



Legislation Text

File #: 17-605, Version: 1

TO: Mayor and Commissioners
FROM: Timothy Stillings, Director of Planning, Zoning, and Building
THROUGH: Chief Neal de Jesus, Interim City Manager
DATE: August 2, 2017

WAIVER REQUEST TO INCREASE THE MAXIMUM FRONT SETBACK FROM 15' TO 19'-4" FOR 324 LOFTS, LOCATED AT 324 NE 3RD AVENUE. (QUASI-JUDICIAL HEARING)

Recommended Action:

Motion to deny the waiver request to LDR Section 4.4.13(D)(2)(a)1., Configuration of Buildings, Dimensional Requirements for CBD Sub-districts, to increase the maximum front setback from 15' to 19'4", based on a failure to make positive findings with LDR Sections 4.4.13(K)(8) and 2.4.7(B)(5).

Background:

At its meeting of June 28, 2017, the Site Plan Review and Appearance Board (SPRAB) approved the Class V Site Plan, Landscape Plan, and Architectural Elevations for the proposal, which consists of the following:

- Construction of a 14,618 square foot four-story, mixed-use building containing a 3,516 square foot restaurant on the first floor, a 3,520 square foot yoga studio on the second floor, a 3,520 professional office on the third floor, and a 3,430 square foot artist studio on the fourth floor.
- Provision of 2 back-out parking spaces at the rear of the property, accessible from the alley.
- Provision of associated landscape, lighting, and streetscape improvements.

A waiver to LDR Section 4.6.16(H)(3)(d) to eliminate the 5' minimum required landscape buffer between parking areas and the abutting property was approved by SPRAB.

The subject waiver before the City of Delray Beach City Commission is to LDR Section 4.4.13(D)(2)(a)1., Configuration of Buildings, Dimensional Requirements for Central Business District (CBD) Sub-districts, to increase the maximum front setback from 15' to 19'4"; SPRAB recommended approval on a vote of 6-1. The SPRAB noted that given the proposed use (restaurant) in the first floor tenant space, the streetscape would not be impacted by the larger setback which would provide additional outdoor seating opportunities.

The proposed waiver must be evaluated based upon the CBD and General Waiver criteria as identified in the next paragraphs.

CBD Waiver Criteria:

Pursuant to LDR Section 4.4.13(K)(8)(b)(2), waivers, in addition to the findings in LDR Section 2.4.7(B)(5), within the CBD, the following standards shall be considered when reviewing waiver requests:
(a) The waiver shall not result in an inferior pedestrian experience along a Primary Street, such as

exposing parking garages or large expanses of blank walls.

(b) The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.

(c) The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan.

(d) The waiver shall not reduce the quality of civic open spaces provided.

General Waiver Criteria:

Pursuant to LDR Section 2.4.7(B)(5), prior to granting a waiver, the approving body shall make a finding that the granting of the 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 similar circumstances on other property for another applicant or owner.

The applicant's Waiver Justification is attached; an excerpt is provided as follows:

"..since the existing buildings adjacent to this project are primarily single-story the overall mass of this new structure would be reduced if set back further, the additional setback would also create a wider area to have outdoor seating improving the buffer to the street..."

The waiver request does not meet the findings or criteria noted above. In consideration of the applicable CBD criteria above, the granting of the waiver is not appropriate as it pushes the front elevation wall plane further away from the pedestrian area which is intended to be more active and thereby not meeting the intent of improving the pedestrian experience along the street. While the proposed restaurant intends on providing outdoor seating which will activate the sidewalk area, the setback requirement and waiver criteria are not based on specific uses. Therefore, if the use changed to office or retail the desired streetscape experience is impacted. The granting of the waiver would allow the creation of significant incompatibilities with future new construction along this street. In consideration of the existing buildings, the granting of the waiver may not create an incompatibility as the existing buildings along the street vary in their front setbacks. The ability to push back the front elevation of the first floor would not result in an erosion of the street or sidewalk network. Last, the waiver would not reduce the quality of the civic open space as this requirement is not applicable to the proposed development.

In consideration of the general waiver criteria, findings cannot be made, as the granting of the waiver would adversely affect the desired design throughout the neighboring area, and the improved pedestrian experience. The provision of public facilities would not be impacted and the creation of an unsafe situation would not occur by the granting of the waiver. However, the granting of the waiver would be considered a special privilege not granted under similar circumstances when developing a vacant property.

City Attorney Review:

Approved as to form and legal sufficiency.

Finance Department Review:

N/A

Funding Source:

N/A

Timing of Request:

The waiver approval is a condition of the approved site plan. If the waiver is not approved, the SPRAB must reconsider the site plan.