



## Legislation Text

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File #: 22-605, Version: 1

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**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Director  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** June 14, 2022

RESOLUTION NO. 74-22: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING A WAIVER REQUEST TO SECTION 4.4.13(J)(1)(C) OF THE LAND DEVELOPMENT REGULATIONS, ALLOWING THE SUBMISSION OF A REQUEST TO ABANDON THE RIGHT-OF-WAY LOCATED IN THE 200 BLOCK OF SOUTHEAST SECOND AVENUE IN THE CENTRAL BUSINESS DISTRICT, AS MORE PARTICULARLY DESCRIBED HEREIN, TO ACCOMMODATE NEW DEVELOPMENT; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES (QUASI JUDICIAL).

**Recommended Action:**

Review and consider Resolution No. 74-22.

**Background:**

The applicant has requested the abandonment of SE 2<sup>nd</sup> Avenue, a City of Delray Beach public right-of-way (ROW), between SE 2<sup>nd</sup> Street and SE 3<sup>rd</sup> Street. The area is zoned Central Business District (CBD) and is within the Railroad Corridor sub-district.

Pursuant to CBD Land Development Regulations (LDR) Section 4.4.13(J)(1)(c), "*Streets and alleys may not be abandoned, vacated or closed to accommodate new development.*" The applicant is requesting a waiver to this provision and seeks to pursue a ROW abandonment and incorporate the proposed roadway area into a Class V development application.

If approved, the abandonment would allow the developer to accomplish greater intensity and density in the project; therefore, a waiver is required from LDR restriction prior to the processing of the abandonment request. Additionally, in the instance that the waiver and abandonment are approved, a public access easement would be needed allowing both vehicular and pedestrian access across a similar area as the existing SE 2<sup>nd</sup> Avenue, as the physical link to other public streets would still exist.

The Technical Advisory Committee (TAC), which reviews all development applications, has reviewed the Class V site plan application, and generated comments; however, until the right-of-way issues is resolved, regulations regarding density, intensity, setbacks, and streetscape standards cannot be fully or accurately addressed. As such, it should be noted that the current version of the site plan, renderings, paving concepts, and architectural style are subject to change as the development is revised through the process.

The approval or denial of the waiver must be made upon two sets of required findings (below). The applicant's justification statements for the requested waiver is attached.

**Required Findings LDR Section 4.4.13 (K)(5)(b)(2)**

- 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 use 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 under this code.

Required Findings LDR Section 2.4.7 (B)(5)

- 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.
- 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.

Pursuant to LDR Section 4.4.13 (K)(5)(a), “...*When reviewing applications that include waivers that can only be granted by the City Commission, the SPRAB...shall make formal recommendations to the City Commission regarding those waivers prior to site plan consideration.*” The SPRAB Staff Report is attached.

On April 27, 2022, the SPRAB heard the waiver request. A motion was made to recommend approval to the City Commission, but resulted in a 3-3 tie vote; a failed motion pursuant to local rules. The board then voted 6-0 to inform the City Commission of the tie vote, and to relay their comments for consideration.

The Board *was not* supportive of

- ☐ Waiving the LDR to support greater density and intensity, in general.
- ☐ Curing the street deficiencies (unattractive landscaping, lack of sidewalks, etc.) by means of abandoning the street when the City and CRA have options available to improve the street.
- ☐ Approving greater development density and intensity when other projects are ongoing in the immediate vicinity of the area (referencing unapproved projects to the south).

The Board *was* supportive of

- ☐ The applicant team as a local developer who wishes to see the area improved.
- ☐ The approval of the waiver, and subsequent abandonment, to potentially be a form of renewal of energy to the area.
- ☐ The increased number of housing (and workforce housing) provided by increasing the density and intensity through the proposed abandonment
- ☐ Retaining the access to the on-street parking on SE 2<sup>nd</sup> Avenue constructed in partnership with the Florida East Coast Railway.
- ☐ Requiring additional conditions and accountability standards for the private development such as bonds, performance standards, or other mechanisms to require the developer holds to promised improvements.

It is important to note that pursuant to the LDR Section 5.3.1 and LDR Section 6.1, the developer is *required* to improve SE 2<sup>nd</sup> Avenue as part of the proposed project, including travel lanes, parking lanes, drainage, sidewalks, landscaping, lighting, etc. Since the project takes access from the

existing street, and no other development/owner abuts the other side of the right-of-way, "Concurrent, or prior to, construction associated with an approved development application...provisions shall be made for the accommodation of such improvements."

**City Attorney Review:**

Resolution No. 74-22 is approved as form and legal sufficiency.

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

The waiver decision is needed to continue to process the Class V Site Plan application and right-of-way abandonment request.