

RESOLUTION NO. 74-21

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, GRANTING A WAIVER REQUEST TO SECTION 4.4.13 (D)(2)(a)(1) AND TABLE 4.4.13(C) OF THE LAND DEVELOPMENT REGULATIONS, APPROVING A DECREASED FRONT SETBACK OF SIX FEET SIX INCHES ON THE FIRST FLOOR AND DECREASED FRONT SETBACK OF ZERO FEET ZERO INCHES ON THE SECOND FLOOR AT THE SOUTHWEST CORNER OF THE PROPERTY LOCATED AT 95 SW 5TH AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach, Florida (“the City”) received a Class V Site Plan application (2020-133) associated with the property located at 95 SW 5th Avenue (“the Property”) from the Community Redevelopment Agency (“Applicant”), which involves the construction of a two-story office and retail building; and

WHEREAS, the Property is located within the Central Business District (“the CBD”) Commercial Core Sub-district at the intersection of SW 5th Avenue and SW 1st Street; and

WHEREAS, City Land Development Regulations (“the LDRs”) Section 4.4.13(D)(2)(a)(1) and Table 4.4.13(C) require that buildings in the CBD Commercial Core Sub-district have a front setback of at least 10 feet but no greater than 15 feet; and

WHEREAS, LDR Section 5.3.1(A)(5) requires a 20 foot corner clip right-of-way dedication at all intersections in the Central Business District (CBD); and

WHEREAS, pursuant to LDR Section 5.3.1(A)(5), the applicant must provide a 20 foot by 20 foot right-of-way dedication to the City at the southwest corner of the Property, which results in an adjustment of the property line; and

WHEREAS, due to the property line adjustment from the corner clip right-of-way dedication, the building, as proposed, has a minimum front setback of six feet six inches at the first floor of the building at the southwest corner and a minimum front setback of zero feet zero inches at the second floor of the building on the southwest corner; and

WHEREAS, the applicant proposes a waiver to allow for a decreased setback of six feet six inches for the first floor and of zero feet zero inches on the second floor at the southwest corner of the property as more particularly described in Exhibit “A”; and

WHEREAS, at its meeting of April 28, 2021, the Site Plan Review and Appearance Board voted _ to _ to recommend _____ to the City Commission of the requested waiver to LDR Section 4.4.13(D)(2)(a)(1) and

WHEREAS, LDR Section 2.4.7(B)(5), which governs waivers from development regulations 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 regulations 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;
- (b) Shall not allow the creation of significant incompatibilities with nearby buildings or uses of land;
- (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.

WHEREAS, the requested waiver of relief from LDR Section 4.4.13(D)(2)(a) and Table 4.4.13(C) regarding setbacks for the proposed development was presented to the City Commission at a quasi-judicial hearing conducted on May 18, 2021; and

WHEREAS, the City Commission considered the waiver request to LDR Section 4.4.13(D)(2)(a) and Table 4.4.13(C) allow for a decreased front setback of six feet six inches on the first floor and of zero feet zero inches on the second floor at the southwest corner of the property of the Delray Beach CRA Development as more particularly described in Exhibit "A," 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. 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 similar circumstances 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(D)(2)(a) and Table 4.4.13(C) to allow for a decreased setback of six feet six inches on the first floor and of zero feet zero inches on the second floor at the southwest corner of the Delray Beach CRA Development as more particularly described in Exhibit "A", which is incorporated herein.

Section 5. The City Clerk, or designee, is directed to send a certified copy of this Resolution to Renee A. Jadusingh, City of Delray Beach Redevelopment Agency (CRA) Executive Director.

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 _____, 2021.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney