



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

American Social - Waivers

Meeting	File No.	Application Type
May 19, 2025	2025-090-ARC-WAI-LV1	Level 1 Site Plan Revision with CBD Waivers
Property Owner	Applicant/Authorized Agent	
Delray Trio, LLC	Miskel Backman LLP	

Request

Provide a recommendation to the City Commission on two waiver requests associated with a Level 1 Site Plan Modification for a previously approved site plan to reduce the streetscape curb zone dimension from the required 4 feet to 0 feet, and to exceed the maximum allowable awning setback encroachment from 4 feet to 9 feet and 7 inches (to abut the property line).

Site Data & Information

Location: 220 NE 1st Street

PCN: 12-43-46-16-C8-000-0030

Property Size: 1.38 acres

LUM: Commercial Core (CC)

Zoning: Central Business District (CBD) – Central Core Sub-district

Adjacent Zoning:

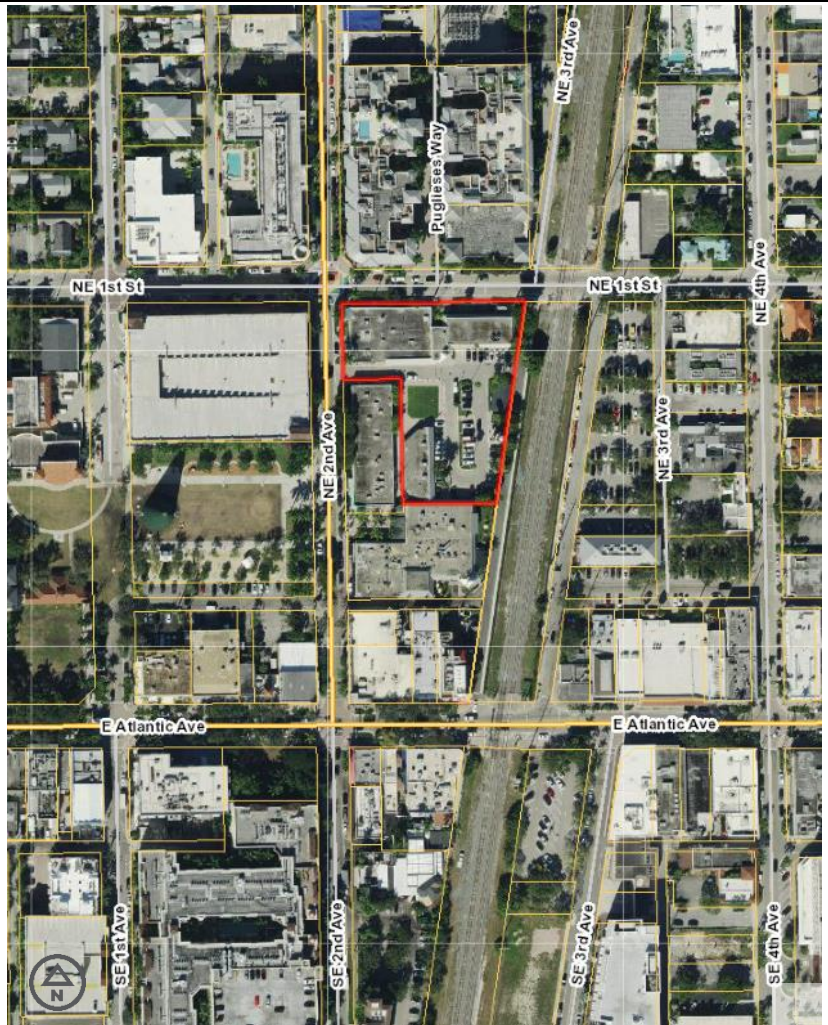
- **North, South, East and West:** CBD – Central Core Sub-district

Existing Use: Vacant (previously office)

Proposed Use: Restaurant (approved)

Central Business District:

- **NE 1st Street**
 - Primary Street
- **NE 2nd Avenue**
 - Primary Street
 - Required Retail
- **Pineapple Grove Neighborhood Plan**



Project Planner:

Julian Gdaniec, Senior Planner; gdaniec@mydelraybeach.com
Susana Rodrigues, Planner; rodrigues@mydelraybeach.com

Background

In 2023, a Site Plan application for site and architectural modifications, and a change of use property (File No. 2023-057) was submitted to convert the existing office use (Bay 100) into a restaurant. This site plan application was accompanied by an in-lieu parking request for 33 parking spaces that applied to both the required parking for the change of use as well as future outdoor dining elsewhere on the subject. The in-lieu parking application was approved by City Commission on June 13, 2023, and the associated Level 1 Site Plan for site and façade modifications as well as a change of use was administratively approved in July 2024. The proposal did not include an expansion of square footage and was therefore eligible for administrative approval.

Description of Proposal

The Applicant has submitted a Level 1 Site Plan Application for significant façade and site modifications to the previously approved restaurant at 220 NE 1st Street, Bay 100. As part of the development application, two waivers have been requested from the CBD development regulations:

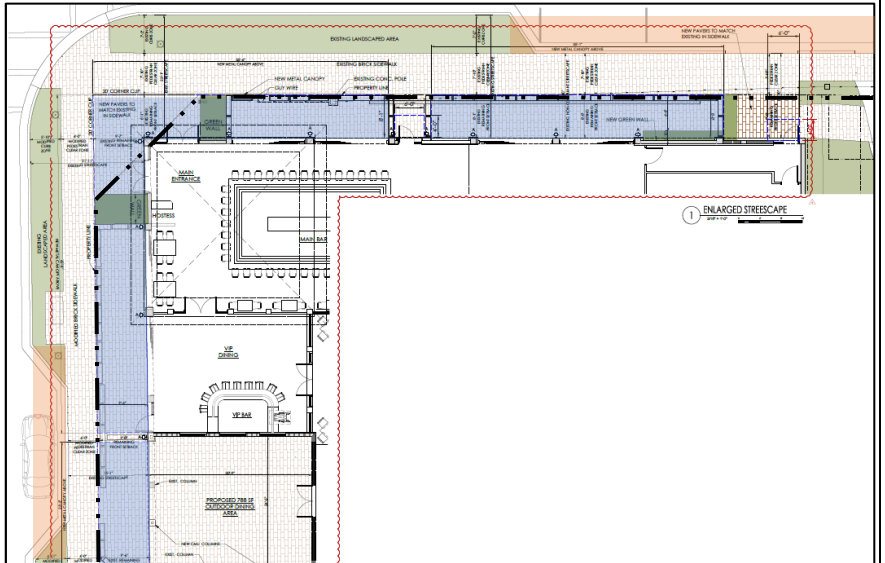
Waiver 1: LDR Section 4.4.13(D)(1)(b)1.b., Roof Eaves, awnings, and balconies may encroach into the setbacks a maximum of four feet.

The request is to exceed the maximum allowable awning setback encroachment of four feet to allow an encroachment of 9 feet and 7 inches, shown in blue at right. The awnings are proposed to cantilever to the property line. The existing building has a variable nonconforming setback, and the awning will encroach **9 feet 7 inches** at the furthest point. The awning will also encroach into the ROW at the corner which will require acceptance of a hold harmless agreement, although this is not part of this subject request. Similarly, the awning will be required to meet minimum vertical clearance requirements over the sidewalk.

Waiver 2: LDR Section 4.4.13(E)(2)(a)1., the curb zone shall be at least four feet wide, measured from the back of curb to the pedestrian clear zone. This zone accommodates street trees and public infrastructure needs such as utility poles, street lights, street signs, parking meters, etc. These elements shall be located as close to the curb as possible; signs and parking meters shall be consolidated as much as possible. Space for pedestrian use is also accommodated in the curb zone.

The request is to omit the required four-foot curb zone, providing a curb zone width of 0 feet for a portion of the streetscape where existing on-street parking spaces are located (shown in orange, above). While the minimum fifteen feet of total streetscape is still provided, the Applicant is proposing that the balance of the streetscape gained from the omission of the curb zone be redistributed to the pedestrian clear zone and remaining front setback area, with an intended use as an expanded outdoor dining area (subject to separate review and approval under the sidewalk café program).

The City Commission will take final action on the waivers after receiving a recommendation from PZB. Once the City Commission has taken final action on the waivers, the complete Level 1 Site Plan will be reviewed, with final action on the site plan under administrative purview.



Waiver Analysis

LDR Section 2.1.5(E)(5)(k)

The Planning and Zoning Board shall review and make recommendations to the City Commission with respect to the following items, pursuant to the procedures and standards of the Land Development Regulations (LDR): Relief to the requirements of the Central Business District prior to the consideration of an associated site plan application.

The requested waivers shall be presented before the Planning and Zoning Board (PZB) for recommendation to City Commission associated with a site plan application.

LDR Section 2.4.11(B)(5), Findings

Prior to granting a waiver, the granting body shall make findings that granting of a 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.
- e. **Within the CBD, the following additional findings apply:**
 - 1. 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.
 - 2. The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.
 - 3. The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan.
 - 4. The waiver shall not reduce the quality of civic open spaces provided under this code.

A detailed analysis of each waiver request is provided below, based on the required findings. Additionally, the Applicant’s justification for each waiver is included as an attachment for further review and consideration.

Waiver 1 – Awning Encroachment

LDR Section 4.4.13(D)(1)(b)1.b., Building Placement: *Roof Eaves, awnings, and balconies may encroach into the setbacks a maximum of four feet.*

The applicant is requesting to exceed the maximum awning setback encroachment of four feet along the north and west façade adjacent NE 1st Street and NE 2nd Avenue. The required setback for the property is a minimum of 10 feet and maximum of 15 feet. The existing structure is nonconforming with a setback that ranges from 8 feet to 8 feet and 1 inch for the north façade, and 9 feet and 6 inches to 9 feet and 7 inches for the west façade.

The proposed awning would cantilever over the outdoor dining seating and would extend to the property line, encroaching approximately 8 feet in depth for the north façade and 9 and a half feet in depth for the west façade. (Note: The outdoor dining requires review and approval through the sidewalk café permit process).

Due to the required 20’ by 20’ corner clip dedication at the intersection of NE 1st Street and NE 2nd Avenue, the existing structure will encroach slightly into the public ROW at the corner. A hold harmless is required for the existing structure and the proposed awning overhang within the public ROW.



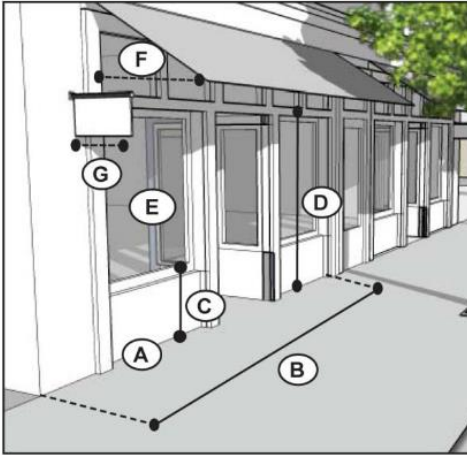


TABLE 10.10.13(I) DIMENSIONAL REQUIREMENTS FOR STOREFRONTS											
		REQUIRED		EXISTING				PROVIDED			
		MIN.	MAX.	NE 2nd AV.		NE 1st ST		NE 2nd AV.		NE 1st ST	
				MIN.	MAX.	MIN.	MAX.	MIN.	MAX.	MIN.	MAX.
A	BUILDING SETBACK	10'	15 Ft	9'-6"	9'-7"	8'-0"	8'-1"	9'-6"	9'-7"	8'-0"	8'-1"
B	STORE WIDTH	N/A	75 Ft	82.5 FT		124.5FT		82.5 FT		92.2FT	
C	STOREFRONT BASE	9 IN.	3 Ft	0 IN.	12 IN.	0 IN.	12 IN.	12 IN.		12 IN.	
D	GLAZING HEIGHT PLUS STOREFRONT BASE	8 FT	-	9'-0"		9'-0"		10'-8"		10'-8"	
E	REQUIRED OPENING	80%	-	74'-6"	90%	28'-0"	22%	66'-6"	81%	81'-7"	88%
				AVERAGE 56%				AVERAGE 84.5%			
F	AWNING PROJECTION	5 FT	-	5'-0"		5'-0"		5'-0"	9'-7"	5'-0"	8'-1"
G	PROJECTING SIGN	N/A	3 Ft	-		-		-		-	

Pursuant to **LDR Section 4.4.13(E)(4)(e)2.a., Storefront Elements**, awnings are required to project a minimum of five feet from the building facade; no maximum projection is specified, and the projection is only limited by the maximum encroachment. Providing large awnings along a storefront offers an opportunity for pedestrians to interact with the storefront and provides a more enjoyable and shaded experience walking along the sidewalk. The proposed awning is exclusively for the outdoor seating area. Although the awning is not providing coverage for pedestrians along the sidewalk, there is still an interaction with the pedestrians that allows them to view the dining experience, provides connection between the interior and exterior which activates the streetscape, and may possibly encourage passersby to enter the establishment.

It is important to note that the minimum required 6-foot pedestrian clear zone is provided along the full extent of the sidewalk and exceeds the minimum in certain areas. This maintains sufficient clearance for pedestrians to pass, while also allowing for the lively exterior environment that outdoor dining can provide. Likewise, the Applicant has proposed the addition of three shade trees along NE 1st Street which will significantly improve the quality of the streetscape compared to the existing conditions.

The Board should consider whether the proposed encroachment sufficiently meets the applicable criteria such that the extension of the awnings to the property line benefits the overall quality of the streetscape and does not diminish the pedestrian experience. It is relevant to note that the awning completely cantilevers and there are no structural support columns required. As such, any potential physical conflict with the encroachment may be sufficiently mitigated given that adequate vertical clearance will be provided.

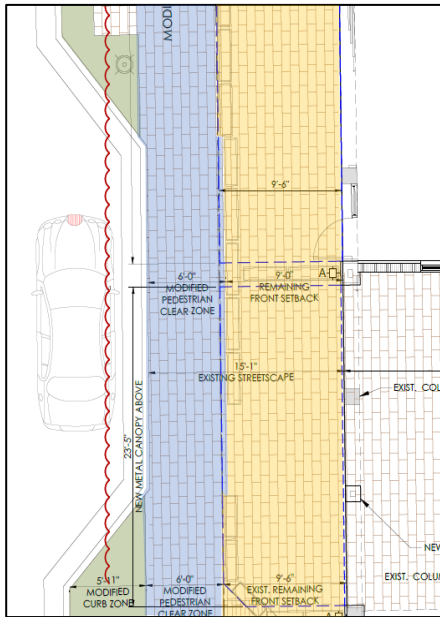
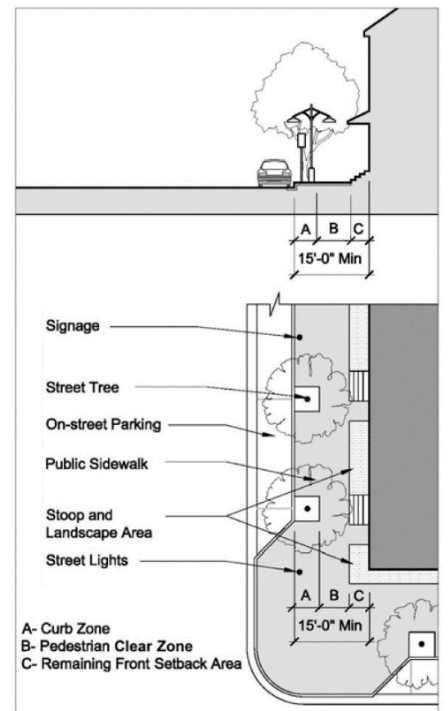
Waiver 2 – Streetscape Curb Zone

LDR Section 4.4.13(E)(2)(a)1., Curb Zone: *the curb zone shall be at least four feet wide, measured from the back of curb to the pedestrian clear zone. This zone accommodates street trees and public infrastructure needs such as utility poles, street lights, street signs, parking meters, etc. These elements shall be located as close to the curb as possible; signs and parking meters shall be consolidated as much as possible. Space for pedestrian use is also accommodated in the curb zone. 20 feet.*

The request is to omit the required four-foot curb zone, providing a curb zone width of 0 feet for a portion of the streetscape where existing on-street parking spaces are located, with the balance of the streetscape gained from the omission of the curb zone redistributed to the pedestrian clear zone and remaining front setback area used for expanded outdoor dining.

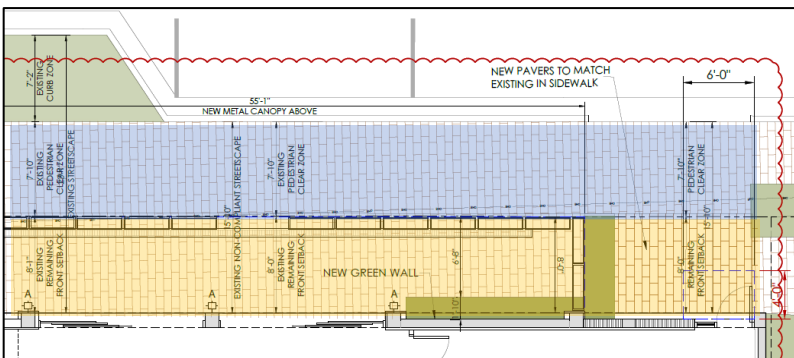
Pursuant to **LDR Section 4.4.13(C)(2)**, properties located within the CBD are held to a higher design standard to support a lively, highly active pedestrian environment that supports business and the historic character of the downtown. Primary Streets are intended to develop over time as superior pedestrian environments and, as such, are subject to stricter regulations regarding building placement and frontage. Both NE 1st Street and NE 2nd Avenue are Primary Streets and are held to this higher design standard.

Pursuant **LDR Section 4.4.13(E)(2), Streetscapes**, front setback areas, which include side setback areas facing streets, shall be detailed to augment public right-of-way design, to establish shaded, continuous routes for pedestrians, and to organize landscaping and other elements to ensure a superior public realm. The proposed restaurant abuts a ROW on the north and west; therefore, a streetscape design that provides a superior pedestrian experience and incorporates the elements detailed in **LDR Section 4.4.13(E)(2)** is required for each side. The required streetscape width includes a curb zone (4 feet), a pedestrian clear zone (6 feet) and the remaining front setback area (5 feet), equating to a total minimum 15-foot streetscape design.



The proposed streetscape meets the minimum dimensional requirements for most of the subject site, providing continuous sidewalk, street trees and lighting. However, the applicant is requesting to reduce the curb zone width from the required remaining 4 feet to 0 feet adjacent to on-street parking spaces. The curb zone is measured from the back of curb to the pedestrian clear zone and typically accommodates street trees and public infrastructure needs such as utility poles, streetlights, street signs, parking meters, etc. The pedestrian clear zone, depicted in blue, and the remaining front setback, depicted in yellow, complies with the required dimensions along the areas seeking curb zone relief; west façade proposes a 6-foot pedestrian clear zone and 9-foot remaining front setback, and north façade proposes a 7-foot 10-inches pedestrian clear zone and 8-foot remaining front setback. The overall streetscape dimensions comply with the required 15 feet throughout the site. Likewise, the Applicant has proposed the addition of three shade trees where none currently exist along NE 1st Street within the portion of the streetscape where the curb zone is provided. This is a clear improvement in quality over the existing

conditions.



In consideration of the criteria findings listed previously, it is important to clarify that the Applicant is essentially proposing to reallocate the four feet that would be required for the curb zone and is instead distributing the four feet to accommodate an expanded dining area, subject to a future sidewalk café permit, and an expanded pedestrian clear zone along the North sidewalk. The Board should consider if this is an acceptable trade-off that improves the quality of the pedestrian experience (that should be available to all individuals downtown), or whether the omission of the curb zone for a portion of the streetscape diminishes public

facilities and results in an inferior pedestrian experience. This depends on whether the activity and liveliness generated by expanded private outdoor dining is seen to significantly benefit the pedestrian experience along downtown primary streets, as much as the public amenity of a publicly available streetscape. The Board shall also consider if this is a special privilege or if this relief would be granted in similar circumstances.

Review by Others

The **Downtown Development Authority (DDA)** reviewed and recommended approval, 5-0, for the full Level 1 Site Plan Application at the April 17, 2025, meeting. The DDA Memo is attached and provides additional information.

The **City Commission** will review the subject waiver requests at an upcoming meeting.

Options for Board Action

Streetscape Width Waiver

- A. Move to recommend **approval** to the City Commission of the waiver request for **American Social** (2025-090), located at 220 NE 1st Avenue, to reduce the streetscape curb zone dimension from the required 4 feet to 0 feet, by finding that the request meets the criteria set forth in the Land Development Regulations.
- B. Move to recommend **denial** to the City Commission of the waiver request for **American Social** (2025-090), located at 220 NE 1st Avenue, to reduce the streetscape curb zone dimension from the required 4 feet to 0 feet, by finding that the request does not meet the criteria set forth in the Land Development Regulations.
- C. Move to **continue** with direction.

Front Setback Waiver

- A. Move to recommend **approval** to the City Commission of the waiver request for **American Social** (2025-090), located at 220 NE 1st Avenue, to exceed the maximum awning setback encroachment from 4 feet to maximum 9 feet and 7 inches (property line), by finding that the request meets the criteria set forth in the Land Development Regulations and is consistent with the Comprehensive Plan.
- B. Move to recommend **denial** to the City Commission of the waiver request for **American Social** (2025-090), located at 220 NE 1st Avenue, to exceed the maximum awning setback encroachment from 4 feet to maximum 9 feet and 7 inches (property line), by finding that the request does not meet the criteria set forth in the Land Development Regulations and is inconsistent with the Comprehensive Plan..
- C. Move to **continue** with direction.

Public and Courtesy Notices

- Public Notices are not required for the Planning and Zoning meeting.
- Public Notices are required for the City Commission meeting.