

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON SECOND READING/PUBLIC HEARING OF THIS RESOLUTION, THE VACATION OF THAT PORTION OF (1) THE NORTHERN HALF OF AN ALLEY KNOWN AS "ABBOTT COURT," CONSISTING OF APPROXIMATELY 3,521 SQUARE FEET IN TOTAL LOT AREA; AND (2) THE ALLEY KNOWN AS "NORMANDY BEACH COURT," CONSISTING OF APPROXIMATELY 1,000 SQUARE FEET IN TOTAL LOT AREA, WITH THE FOREGOING ALLEYS LOCATED BETWEEN BYRON AVENUE AND ABBOTT AVENUE, FROM 71ST STREET TO 72ND STREET (COLLECTIVELY, THE "CITY ALLEYS"), IN FAVOR OF THE ABUTTING PROPERTY OWNERS, ABBOTT AVENUE PARTNERS, LLC; PUMPS AT 71, LLC; AND 7433 COLLINS AVE. CORP. (THE "APPLICANT"); FURTHER, PROVIDING THAT THE VACATION OF THE CITY ALLEYS SHALL BE SUBJECT TO AND CONDITIONED UPON THE APPLICANT'S EXECUTION OF A VACATION AGREEMENT AND DELIVERY OF CERTAIN PUBLIC BENEFITS TO THE CITY, INCLUDING THE DEDICATION OF THE SOUTHERN FORTY (40) FEET OF 7117 BYRON AVENUE, CONNECTING BYRON AVENUE TO ABBOTT COURT, AND CONSISTING OF A TOTAL OF 4,741 SQUARE FEET (THE "NEW CITY ALLEY"), WITH APPROXIMATELY 2,543 SQUARE FEET OF THE NEW CITY ALLEY TO BE DEDICATED FOR PUBLIC USE AS AN ALLEY FOR PEDESTRIAN AND VEHICULAR TRAVEL, AND WITH APPROXIMATELY 2,198 SQUARE FEET OF THE NEW CITY ALLEY TO BE DEDICATED AS A NEW STORMWATER RETENTION AREA, AND IMPROVED AS A BIOSWALE, AT APPLICANT'S SOLE COST AND EXPENSE; FURTHER, WAIVING, BY 5/7THS VOTE, THE COMPETITIVE BIDDING REQUIREMENT, PURSUANT TO SECTION 82-38 OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; FURTHER, AUTHORIZING THE ADMINISTRATION TO FINALIZE A VACATION AGREEMENT THAT INCORPORATES THE CONDITIONS SET FORTH IN THIS RESOLUTION, AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE VACATION AGREEMENT, SUBJECT TO FORM APPROVAL BY THE CITY ATTORNEY.

WHEREAS, the City holds a right-of-way dedication to the following right-of-way areas:

(1) the northern half of an alley known as Abbott Court, running south approximately 125 feet from the southerly right-of-way ("ROW") line of 72nd Street, which consists of a 20 foot ROW containing approximately 3,521 square feet, as shown on the Plat of the Normandy Beach South Subdivision, recorded in Plat Book 21, Page 54 of the Public Records of Miami-Dade County (the "Normandy Beach South Plat"), and more fully described in Exhibit "A" attached hereto (the "Abbott Court Alley"); and

(2) the portion of the alley known as Normandy Beach Court, located between the easterly ROW line of Abbott Court and the westerly ROW line of Abbott Avenue, which consists of a 10 foot ROW containing approximately 1,000 square feet, as shown on the Normandy Beach South Plat, and more fully described in Exhibit "B" attached hereto (the "Normandy Beach Court Alley");

(collectively, the Abbott Court Alley and Normandy Beach Court Alley shall be hereinafter referred to as the "City Alleys"); and

WHEREAS, Abbott Avenue Partners, LLC; Pumps at 71, LLC; and 7433 Collins Avenue Corp. (the "Applicant") own the properties abutting or in the vicinity of the City Alleys; which parcels are known as 7117 and 7135 Byron Avenue; 7120, 7124, 7134, 7136, and 7140 Abbott Avenue; 430 72nd Street; and 409 71st Street (collectively, the "Property"); and

WHEREAS, the Applicant intends to develop the Property as a mixed-use residential and commercial development (collectively, the "Proposed Development"); and

WHEREAS, the Proposed Development shall be developed as a unified development site; and

WHEREAS, in conjunction with Proposed Development, the Applicant is requesting that the City vacate the City Alleys, and has submitted its application to the City's Public Works Department with respect thereto; and

WHEREAS, the vacation of City streets, alleys, and/or rights of way, require compliance with Article II, Sections 82-36 through 82-40, of the City Code (which establish the procedures governing the sale or lease of public property);

WHEREAS, prior to approving a request for vacation, the following requirements must be satisfied: (1) the title of the Resolution approving the proposed vacation shall be heard by the City Commission on two separate meeting dates, with the second reading to be accompanied by a duly noticed public hearing; (2) the proposed vacation shall be transmitted to the Finance and Citywide Projects Committee (the "Finance Committee") for its review; (3) the City's Planning Department shall prepare a written planning analysis, to be submitted to the City Commission concurrent with its consideration of the proposed vacation; and (4) the City shall obtain an independent appraisal of the fair market value of the property proposed to be vacated; and

WHEREAS, on March 6, 2019, the Land Use and Development Committee discussed the proposed vacation, and recommended that the City Commission refer the vacation proposal to the Finance and City Wide Projects Committee (FCWPC), pursuant to City Code Section 87-37(a);

WHEREAS, at the FCWPC's June 14, 2019 meeting, the Planning Department staff advised that the proposed vacation would be consistent with the North Beach Master Plan recommendations, as well as the recently adopted land development regulations for the TC-C district; and

WHEREAS, at its June 14, 2019 meeting, the FCWPC recommended in favor of the proposed vacation of the City Alleys, with the vacation of the City Alleys subject to and conditioned upon the Applicant's delivery of certain public benefits to the City, including: the Applicant's dedication of the southern forty (40) feet of 7117 Byron Avenue, connecting Byron Avenue to Abbott Court, consisting of a total of 4,741 square feet, for use by the public, as described more fully in Exhibit "C" attached hereto (the "New City Alley"), with approximately 2,543 square feet of the New City Alley to be dedicated as a new alley for pedestrian and vehicular travel, and the remaining 2,198 square feet of the New City Alley to be developed as a new stormwater retention

area, and improved as a bioswale, as described more fully in Exhibit "D" attached hereto (the "Bioswale Improvements"); and

WHEREAS, the Planning Department analysis of the vacation, pursuant to Section 82-38 of the City Code, is attached as Exhibit "E" hereto; and

WHEREAS, the Public Works Department obtained an appraisal on April 2, 2019, which appraisal is attached as Exhibit "F" hereto and valued the City Alleys at \$2,350,000; and

WHEREAS, Section 82-39(a) of the City Code provides that the lease or sale of public property also requires an advertised public bidding process, which requirement may be waived by 5/7th vote of the City Commission; and

WHEREAS, by operation of law, upon a vacation, a right-of-way reverts to the abutting property owners or the holders of any interest in any reversionary rights to the vacated area; and

WHEREAS, as the only persons entitled to the vacated City Alleys is the Applicant (as the abutting property owners and holder of the appropriate reversionary interests), the City Administration recommends that the Mayor and City Commission waive the competitive bidding requirement, finding that the public interest is served by waiving such condition; and

WHEREAS, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the proposed vacation will be heard before the Planning Board on July 23, 2019 meeting, where it must be approved by 4/7^{ths} vote; and

WHEREAS, Section 1.03 (b)(4) of the Charter also requires that the vacation be approved by 6/7^{ths} vote of the City Commission; and

WHEREAS, the vacation of the City Alleys shall be subject to and conditioned upon the Applicant and City executing a Vacation Agreement that includes the following terms and conditions:

(1) Applicant shall dedicate to the public the New City Alley, consisting of approximately 4,741 square feet, with approximately 2,543 square feet to be dedicated for public use as an alley for pedestrian and vehicular travel, and the remaining approximately 2,198 square feet to be dedicated for the Bioswale Improvements; and

(2) Applicant shall complete construction of the Bioswale Improvements, at Applicant's sole cost and expense, prior to the Applicant's completion of the Proposed Development; and

(3) Applicant shall pay all City's costs in connection with the proposed vacation of the City Alleys and dedication of the New City Alley, including any City closing costs, recording fees, or outside legal fees that may be incurred by the City; and

(4) Applicant shall be responsible, at Applicant's sole cost and expense, for the relocation of any underground utilities located within the City Alleys and the New City Alley, as may be necessary for the Proposed Development and/or to fulfill the vacation conditions herein.

(5) Applicant agrees that City's quit claim deed for the City Alleys shall contain a reverter clause, to provide for the City Alleys to revert back to the City in the event Applicant fails to satisfy all conditions of this Vacation Resolution prior to the completion of the Proposed Development, and with such reverter being without prejudice to any other rights or remedies that may be available to the City in the event the Applicant fails to satisfy the conditions of this Resolution; and

(6) Applicant agrees that City shall not issue a temporary certificate of occupancy or final certificate of occupancy for the Proposed Development until the Applicant has satisfied all conditions of this Resolution; and

(7) The Applicant agrees to indemnify, defend, save and hold harmless the City from any claims, demands, causes of action, liabilities, losses, costs, fees, expenses, orders, judgments and/or decrees of any nature whatsoever as a result of City's adoption of the Vacation Resolution or issuance of a Building Permit prior to the satisfaction of the conditions of the Vacation Resolution, including the reasonable, out-of-pocket attorneys' fees and expenses incurred in the defense of any such claim, demand or cause of action; and

(8) in the event the foregoing conditions of the Vacation Agreement are not met, following notice to Applicant and a reasonable opportunity to cure, the Vacation Agreement shall be subject to termination, and in the event of any such termination, this Vacation Resolution shall be null and void; and

WHEREAS, on July 17, 2019, the Mayor and City Commission held the first reading of this Resolution, and read the title into the record as required by Section 82-37 of the City Code; and

WHEREAS, the Administration recommends approval of the vacation at second reading, subject to the terms and conditions contained herein, and further recommends that the Administration be authorized to finalize a vacation agreement incorporating the conditions set forth in this Resolution, and that the Mayor and City Clerk be authorized to execute the vacation agreement, upon form approval by the City Attorney.

NOW THEREFORE BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, on second reading/public hearing of this Resolution, the vacation of the (1) the Abbott Court Alley described in Exhibit "A"; and (2) the Normandy Beach Court Alley described in Exhibit "B", in favor of the abutting property owners, Abbott Avenue Partners, LLC; Pumps at 71, LLC; and 7433 Collins Ave. Corp.; further, providing that the vacation of the City Alleys shall be subject to and conditioned upon the Applicant's delivery of certain public benefits to the City, including dedication of the New City Alley, as described in Exhibit "C", with approximately 2,543 square feet of the New City Alley to be dedicated for public use as an alley for pedestrian and vehicular travel, and with approximately 2,198 square feet of the New City Alley to be dedicated as a new stormwater retention area, and improved as a bioswale, at Applicant's sole cost and expense, as described in Exhibit "D"; further, waive, by 5/7ths vote, the competitive bidding requirement, pursuant to Section 82-39, finding such waiver to be in the best interest of the City; further, authorize the Administration to finalize a vacation agreement that

incorporates the conditions set forth in this Resolution, and further authorize the Mayor and City Clerk to execute the vacation agreement, subject to form approval by the City Attorney.


PASSED and ADOPTED this ____ day of July, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael G. Granada, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney 7/23/19 Date
RAP