

LAW OFFICES
MOSKOWITZ, MANDELL, SALIM & SIMOWITZ, P.A.

800 CORPORATE DRIVE • SUITE 500
FORT LAUDERDALE, FLORIDA 33334

MICHAEL W. MOSKOWITZ*¹
SCOTT E. SIMOWITZ¹
CRAIG J. MANDELL
WILLIAM G. SALIM, JR.**
SCOTT M. ZASLAV*
ARI J. GLAZER[^]
TODD A. ARMBRUSTER
ARTHUR E. LEWIS
BENJAMIN SUNSHINE^{^^}
RACHEL L. SIMOWITZ⁻

ALSO ADMITTED IN NY & DC*
ALSO ADMITTED IN MA**
ALSO ADMITTED IN NY & CT*
ALSO ADMITTED IN NY[^]
ALSO ADMITTED IN IL^{^^}
ALSO ADMITTED IN NY & NJ⁻

BROWARD (954) 491-2000
BOCA RATON (561) 750-7700
TELECOPIER (954) 491-2051
EMAIL mmss@mmsslaw.com

OF COUNSEL

SHIRLEY D. WEISMAN, P.A.

Michael W. Moskowitz
mmoskowitz@mmsslaw.com
Direct (954) 776-9211

CERTIFIED CIRCUIT COURT MEDIATOR¹

December 29, 2016

VIA E-MAIL (dejesus@mydelraybeach.com)

Neal De Jesus, Acting City Manager
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

Re: City Commission Hearing on Appeal
Property: Delray Place South, 1911 South Federal Highway
SPRAB Hearing: October 26, 2016
Denial of Class III Site Plan Modification and Special Action Parking
Reduction Request

Dear Mr. De Jesus:

This Firm represents Delray Place LLC ("Delray Place"), the owner of the shopping center property referenced above.

On behalf of Delray Place, we filed an appeal dated November 3, 2016 of a decision of the Site Plan Review and Appearance Board ("SPRAB") from its meeting on October 26, 2016 denying Delray Place's Application for Class III Site Plan Modification and Special Action Parking Reduction Request. A copy of the Appeal is attached hereto as Exhibit "A".

The City Commission, at its meeting of December 6, 2016, voted to take an appeal from other actions of SPRAB taken at its meeting on October 26 granting certain requests of Delray Place in connection with its site plan application. As a result, all of the items that SPRAB heard at its October 26, 2016 meeting in connection with Delray Place is now scheduled for a *de novo* hearing at the January 24, 2017 City Commission meeting.

Delray Place would like to request the City Commission to postpone the appeal hearing from January 24 to the City Commission meeting of April 4, 2017 (approximately 60 days). The reasons for this request are as follows:

December 29, 2016

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1. Delray Place wants to confer with its consultants and experts and explore alternatives/modifications to the current proposed site plan that may make the site plan more acceptable to the City and the neighboring residents.
2. Delray Place wants to confer with City Staff about these potential site plan alternatives/modifications.
3. Delray Place wants to reach to the neighboring residents; meet with them; and determine whether (or not) there may be common ground for a resolution on the site plan.
4. This process will take approximately 60 days to determine whether (or not) there is common ground that can lead to a potential resolution of this issue. There was little ability to move forward from December 15 thru the beginning of January because of the holidays and people being out of town. While certain groundwork has already commenced, from a practical standpoint, these efforts will begin in earnest the week of January 9.
5. While there is certainly no guarantee that these efforts will be successful, Delray Place believes that attempting this constructive approach makes good sense to all parties, the city, the neighboring residents, and Delray Place itself.
6. As the Site Plan application was denied by SPRAB, this project cannot move forward until the resolution of the appeal. Thus, there is no prejudice to anyone if the appeal hearing is postponed as no work; no permits; etc. can commence on the project. Only Delray Place is prejudiced by the delay and we believe it is in the best interests of all concerned if these good faith efforts are allowed to occur.

Delray Place would appreciate the City Commission considering this postponement request at its City Commission meeting scheduled for January 10, 2017.

Thank you for your consideration

Respectfully yours,

MOSKOWITZ, MANDELL, SALIM & SIMOWITZ, P.A.

BY: _____

MICHAEL W. MOSKOWITZ

MWM/cl

cc: Timothy Stillings, Director Planning & Zoning Dept. (via email stillings@mydelraybeach.com)
City Attorney Max Lohman, Esq. (via email lohmanm@mydelraybeach.com)
City Planner Candi Jefferson (via email jefferson@mydelraybeach.com)
Client

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OF COUNSEL

SHIRLEY D. WEISMAN, P.A.

Michael W. Moskowitz
mmoskowitz@msslaw.com
Direct (954) 776-9211

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November 3, 2016

VIA HAND DELIVERY & E-MAIL

Chevelle Nubin
City Clerk
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

Re: **NOTICE OF APPEAL**

Property: Delray Place South, 1911 South Federal Highway
SPRAB Hearing: October 26, 2016
Denial of Class III Site Plan Modification and Special Action Parking Reduction Request

Dear Ms. Nubin:

Name and Interest of the Appellant

This firm represents the Appellant, Delray Place LLC ("Delray Place"), the owner of the shopping center property (the "Property") defined above.

Identification of the Action Which Is Being Appealed

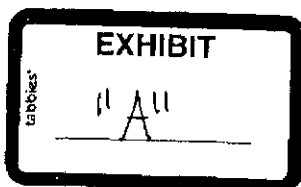
Pursuant to § 2.4.7(E) of the City's Land Development Regulations ("LDR"), please consider this letter Delray Place's appeal of a decision of the Site Plan Review and Appearance Board ("SPRAB") at its meeting on October 26, 2016 denying Delray Place's Application for Class III Site Plan Modification (the "Application") and Special Action Parking Reduction Request.

Identification of Who Took the Action and When It Was Made

As stated above, SPRAB denied Delray Place's Application for Class III Site Plan Modification and Special Action Parking Reduction Request at its October 26, 2016 meeting.

Basis of the Appeal

The Application is for the redevelopment of the Property, which has been renamed "Delray Place South." The Property is located on the East side of South Federal Highway between Eve Street to the North and Tropic Boulevard to the South. Delray Place also owns a shopping center North of Eve Street called "Delray Place North".



SPRAB denied the Application for Class III Site Plan Modification by a 3-2 vote and denied the Special Action Parking Reduction Request. The sole reason for the denial of the Class III Site Plan Modification was Delray Place's request for cross-access between Delray Place North and Delray Place South through Eve Street.

With respect to the Special Action Parking Reduction Request, Delray Place requested to continue to be treated as a shopping center for determining the required number of parking spaces under LDR § 4.6.9(C)(3)(e), which would have required 4 parking spots per 1000 square feet. City Staff recommended a different treatment, that a detailed parking chart be attached to the Class III Site Plan Modification. The detailed parking chart would allow for a mix of uses in any different store locations, and would allow for up to 209 parking spaces when calculated under the parking code. City Staff recommended approval of this but because it was included in the Class III Site Plan Modification, it was denied. Delray Place has agreed to City Staff's recommended detailed parking chart. Delray Place is requesting that the parking issue be considered separately from the Class III Site Plan Modification as a Special Action Parking Reduction Request. This will allow consideration of the Class III Site Plan Modification to focus on the primary issue, the cross-access between Delray Place North and Delray Place South through Eve Street.

Delray Place is appealing SPRAB's denial of the two motions for Class III Site Plan Modification and the Special Action Parking Reduction Request.

City Staff, the City's traffic consultant, Delray Place and Delray Place's traffic consultant, demonstrated by competent substantial evidence that the criteria for approving the Class III Site Plan Modification were satisfied. Delray Place further demonstrated by competent substantial evidence that it was entitled to the Special Action Parking Reduction in accordance with City Staff's detailed parking chart.

The basis of this appeal is that SPRAB's denial of the Class III Site Plan Modification and Special Action Parking Reduction were not supported by competent substantial evidence as required by *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla. 1986); *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So.2d 708, 709 (Fla. 3d DCA 2000).

Residents of Tropic Isle voiced generalized and speculative objections to the proposed cross-access claiming the cross-access would have negative traffic impacts. Such generalized non-fact based statements do not constitute competent substantial evidence to support the denial. *Pollard v. Palm Beach County*, 560 So.2d 1358 (Fla. 4th DCA 1990).

Accordingly, Delray Place requests that the City Commission conduct a new evidentiary *de novo* hearing with respect to SPRAB's denial of the Class III Site Plan Modification and Special Action Parking Reduction Request.

Relief Being Sought

The relief sought is that the City Commission grant approval of the Class III Site Plan Modification, including the request for cross-access between Delray Place North and Delray Place South through Eve Street, and grant approval of the Special Action Parking Reduction Request, with the City Staff recommended detailed parking chart.

Fee

As required by LDR § 2.4.7(E)(2), the required \$1,000 fee for filing an appeal is being submitted herewith.

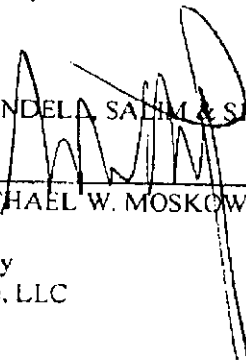
Scheduling of the Appeal

While LDR Section 2.4.7(E)(3)(a), generally provides that this appeal be placed on the first available regular City Commission agenda, we respectfully ask the scheduling of this matter on the City Commission agenda be coordinated with us due to the unavailability of necessary witnesses, the required consultants, and the property owners. Kindly confirm that the coordination of the scheduling of this matter before the City Commission is acceptable to the City.

Thank you for your consideration of this matter.

Very truly yours,

MOSKOWITZ, MANDELA, SALIM & SIMOWITZ, P.A.

BY: 
MICHAEL W. MOSKOWITZ

CC: City Attorney
Delray Place, LLC