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RESOLUTION NO. 21-235

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPROVING AND ACCEPTING A MODIFIED SITE PLAN AS A SETTLEMENT IN A FLORIDA LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION ACT PROCESS; APPROVING THE ISSUANCE OF A SITE PLAN LEVEL IV BEACH DEVELOPMENT PERMIT FOR THE DEVELOPMENT OF A 17-STORY MIXED-USE HOTEL, RESIDENTIAL, RESTAURANT AND RETAIL PROJECT AND PARKING FACILITIES LOCATED AT 3016 AND 3030 BAYSHORE DRIVE, FORT LAUDERDALE, FLORIDA, IN THE A-1-A BEACHFRONT AREA (ABA) ZONING DISTRICT; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO TAKE NECESSARY ACTIONS TO EFFECTUATE THIS RESOLUTION, AND PROVIDING FOR RESCISSION OF CONFLICTING RESOLUTION PROVISIONS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Section 47-12.6 of the City of Fort Lauderdale, Florida Unified Land Development Regulations ("ULDR") provides that no development of property in the Central Beach area of the City shall be permitted without first obtaining a beach development permit from the City of Fort Lauderdale in accordance with the provisions and requirements of the ULDR; and

WHEREAS, Bayshore Hotel LLC and 3030 Bayshore Properties LLC, the property owners of 3016 and 3030 Bayshore Drive, Fort Lauderdale, Florida, (collectively "Property Owners") submitted an application in 2018 for a beach development permit for a mixed-use hotel, residential and retail project consisting of a 17-story, 168-room hotel, 115 residential units, 3,600 square feet of restaurant and 3,156 square feet of retail at 3016 and 3030 Bayshore Drive, Fort Lauderdale, Florida, and located in the A-1-A Beachfront Area (ABA) zoning district; and

WHEREAS, Section 47-12.5-B.1 of the ULDR sets forth the minimum yard setbacks within the ABA district and allows a setback other than the minimum to be approved as part of the approval of a development of significant impact, also known as a Site Plan Level IV development; and

WHEREAS, the Development Review Committee (PZ Case No. R18058) at its meeting of August 28, 2018, recommended approval of the proposed development permit to the Planning and Zoning Board; and

WHEREAS, the Planning and Zoning Board at its meeting of February 20, 2019, recommended approval of the proposed development permit to the City Commission; and

WHEREAS, the City Commission at its meeting of June 4, 2019, reviewed the beach development permit application submitted by the applicant, as required by the ULDR, and found that the proposed development was not consistent with the development standards for the proposed development under the provisions of the ABA zoning district and the neighborhood compatibility criteria provided in Section 47-25.3, and

WHEREAS, the City Commission adopted Resolution No. 19-113 denying the Site Plan Level IV development permit application to construct a hotel and residential project and parking facilities located at 3016 and 3030 Bayshore Drive, Fort Lauderdale, Florida, based on the failure to meet the requirement of Section 47-12.6 of the ULDR; and

WHEREAS, on July 8, 2019, Property Owners petitioned the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida to issue a writ of certiorari directed to the Commission of the City of Fort Lauderdale quashing Resolution No. 19-113, rendered on June 17, 2019; and

WHEREAS, the Property Owners filed for relief through the Florida Land Use and Environmental Dispute Resolution Act, commonly known as FLUEDRA, pursuant to § 70.51, Florida Statutes on July 3, 2019; and

WHEREAS, on January 20, 2021, a mediation was held before Special Magistrate Honorable Scott J. Silverman, Retired Judge, 11th Judicial Circuit Court of Florida, between Property Owners and the representatives of the City, at which the Property Owners presented a site plan that modified the proposed use of the property as a proposed settlement of the dispute; and

WHEREAS, Special Magistrate Silverman issued a report advising the City of its statutory obligation to direct all available resources and authorities to effect fully the obvious purposes and intent of the statute in resolving the dispute and of the special magistrate's responsibility to hold a hearing to determine whether the City's action is unreasonable or unfairly burdens the real property if the Property Owners and the City are unable to resolve the dispute based on the Property Owner's proposal; and

WHEREAS, the City Commission reviewed the modified site plan proposed for settlement of the FLUEDRA dispute as a revision to the beach development permit application submitted by the applicant and finds that the proposed development is consistent with the development standards for the proposed development under the provisions of the ABA zoning district and the neighborhood compatibility criteria provided in Section 47-25.3;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That each WHEREAS clause set forth above is true and correct and incorporated herein by this reference.

SECTION 2. That the City Commission finds that the amended Site Plan Level IV application submitted by the Applicant meets the criteria of Sections 47-24 of the ULDR, as enunciated and memorialized in the minutes of its meeting of October 21, 2021, a portion of those findings expressly listed as follows:

The City Commission hereby adopts the findings of fact set forth in Commission Agenda Memorandum No. 21-1011.

SECTION 3. That the site plan level IV development permit application submitted to construct a hotel and residential project and parking facilities located at 3016 and 3030 Bayshore Drive, Fort Lauderdale, Florida, in an ABA zoning district, as amended in the modified site plan proposed for settlement of the FLUEDRA dispute by the property owners, is hereby approved for the issuance of a beach development permit, subject to the modifications and conditions imposed by the Development Review Committee, Planning and Zoning Board and City Commission; including and not limited to the conditions imposed at the October 21, 2021 City Commission meeting, including but not limited to:

1. Applicant is required to pay a Park Impact Fee for the proposed residential units prior to issuance of building permit in accordance with ULDR Sec. 47-38A, Park Impact Fees.
2. This project is subject to the requirements of Broward County Public School Concurrency. The applicant is required to notify the School Board Superintendent or designee of this proposal. Prior to submitting an application for placement on a Planning and Zoning Board or City Commission agenda, a written response from the School Board shall be provided by the applicant. Prior to application for final DRC approval, provide confirmation from the School District that the residential development is exempt or vested from the requirements of public school concurrency, or a School Capacity Availability Determination (SCAD) letter that confirms that capacity is available, or if capacity is not available, that mitigation requirements have been satisfied.
3. Pursuant to the Unified Land Development Regulations ("ULDR"), Section 47-25.2.P, this site is located in an area that the City has identified as an archaeologically significant zone. The applicant is required to contract with an archaeologist to provide a shovel test survey that includes samples from throughout the project site and states whether the development site holds archaeological significance. The archaeologist must state within the report if further testing on the

site is required and/or if monitoring by the archaeologist is required during ground disturbing activity once construction commences. All preliminary reports from the archaeologist must be submitted, prior to final DRC approval, to both the Case Planner and Historic Preservation Planner. If monitoring is required, the applicant must also provide a letter of agreement with the archaeologist stating that they will be present during phases of the project that include ground disturbing activity. For any questions contact Trisha Logan, Historic Preservation Planner, at 954-828-7101 or at tlogan@fortlauderdale.gov.

4. The Water and Wastewater Capacity Availability letter issued by the City's Public Works Department dated September 30, 2021, indicates that the existing 8-inch and 10-inch gravity sewer mains along North Birch Road currently do not have capacity to serve the project and convey flow downstream to the existing 15-inch sewer on North Birch Road and Pump Station (PS) D-31. Applicant shall be required to meet the conditions of approval included in the September 24, 2021 Water and Wastewater Capacity Availability letter, which states:
 - (1) Upsizing the 8-inch gravity sewer on Bayshore Drive to a 10-inch pipe approximately 250-feet in length; and,
 - (2) Upsizing the existing 10-inch gravity sewer main along North Birch Road to a 15-inch sewer pipe approximately 1,700-feet in length.
 - (3) Applicant shall enter into a memorandum of agreement with the City to coordinate the design requirements and construction of the improvements.

At the time of building permitting the Water and Wastewater Capacity analysis will be updated to ensure the proposed infrastructure is adequate at the time of construction.

5. All proposed private features encroaching within the right of way along North Birch Road and Bayshore Drive (i.e. water features, raised planters, landscape walls), are subject to a separate DRC submittal and revocable license agreement approval. These features shall not conflict with ULDR requirements and the public use of the right of way. Prior to issuance of building permit a copy of the recorded revocable license shall be provided.
6. Prior to final DRC sign off, provide additional information on plans to verify that the proposed garage ramps do not exceed 12% slope in accordance with ULDR section 47-20.9 (i.e. ramp length, floor elevation).
7. Prior to final DRC sign off, applicant shall provide a cross section along east side of development illustrating that runoff is retained onsite per ULDR requirements.

- Applicant shall also clarify that the design of the southern boundary of the site are coordinated with the existing power poles to remain in this area, and verify the utility easement owner(s) have no objection to the proposed retaining wall/ foundation encroachment within the utility easement. Applicant shall provide all necessary correspondence accordingly.
8. Prior to final DRC sign off, applicant must include dimension on landscape plans to confirm the required horizontal clearance from existing 6-inch water main (Bayshore Drive) and 12-inch water main (North Birch Road) is provided (10-feet from larger trees, and 5-feet from smaller trees). Applicant documentation verifying the barrier is a minimum of 36-inches below the pavement/ground level is installed to mitigate future conflicts with utilities. If proper horizontal clearance cannot be provided (5-foot min. for smaller trees and 10-feet for larger trees), provide correspondence from Public Works accepting the proposed clearance/ alternative requirements.
 9. Prior to final DRC sign off, survey shall be updated to be based on a title commitment or opinion of title with an effective date no more than thirty days prior to the date of submittal of the survey and must be certified to the City of Fort Lauderdale (provided survey is based on title commitment from 08/30/2015). Also, provide background information on title notes items #7 through #11 since the only items depicted on survey appears to be items #7 and #8.
 10. Prior to final DRC sign off, applicant must depict location of relocated street light poles along Bayshore Drive in coordination with proposed improvements.
 11. Prior to final DRC sign off, revise Section 1A, on page LC-101, applicant to depict that proposed water feature wall (within sight triangle) does not exceed 2.5-feet in height from adjacent edge of pavement (rather than sidewalk) in accordance with ULDR section 47-35.
 12. Prior to final DRC sign off, applicant to depict striping for no parking on proposed turnaround areas where dead-end parking is proposed.
 13. Prior to issuance of building permit, applicant shall coordinate with FPL on any additional requirements related to access and maintenance of existing power poles to remain along southern boundary of property line.
 14. Prior to issuance of building permit, applicant shall provide details per City standards for the proposed bio-swales along North Birch Road and Bayshore Drive in coordination with Public Works.

15. Prior to issuance of final certificate of occupancy, applicant shall record a 20-foot corner chord permanent right-of-way easement on southeast corner of North Birch Road and Bayshore Drive intersection per ULDR Section 47-24.5.D.1.p.
16. Prior to issuance of final certificate of occupancy, applicant shall record a permanent Sidewalk Easement as appropriate along east side of North Birch Road to accommodate portion of pedestrian clear path that may be located beyond public right-of-way and/or right-of-way easement dedication.
17. Prior to issuance of final certificate of occupancy, applicant shall record a 10-foot x 15-foot (minimum) permanent Utility Easement for the proposed 4-inch water meter off North Birch Road.
18. Prior to issuance of final certificate of occupancy, applicant shall coordinate a maintenance agreement with the City for property frontage along Bayshore Drive and North Birch Road. Proposed special improvements for this project within adjacent City right-of-way to be maintained in perpetuity by property owner include: asphalt pavement, curb and gutter, valley gutter, landscape, structural soil, landscape walls/raised planters, irrigation, root barriers, pedestrian lighting, concrete driveways, specialty paving sidewalks and water features as depicted on maintenance agreement exhibit sheet LC-201.
19. Light poles shall be placed beyond 15-feet of trees, in accordance with ULDR Section 47-21.12.B.3.
20. Prior to Final DRC approval, applicant shall verify all aspects of the ULDR have been met.

SECTION 4. That pursuant to the provisions of the City of Fort Lauderdale, Florida ULDR, the proper City officials are hereby authorized to issue the necessary building and use permits.

SECTION 5. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

SECTION 6. This approval is conditioned upon the applicant obtaining all other applicable state or federal permits before commencement of the development.

SECTION 7. That the City Commission of the City of Fort Lauderdale, Florida hereby accepts the modifications of the proposed use as depicted in the modified site plan approved by this resolution as the settlement and resolution of the conflict between Bayshore Hotel LLC and 3030 Bayshore Properties LLC, and the City of Fort Lauderdale that is the subject of the pending FLUEDRA action, pursuant to § 70.51, Florida Statutes.

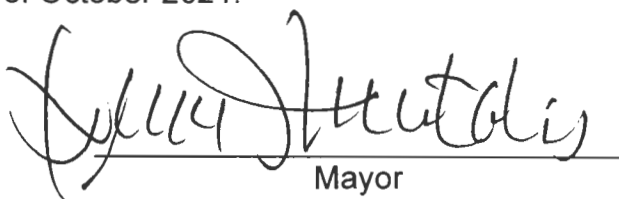
SECTION 8. That the City Manager and City Attorney are hereby authorized and directed to send a certified copy of this resolution to Special Magistrate Honorable Scott J. Silverman and to execute the necessary documents, and take all the necessary actions to effectuate the purpose and intent of this Resolution.

SECTION 9. That all resolutions or parts of resolutions in conflict herewith be, and the same are hereby rescinded to the extent of such conflict.

SECTION 10. That if any clause, section, or other part of this Resolution shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Resolution shall not be affected thereby, but shall remain in full force and effect.

SECTION 11. That this Resolution shall become effective immediately upon its adoption.

ADOPTED this 21st day of October 2021.



Mayor
DEAN J. TRANTALIS

ATTEST:



City Clerk
JEFFREY A. MODARELLI