



## Legislation Text

File #: 20-113, Version: 1

**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Department  
**THROUGH:** George Gretsas, City Manager  
**DATE:** March 3, 2020

RESOLUTION NO. 22-20: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING A REQUEST FOR A CONDITIONAL USE PURSUANT TO LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, AND THE COMPREHENSIVE PLAN, TO AUTHORIZE 24-HOUR OPERATIONS AT A CONVENIENCE MART (GASOLINE STATION WITH FOOD SALES), KNOWN AS 7-ELEVEN AT VIA DELRAY, RELATED TO THE DEVELOPMENT OF A CONVENIENCE MART (GASOLINE STATION WITH FOOD SALES) AT 13555 SOUTH MILITARY TRAIL, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A"; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES (QUASI-JUDICIAL).

### **Recommended Action:**

Review and consider Resolution No. 22-20, a request for Conditional Use approval for a 24-hour or late night business for a proposed 7-Eleven located at 13555 South Military Trail.

### **Background:**

The subject property is located at 13555 South Military Trail, on the southwest corner of South Military Trail and Via Delray Boulevard. The site presently consists of a gasoline station with 4 fuel pumps and 8 fuel stations under a 199 SF canopied area, a 700 SF convenience store (built in 1984), and a 720 SF car wash (built in 1995). The gas station received a "special exception" approval under Palm Beach County jurisdiction on February 24, 1983. The gasoline station has been operating as a 24-hour facility since it opened in 1984; however, no documentation on the approval is available and the gas station redevelopment represents an expansion of the existing business.

In 2019, the City Commission approved a request to annex the property into the city. The annexation (Ordinance No. 21-19), future land use map (FLUM) amendment (Ordinance No. 22-19), and rezoning (Ordinance 23-19), were approved on October 1, 2019. Upon annexation, a Conditional Use application was not required because the existing use was not expanded at that time. Concurrent with the request for Conditional Use approval, the applicant submitted a request for site plan approval for 8 fuel pumps with 16 fueling stations under a new 4,284 SF fuel canopy, a new 978 SF self-service car wash, and 4,739 SF convenience store.

### **Required Findings**

Pursuant to LDR Section 3.1.1, Required Findings, "findings shall be made by the body which has the authority to approve or deny the development application."

### **Required Findings: LDR Section 3.1.1**

*Prior to the approval of development applications, certain findings must be made in a form which is*

*part of the official record. This may be achieved through information on the application, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application. These findings relate to the following four areas:*

- Future Land Use Map
- Concurrency
- Consistency
- Compliance with the LDRs

**Future Land Use Map.** *The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Future Land Use Map.*

The subject property has a Future Land Use Map (FLUM) designation of GC, and a zoning designation of GC, which are consistent with each other. Per LDR Section 4.4.9(D)(8), “Gasoline stations or the dispensing of gasoline directly into vehicles” are allowed as a conditional use in the GC zoning district. Per LDR Section 4.3.3(VV), a conditional use permit is required when a 24-Hour or late-night business is proposed within a 300-foot straight line route from any residentially-zoned property. The resulting use of land a 24-hour gasoline station with a convenience mart is consistent with the land use designation, and compatibility is determined through the conditional use process.

**Concurrency.** *Concurrency as defined pursuant to Objective B-2 of the Future Land Use Element of the Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CI-GOP-1 of the adopted Comprehensive Plan of the City of Delray Beach.*

The subject property was previously subject to Palm Beach County land use and zoning at the highest commercial intensity possible, and it was determined to have sufficient capacity. Compliance with traffic, schools, utilities, and solid waste is described below:

**Traffic.** The proposed 7-Eleven will generate 882 Net New Daily trips, 61 Net new AM Peak Hour trips, and 61 Net New PM Peak Hour Trips. The applicant has received a Traffic Performance Standards (TPS) approval letter Palm Beach County. Two entrances are proposed:

- South Military Trail: 35 foot wide driveway approximately 210 feet south of the intersection with Via Delray Boulevard.
- Via Delray Boulevard: 35 foot wide driveway approximately 340 feet west of the intersection with Military Trail.

**Schools.** Commercial development is not subject to school concurrency evaluation. Furthermore, the applicant indicates that a deed restriction is in place for the property that prevents the site from becoming a residential development. Therefore, there will be no negative impact on the public school system.

**Water.** The City’s Water Atlas and the survey indicate water is provided to the site by a 12” water main located within the Military Trail right-of-way.

**Sewer.** The survey indicates sanitary sewer service is provided. The City's Sewer Atlas indicates that sewer service is not provided to the site by the City. Under Future Land Use Policy B-3.1, the City is not required to provide services upon annexation in areas that receive these services from Palm Beach County. Therefore, the property can remain on Palm Beach County sanitary sewer service subsequent to the approved annexation; therefore, there is no impact on City sanitary sewer facilities.

**Solid Waste.** The Solid Waste Authority (SWA) is the waste collector for both the City and the County. Since the use as a gas station and convenience store is expanding, the demand for services will increase. Solid waste generation is calculated at a rate of 36.7 pounds per square foot per year for neighborhood convenience uses. The development proposal will increase solid waste generation from 25,690 pounds per year to 173,921 pounds. The applicant provided documentation that the service provider has been contacted, and the information will be evaluated as part of the site plan review.

**Drainage.** The applicant has provided 65% impervious surfaces on the site. Lot coverage by building, pavement, or hardscape cannot exceed 75% of the development - 25% minimum must be impervious). The site plan is currently under review, and the review process will ensure sufficiency of site drainage.

***Consistency.*** *A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.*

Goal A of the Future Land Use Element of the Comprehensive Plan says that "Land within the Planning Area shall be developed or redeveloped to sustain and enhance the existing quality of life, compliment and be compatible with existing land use and result in a mixed, but predominately residential community with a balanced economic base and encourage accessible affordable everyday services." A gas station and convenience retail in proximity to residential development provides everyday services to residents within the City of Delray Beach.

**Compliance with the LDRs.** The following sections of the Land Development Regulations particularly apply to this request.

**Required Findings: LDR Section 2.4.5(E)(5).** *In addition to provisions of Chapter 3, the City Commission must make findings that establishing the conditional use will not: a) Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located; b) Hinder development or redevelopment of nearby properties.*

The subject property has operated as a gasoline station and convenience mart since 1984, and the self-service car wash was built in 1995. The proposed redevelopment represents an improvement to the property. The property is surrounded by medical offices to the north, condominiums to the south and east, and a water retention area / townhomes to the west. The properties to the north are separated by Via Delray Boulevard, and the residential properties to the east are separated by Military Trail. The site redevelopment will be located primarily on the northeast portion of the property, further away from abutting properties. The site currently has significant vegetation on approximately three-fourths of the property that provides a buffer between the gas station and the properties to the west and south. The proposed landscaping plan removes invasive exotic species,

either relocates or retains the existing trees that are in good condition on the south side of the property, and adds new perimeter and site landscaping throughout the site.

24-hour or late night businesses are subject to the conditional use criteria in **LDR Section 4.3.3(VV) “24-hour or Late Night Businesses”**. The purpose and intent of the regulations is “*to promote the health, safety and general welfare of the citizenry*” and “*to provide conditions upon the use of 24-Hour or late night businesses in order to minimize impacts upon residentially-zoned properties from such uses.*” Businesses located “*within a 300-foot straight line route from any residentially-zoned property shall obtain a conditional use permit from the City.*” The proposed gas station redevelopment with 24-hour use is adjacent to a residential development to the west. The applicant has been operating as a 24-hour business since the operations began in 1984. However, inasmuch as the site will be redeveloped with a larger building footprint and additional gasoline pumps, a Conditional Use request to continue operating as a 24-hour business is required.

Pursuant to **LDR Section 4.3.3(VV)(2)(b), Conditions** the following conditions shall apply to all 24-Hour or late night businesses seeking conditional use approval when located within 300 feet from a residentially-zoned property:

**1) Security plan:** *A 24-Hour or late night business shall submit a security plan detailing the manner in which the business intends to address the security of the establishment, its patrons, employees and nearby residents. A convenience business as defined in Section 812.171, Florida Statutes (2000), as may be amended from time to time, is exempted from filing a security plan with the City pursuant to this subsection. However, convenience businesses shall comply with all applicable provisions of Sections 812.101-812.175, Florida Statutes (2000), as may be amended from time to time. A security plan shall include, at a minimum, a detailed description of the following:*

**a. external lighting;**

The site plan submitted concurrently with the request for conditional use approval provides a photometric plan. Section 812.173, Florida Statutes, requires convenience businesses to have a minimum of 2 foot-candles per square foot at 18 inches above the surface of parking areas. The lighting provided meets or exceeds the illumination requirement for convenience businesses, although not required to do so. The proposed development also meets the lighting requirements of Section 4.6.8.

**b. other external security measures, such as security cameras or other similar measures;**

The applicant has indicated they will provide external security cameras compliant with City of Delray Beach regulations, and the proposed lighting conforms to City standards in LDR Section 4.6.8. The location of external security cameras is indicated on the site plan and will be reviewed by the City's Police Department as part of the CPTED review prior to site plan approval.

**c. internal security measures, such as drop safes, silent alarms, security personnel or other similar measures.**

The applicant has agreed to provide internal security such as drop safes, employee training, and store design using CPTED principles; these details will also be provided during the site plan review for analysis by the Police Department. While the LDRs exempt convenience

businesses from the security measures required by Sections 812.173 and 812.174, Florida Statutes, the applicant proposes many of the security measures required of convenience businesses.

**2) Buffering:** *A 24-hour or late night business shall provide adequate buffering to minimize the effects of noise and to act as a visual buffer to the property from nearby residential districts.*

The proposed development is subject to the regulations in LDR Sections 4.6.4 and 4.6.16. Per Section 4.6.4(A)(2), commercial properties abutting residential properties are required to provide a 6-foot solid, finished masonry wall, or a continuous hedge 4.5 feet in height. The applicant has provided a 4.5-foot Small Leaf Clusia hedge along the western property line, which abuts a residential development, as well as a perimeter shade trees planted at 30-foot intervals, pursuant to the minimum landscape requirements in Section 4.6.16(H)(3). The property to the west has an existing wood fence, berm, and hedge row. The property to the south has a chain link fence along the property line. The dumpster pad is subject to screening, per Section 4.6.16(C)(1)(b)7. The applicant has proposed a Florida Privet hedge on the north and west sides of the dumpster. Access is provided from the south side, and the east side of the dumpster enclosure faces the rear of the building. A live oak will be located to the southwest of the dumpster enclosure. A sign is proposed at the northeast corner of the property, and three (relocated) Royal Palms, 60 yellow crotons, and 76 Asian jasmine plants are proposed surrounding the sign.

Pursuant to Section LDR 4.6.16(E)(2)(d), the applicant was asked to provide a Tree Disposition Plan that designates the disposition of all trees proposed for preservation, relocation, or removal. Section 4.6.16(K) requires the removal of all invasive nuisance species during the development process - as such, the applicant was asked to remove any invasive species based on the tree survey provided. Development proposals must, however, must provide for the protection of existing native plant communities and existing trees with trunks 4 inches or greater measured at 4.5 feet above grade and palms with a clear trunk measured at 8 feet above grade, pursuant to Section 4.6.16(D)(1)&(2). The applicant has proposed the removal of certain non-invasive, native trees, as well as site clearing on the portion of the site which is not identified for redevelopment. This is not allowed per regulations, and the applicant will be required to revise this during the site plan review.

The location of a 24-hour business within 300 feet of residentially-zoned property requires that the City Commission make findings pursuant to LDR Section 2.4.5(E)(5) that establishing the conditional use will not:

- a) Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;
- b) Hinder development or redevelopment of nearby properties.

The City Commission must take into consideration if the proposed improvements comply with the required conditions, and if they are sufficient so as to not have a significantly detrimental effect upon the stability of the neighborhood, or hinder development or redevelopment of nearby properties. The proposed lighting uses cut-off luminaires to prevent spill-over to nearby properties and provides illumination less than the maximum allowed by Section 4.6.8. The proposed landscaping provides a buffer between the site and the adjacent residential neighborhood. While there is an entrance along Via Delray Boulevard, the site will primarily be accessed from South Military Trail, which reduces impact to the residential neighborhoods located on Via Delray Boulevard. Thus, it is not anticipated that the development will have a negative impact on the surrounding neighborhood.

The Planning and Zoning Board Reviewed Resolution No. 22-20 at the January 27, 2020 meeting and unanimously recommended approval (7-0).

**Funding Source/Financial Impact:**

NA

**Timing of Request:**

NA