

# HISTORIC PRESERVATION BOARD

## CITY OF DELRAY BEACH

### STAFF REPORT

**MEETING DATE:** August 16, 2017  
**ITEM:** 55 SE 7<sup>th</sup> Avenue, Marina Historic District  
Ad Valorem Tax Exemption (2017-200)  
**RECOMMENDATION:** Approval of the Ad Valorem Tax Exemption

#### GENERAL DATA:

Owner:..... Michael Marco  
Location:..... 55 SE 7<sup>th</sup> Avenue  
Property Size:..... .11 Acres  
Historic District: Marina Historic District  
Current Zoning:..... RM - (Multiple Family Residential Medium Density)  
Adjacent Zoning:.....  
    North: RM  
    South: RM  
    East: RM  
    West: RM  
Existing Future Land Use Designation:..... Medium Density Residential – 5-12 Units per Acre  
Water Service:..... Public water service is provided on site.  
Sewer Service:..... Public sewer service is provided on site.



### ITEM BEFORE THE BOARD

The action requested of the Board is to approve a Historic Property Ad Valorem Tax Exemption Application for improvements to a contributing property located at **55 SE 7th Avenue, Marina Historic District**, pursuant to Land Development Regulations (LDR) Section 4.5.1(J).

### BACKGROUND/PROJECT DESCRIPTION

The subject property is situated on the east side of SE 7th Avenue between east Atlantic Avenue and SE 1<sup>st</sup> Street. The property is located within the RM (Multi-Family Residential) zoning district. The original historic, ranch style residence was built in 1935 and is classified as contributing to the Marina Historic District.

At its meeting of October 7, 2015, the Board considered a Certificate of Appropriateness (COA) (2015-240) for the following:

- Rehabilitation and renovation of the existing historic residence;
  - Restoration of original wood siding (horizontal and vertical) and replacement of damaged material with new wood milled product;
  - New dimensional asphalt shingle roof (to replicate original roof material);
  - Redesign and reconstruction of the (non-original) roof cupola;
  - Replacement of all existing doors and windows with new impact resistant, aluminum, windows with a 6 over one pattern, installation of round metal framed, fixed windows;
- Addition of new living space where the garage was once located; and,
- Site improvements including a swimming pool and associated brick paver deck, new concrete driveway strips and paver brick, front entry walk areas.

Also included with the approval were three associated variances:

- Variance allowing for parking within the 25' front setback. Introducing a new driveway in a similar location of the historic driveway;
- Variance allowing for a reduction in the east (rear) yard building setback line for the proposed positioning of a new addition to the residence within the site. An 8' reduction was approved from the code required 10' to a proposed 2' setback.
- Variance allowing for the positioning of a new swimming pool (10' x 16') located in the east (rear) and south yard property line setbacks. A 5' reduction was approved from the code required 10' to a proposed 5' setback.

At the time of the 2015 COA, the lot was 100 feet wide. The approval included the double lot being divided into two properties, with new construction proposed on the northern lot (53 SE 7<sup>th</sup> Avenue), renovation and addition of the existing historic structure on the southern lot (55 SE 7<sup>th</sup> Avenue). Each lot measures 50' wide x 100' deep.

The applicant is now before the Board to request review of the Tax Exemption Application for the aforementioned site and building improvements. Landscaping associated with this project is not permitted as a legitimate expenditure as it is not interpreted as a "site improvement," pursuant to the Florida Administrative Code 1A-38.

Based on State regulations, an Ad Valorem Tax Exemption can be approved for a project before, during, or after it has been undertaken. The applicant therefore requests consideration of the ad valorem tax exemption as the project is complete.

## AD VALOREM TAX EXEMPTION

Pursuant to **LDR Section 4.5.1(J)**, a tax exemption is available for improvements to qualifying contributing properties in a designated historic district or individually designated properties, as listed in Section 4.5.1(I). Qualifying properties shall be exempt from that portion of ad valorem taxation levied by the City of Delray Beach on one hundred percent (100%) of the increase in assessed value resulting from any HPB approved renovation, restoration, rehabilitation, or other improvements of the qualifying property made on or after the effective date of the original passing of Ordinance 50-96 on November 19, 1996.

**LDR Section 4.5.1(J)(1)**, clarifies that the exemption does not apply to the following:

- (a) Taxes levied for payment of bonds;
- (b) Taxes authorized by a vote of the electors pursuant to Section 9(b) or Section 12, Article 7 of the Florida Constitution; or
- (c) Personal property.

**LDR Section 4.5.1(J)(2)**, explains the exemption period shall be for ten (10) years, unless a lesser term is set by the City Commission.

- (a) The term of the exemption shall be specified in the resolution approving the exemption and shall continue regardless of any changes in the authority of the City to authorize such exemption or change in ownership of the property.
- (b) To retain an exemption, the historic character of the property and the improvements which qualified the property for an exemption must be maintained in their historic state over the period for which the exemption was authorized.

**LDR Section 4.5.1(J)(4)** provides the parameters for qualifying properties and improvements. The subject property qualifies as it is listed on the Local Register of Historic Places. **LDR Section 4.5.1(J)(5)** requires that for an improvement to a historic property to qualify the property for an exemption, the improvement must:

- (a) be consistent with the United States Secretary of the Interior's Standards for Rehabilitation, as amended; and
- (b) be a constructed and/or installed improvement as approved by the Historic Preservation Board and as established in rules adopted by the Department of State, Division of Historical Resources, FAC 1A-38, as amended which defines real property improvements as changes in the condition of real property brought about by the expenditure of labor and money for the restoration, renovation, or rehabilitation of such property. Improvements shall include, but are not limited to: modifications, repairs, or additions to the principal contributing building and its associated accessory structures (i.e. a garage, cabana, guest cottage, storage/utility structures, swimming pools), whether existing or new. The exemption does not apply to improvements made to non-contributing principal buildings, existing non-contributing accessory structures, or undesignated structures and/or properties; and,
- (c) be consistent with Section 4.5.1(E), "Development Standards", of the City's Land Development Regulations; and
- (d) include, as part of the overall project, visible improvements to the exterior of the structure.

The project meets the above criteria (a) and (b) through previous approval by the Board of the associated improvements outlined above which constituted its compliance with the Secretary of the Interior's Standards for Rehabilitation, as well as the rules of Florida Administrative Code 1A-38, promulgated by the Florida Department of State, Division of Historical Resources. The development project further meets criterion (c) per the COA approval, which applied the LDR Development Standards in the assessment of the proposal. Finally, the project meets criterion (d) as the project encompasses visible improvements to the exterior of the building and related property.

Pursuant to **LDR Section 4.5.1(J)(7)**, any property owner, or the authorized agent of the owner, that desires an ad valorem tax exemption for the improvement of a historic property must submit a Historic Property Tax Exemption Application to the Planning and Zoning Department upon completion of the qualifying improvements.

- (a) The application shall indicate the estimated cost of the total project, the estimated cost attributed solely to the historic structure, and project completion date as determined by the Certificate of Occupancy issued by the Building Department.
- (b) The Historic Property Tax Exemption Application shall be accompanied by a copy of the most recent tax bill from the Palm Beach County Property Appraiser for the property; a new property survey illustrating the improvements; a copy of the building permit application indicating estimated project cost; a copy of the Certificate of Occupancy/Final Inspection; and photographs illustrating the before and after of each improvement, including both the interior, exterior, and all new construction. The photographs shall be identified with a date and description indicating the impact of the improvement.
- (c) The application must be submitted within three (3) months from the date of issuance of a Certificate of Occupancy.
- (d) The Historic Preservation Planner will inspect the completed work to verify such compliance prior to Historic Preservation Board review.
  - a. If the Historic Preservation Board determines that the work is a qualifying improvement and is in compliance with the approved plans and the review standards contained in Section 4.5.1(E), the Board shall recommend that the City Commission grant the Historic Property Tax Exemption Application.
  - b. Upon a recommendation of approval of a Historic Property Tax Exemption Application by the Historic Preservation Board, the application shall be placed by resolution on the agenda of the City Commission for approval. The resolution of the City Commission approving the application shall provide the name of the owner of the property, the property address and legal description, a recorded restrictive covenant in the official records of Palm Beach County as a condition of receiving the exemption, and the effective dates of the exemption, including the expiration date.
  - c. If the Historic Preservation Board determines that the work as completed is either not consistent with the approved plans or is not in compliance with the review standards contained in Section 4.5.1(E), the applicant shall be advised that the request has been denied

The qualifying improvements were completed and submitted on June 27, 2017, within three months of the Certificate of Occupancy, which was issued on August 8, 2017. The tax exemption will be limited to the increase in assessed value (as determined by the Palm Beach County Property Appraiser) resulting from the subject improvements and provide an abatement of taxes on the City and County portions for a period of ten years from the date of approval.

Pursuant to **LDR Section 4.5.1(J)(8), Historic Preservation Exemption Covenant**, the covenant required in order to qualify for the exemption:

- (a) To qualify for an exemption, the applicant must sign and return the Historic Preservation Exemption Covenant with the Final Application/Request for Review of Completed Work. The covenant as established by the Department of State, Division of Historical Resources, shall be in a form approved by the City of Delray Beach City Attorney's Office and applicable for the term for which the exemption is granted and shall require the character of the property and qualifying improvements to be maintained during the period that the exemption is granted.
- (b) On or before the effective date of the exemption, the owner of the property shall have the covenant recorded in the official records of Palm Beach County, Florida, and shall cause a certified copy of the recorded covenant to be delivered to the City's Historic Preservation Planner. Such covenant shall be binding on the current property owner, transferees, and their heirs, assigns and successors. A violation of the covenant shall result in the property owner being subject to the payment of the differences between the total amount of the taxes which would

have been due in March of each of the previous years in which the covenant or agreement was in effect had the property not received the exemption and the total amount of taxes actually paid in those years, plus interest on the difference calculated as provided in Sec. 212.12(3), Florida Statutes.

**LDR Section 4.5.1(J)(10), Revocation Proceedings**, provides guidelines to revocation of the tax exemption upon violation of the recorded covenant.

- (a) The Historic Preservation Board may initiate proceedings to revoke the ad valorem tax exemption provided herein, in the event the applicant, or subsequent owner or successors in interest to the property, fails to maintain the property according to the terms, conditions and standards of the Historic Preservation Exemption Covenant.
- (b) The Historic Preservation Planner shall provide notice to the current owner of record of the property and the Historic Preservation Board shall hold a revocation hearing in the same manner as in Section 4.5.1(M)(10), and make a recommendation to the City Commission.
- (c) The City Commission shall review the recommendation of the Historic Preservation Board and make a determination as to whether the tax exemption shall be revoked. Should the City Commission determine that the tax exemption shall be revoked, a written resolution revoking the exemption and notice of penalties as provided in Paragraph 8 of the covenant shall be provided to the owner, the Palm Beach County Property Appraiser, and filed in the official records of Palm Beach County.
- (d) Upon receipt of the resolution revoking the tax exemption, the Palm Beach County Property Appraiser shall discontinue the tax exemption on the property as of January 1st of the year following receipt of the notice of revocation.

The Sections noted above regarding the “Restrictive Covenant” and “Revocation Proceedings” are provided to demonstrate that the tax exemption is binding, and if violated, the property owner would have to comply with the consequences.

The tax exemption request complies with the criteria contained in LDR Section 4.5.1(J) as the Historic Preservation Board approved the associated improvements by making positive findings with respect to the applicable LDR Sections, Delray Beach Historic Preservation Design Guidelines, and Secretary of the Interior’s Standards for Rehabilitation; therefore, positive findings can be made with respect to LDR Section 4.5.1(J).

<b>ALTERNATIVE ACTIONS</b>
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- A. Continue with direction.
- B. Recommend approval to the City Commission of the Historic Property Ad Valorem Tax Exemption Application for improvements to the property at **55 SE 7th Avenue, Marina Historic District**, based upon positive findings with respect to LDR Section 4.5.1(J).
- C. Recommend denial to the City Commission of the Historic Property Ad Valorem Tax Exemption Application for improvements to the property at **55 SE 7th Avenue, Marina Historic District**, based upon a failure to make positive findings with respect to LDR Section 4.5.1(J).

<b>RECOMMENDATION</b>
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Recommend approval to the City Commission of the Historic Property Ad Valorem Tax Exemption Application (2017-200) for improvements to the property at **55 SE 7th Avenue, Marina Historic District**, based upon positive findings with respect to LDR Section 4.5.1(J).