cause reversion or voiding of the abandonment in the event of a failure to comply with other conditions.

The subject request contains a provisional requirement requiring the applicant to provide a General Utility Easement satisfactory to the City for each property owner receiving land over the abandonment area. The easement must be recorded by the Palm Beach County Office of Public Records to consummate the abandonment of the right-of-way if the abandonment is approved.

Pursuant to **LDR Section 2.4.6(M)(5), Abandonment of right-of-way: Findings**, prior to granting an abandonment the City Commission must make the following findings:

- (a) That there is not, nor will there be, a need for the use of the right-of-way for any public purpose;
- (b) That the abandonment does not, nor will not, prevent access to a lot of record;
- (c) That the abandonment will not result in detriment to the provision of access and/or of utility services to adjacent properties or the general area.

In consideration of the findings above, the City has identified no current or future need for this specific area of right-of-way aside from the provision of utilities which shall be provided by a General Utility Easement. The subject abandonment request would not prevent access to a lot of record; the adjacent properties do not take access from the area. Further, the abandonment will not impact the provision of access or utilities to adjacent properties.

The Planning and Zoning Board is also required to determine if the request is consistent with the Comprehensive Plan. The following Comprehensive Plan policies are related to abandonments of rights-of-ways:

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.*

The subject right-of-way is an unimproved alley that dead ends at private property. The City has no identified use for the alley on any adopted plans. Nevertheless, the property in the past has been utilized by the Florida Power and Light Company to provide utilities to the area residences. The City will reserve the requested abandonment area until such a time as a General Utility Easement be recorded in the Public Records of Palm Beach County to the benefit of the City, with all providers being given access.

Neighborhoods, Districts, and Corridors Element

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 gridded, interconnected street and alley network that facilitates the dispersal of traffic and contributes to the character of Delray Beach, especially in the Central Business District, is not impacted by this abandonment. The subject area is a dead-end and no improvements are proposed for said area. Additionally, the proposed abandonment area does not serve any of the functions provided in NDC 2.2.1 of the Always Delray Comprehensive Plan. The following are also provided as part of the Board's consideration:

- The alley is not presently used by the City.
- The alley could not be connected to any connection either north of the canal, or on either side of the right-of-way.
- The link is not identified on the Interim Bicycle and Pedestrian Master Plan.
- No roadway infrastructure is needed for reinvestment at this location.

Recommendation of the City Engineer

The recommendation of the City Engineer is to approve abandonment request, contingent upon the dedication of an exclusive General Utility Easement to the benefit of the City to maintain the provision of utilities.

Review By Others

No additional review is required or deemed necessary.

Alternative Actions

- A. Move a **recommendation of approval** to the City Commission of **Resolution No. 99-22**, to abandon an unimproved alley right-of-way totaling approximately 2,062.5 square feet located between Bond Way and Witherspoon Lane north of 905, 907, and 909 Witherspoon Lane, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.
- B. Move a **recommendation of approval, as amended**, to the City Commission of **Resolution No. 99-22**, to abandon an unimproved alley right-of-way totaling approximately 2,062.5 square feet located between Bond Way and Witherspoon Lane north of 905, 907, and 909 Witherspoon Lane, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.
- C. Move a **recommendation of denial** to the City Commission of **Resolution No. 99-22**, to abandon an unimproved alley right-of-way totaling approximately 2,062.5 square feet located between Bond Way and Witherspoon Lane north of 905, 907, and 909 Witherspoon Lane, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is not consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.

Public and Courtesy Notices

 x Courtesy Notices were provided to the following:

- Palm Trail Neighborhood Association

 x Public Notice was mailed to property owners within a 500' radius ten days before the meeting date.

 x Public Notice was mailed to the adjacent property owners twenty days before the meeting date.

 x Public Notice was published seven days before the meeting date.

 x Public Notice was posted to the City's website 10 days prior to the meeting.

 x Public Notice was posted in the main lobby at City Hall 10 days prior to the meeting.