

**Waiver Justification**  
**200 NE 1<sup>st</sup> Street**

Delray Trio LLC (“Petitioner”) is the owner of the +/- 2.5 acre site that consists of Lots 1-3, Onnen Subdivision, which is within the original Block 84, Town of Delray, and which is generally located on the southeast corner of NE 2<sup>nd</sup> Avenue and NE 1<sup>st</sup> Street (“Property”) in the City of Delray Beach (“City”). The Property was formerly known as Ocean City Lumber Company, and contains five (5) commercial buildings with a total leasable area of 47,306 square feet. The Property has a land use designation of Commercial Core and is zoned Central Business District (“CBD”). More specifically, it is located within the Pineapple Grove Main Street Area. The Property is currently developed with +/- 47,206 square feet of buildings occupied with a variety of commercial, restaurant and personal service uses, including a +/- 10,000 square foot gym. At this time, Petitioner is seeking to make façade modifications in order to provide for a restaurant use within the existing +/- 9,960 square foot building (Building 100) located at the northwest corner of the Property (“Site Plan”). As part of the Site Plan, Petitioner is proposing to significantly modify the appearance of the Property in order to create a more vibrant and inviting restaurant space that will help activate this prominent intersection with the downtown. More specifically, Petitioner is proposing to modify the façade of the existing structure in the Main Street Vernacular style with a simple structure consisting of large doors that will transform the appearance of this old brick office building and open it up to a sidewalk café with attractive awnings (“Project”). The architectural style will flow seamlessly with the neighboring PurLife fitness center building to the south and activate this prominent corner of the Pineapple Grove district that is currently dark due to the vacant office space. Rather, the proposed restaurant will create life at this prominent intersection and help transition pedestrian activity from Atlantic Avenue to the Pineapple Grove area.

In order to create the necessary vibrancy and support the restaurant use in this location, the outdoor seating and sidewalk café component is crucial. The Project has been designed in such a way as to locate the sidewalk café area next to the building, rather than in green spaces closer to the adjacent streets. However, pursuant to the City’s Land Development Regulation (“LDR”) Section 4.4.13(E)(2), *Streetscapes*, the Project must provide for a minimum four foot (4’) curb zone, six foot (6’) pedestrian clear zone and five foot (5’) remaining setback. This measurement is taken from the back of curb adjacent to the on-street parking spaces. The curb zone is intended to provide for necessary landscaping, utilities and signage to ensure it stays clear of the pedestrian path. In this instance, the Property is somewhat unique in that there are expansive green areas larger than six feet (6’) and seven feet (7’), which provide ample areas for the necessary signage, landscaping and utilities. As a result, the Project is proposing to eliminate the curb zone requirement (as measured from the back of curb of the on-street parking spaces) and provide for a six foot (6’) pedestrian path along NE 2<sup>nd</sup> Avenue that lines up with the existing brick and concrete path that continues along this roadway. Similarly, Petitioner proposes to provide a seven foot ten inch (7’10”) pedestrian path along NE 1<sup>st</sup> Street that continue in line with the existing pathway traveling east. Strict adherence to the streetscape requirements, which came into effect long after the Property was initially developed, would create fairly significant jog in the pedestrian pathway, affect the outdoor seating areas that are critical to the success of such a business in this portion of the City, and force the sidewalk café to be placed immediately adjacent to the streets, which is less desirable for both customers and pedestrians

that are traveling between the building and outdoor seating areas. Rather, this compact design allows for a better customer experience, restaurant operations, pedestrian travel, and still allows for the necessary placement of landscaping and other requirements within the existing green spaces. As a result, Petitioner is respectfully requesting the following waiver:

*Waiver from LDR Section 4.4.13(E)(2), Streetscapes, to allow for no curb zone where the landscaping, utilities and signage can be accommodated within existing green spaces adjacent to the on-street parking spaces ("Waiver")*

In support of the Waiver, the Applicant will demonstrate compliance with LDR Section 2.4.11. Pursuant to LDR Section 2.4.11, the Applicant will demonstrate that the waiver a) will not adversely affect the neighboring area; b) will not significantly diminish the provision of public facilities; c) will not create an unsafe situation; d) will 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; and e) within the CBD, that the waiver 1. will not result in an inferior pedestrian experience along a primary street, such as exposing parking garages or large expanses of blank walls; 2. will not allow the creation of significant incompatibilities with nearby buildings or uses of land; 3. will not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan; and 4. will not reduce the quality of civic open spaces provided under the LDR.

Section 2.4.11 Waiver Criteria:

*a) The waiver will not adversely affect the neighboring area.*

The Waiver will not adversely affect the neighboring area. As noted above, LDR Section 4.4.13(E)(2), *Streetscapes*, requires a minimum four foot (4') curb zone, six foot (6') pedestrian clear zone and five foot (5') remaining setback. This measurement is taken from the back of curb adjacent to the on-street parking spaces. The curb zone is intended to provide for necessary landscaping, utilities and signage to ensure it stays clear of the pedestrian path. In this instance, the Property is somewhat unique in that there are expansive green areas larger than six feet (6') and seven feet (7'), which provide ample areas for the necessary signage, landscaping and utilities. As a result, the Project is proposing to eliminate the curb zone requirement (as measured from the back of curb of the on-street parking spaces) and provide for a six foot (6') pedestrian path along NE 2<sup>nd</sup> Avenue that lines up with the existing brick and concrete path that continues along this roadway. Similarly, Petitioner proposes to provide a seven foot ten inch (7'10") pedestrian path along NE 1<sup>st</sup> Street that continue in line with the existing pathway traveling east. Strict adherence to the streetscape requirements negatively affect the outdoor seating areas that are critical to the success of such a business in this portion of the City, and force the sidewalk café to be placed immediately adjacent to the streets. This is both less desirable from a customer and business standpoint, but also for pedestrians that would be forced to travel between the building and outdoor seating areas, and avoid intersecting with servers delivering food and beverages to tables. Rather, this compact design allows for a better customer experience, restaurant operations, pedestrian travel, and still allows for the necessary placement of landscaping and other requirements within the existing green spaces. As the placement of the required landscaping, utilities and signage can still be placed in the existing green spaces adjacent to NE 1<sup>st</sup> Street and NE 2<sup>nd</sup> Avenue, and the proposed design leads to a more seamless path for pedestrian travel, the Waiver will not adversely affect the neighboring area.

*b) The waiver will not significantly diminish the provision of public facilities.*

The Applicant's request for a Waiver will not impact the provision of public facilities. The Waiver request is unrelated to the provision of public facilities. Further, necessary lighting, signage, and utilities have been accommodated through the current design to serve the Project and neighboring areas. As a result, the Waiver will not diminish the provision of public facilities.

*c) The waiver will not create an unsafe situation.*

The Applicant's request for a Waiver will not create an unsafe situation. As noted above, LDR Section 4.4.13(E)(2), *Streetscapes*, requires a minimum four foot (4') curb zone, six foot (6') pedestrian clear zone and five foot (5') remaining setback. This measurement is taken from the back of curb adjacent to the on-street parking spaces. The curb zone is intended to provide for necessary landscaping, utilities and signage to ensure it stays clear of the pedestrian path. In this instance, the Property is somewhat unique in that there are expansive green areas larger than six feet (6') and seven feet (7'), which provide ample areas for the necessary signage, landscaping and utilities. As a result, the Project is proposing to eliminate the curb zone requirement (as measured from the back of curb of the on-street parking spaces) and provide for a six foot (6') pedestrian path along NE 2<sup>nd</sup> Avenue that lines up with the existing brick and concrete path that continues along this roadway. Similarly, Petitioner proposes to provide a seven foot ten inch (7'10") pedestrian path along NE 1<sup>st</sup> Street that continue in line with the existing pathway traveling east. Strict adherence to the streetscape requirements negatively affect the outdoor seating areas that are critical to the success of such a business in this portion of the City, and force the sidewalk café to be placed immediately adjacent to the streets. This is both less desirable from a customer and business standpoint, but also for pedestrians that would be forced to travel between the building and outdoor seating areas, and avoid intersecting with servers delivering food and beverages to tables. Rather, this compact design allows for a better customer experience, restaurant operations, pedestrian travel, and still allows for the necessary placement of landscaping and other requirements within the existing green spaces.

In addition, the proposed design will result in a safer situation. If the Waiver is not granted and the Project is forced to comply with the curb zone requirement, much of the outdoor seating/sidewalk café areas would also be shifted to be located adjacent to the existing streets, including adjacent to on-street parking areas. Despite slower speeds that generally occur in the downtown area, accidents still occur and drivers make mistakes. Placing the sidewalk café along the street, rather than adjacent to the building, creates an inherent risk to customers dining at the restaurant where it could otherwise be avoided. As a result, the Waiver will not create an unsafe situation.

*d) The waiver will 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.*

Approval of the Waiver does not result in the grant of a special privilege. As noted above, LDR Section 4.4.13(E)(2), *Streetscapes*, requires a minimum four foot (4') curb zone, six foot (6') pedestrian clear zone

and five foot (5') remaining setback. This measurement is taken from the back of curb adjacent to the on-street parking spaces. In this instance, the Property is somewhat unique in that there are expansive green areas larger than six feet (6') and seven feet (7'), which provide ample areas for the necessary signage, landscaping and utilities. Petitioner is also proposing to revitalize an existing structure, and is not redeveloping the entirety of the site. A new development would have more flexibility in the positioning of the structure to comply with all requirements of the LDRs, whereas the Project must work within the confines of the existing development plan. Despite the existing site constraints, the Project provides for the necessary landscaping, pedestrian pathways and other design elements in conformance with the LDRs. Further, many other restaurant uses along NE 1<sup>st</sup> Avenue have the outdoor seating areas positioned in a similar manner, immediately adjacent to the building, specifically along the block immediately to the north. However, those parcels do not provide for any green space or planting of required street trees, where the Project is still able to accommodate the required street trees within existing green areas greater than six feet (6') in width. As such, the Waiver will not result in the grant of a special privilege.

*e) Within the CBD, the following additional findings apply:*

*1. The waiver will not result in an inferior pedestrian experience along a Primary Street, such as exposing parking garages or large expanses of blank walls.*

The Waiver will not result in an inferior pedestrian experience along a Primary Street. Rather, the Project will enhance the pedestrian experience from what exists today and result in better design for pedestrians and customer alike. As discussed above, Property is somewhat unique in that there are expansive green areas larger than six feet (6') and seven feet (7'), which provide ample areas for the necessary signage, landscaping and utilities. While the Project proposes to eliminate the curb zone requirement (as measured from the back of curb of the on-street parking spaces), there are six foot (6') and greater existing green spaces that can accommodate the necessary curb zone requirements including street trees and signage. The Project further provides for a minimum six foot (6') pedestrian path along NE 2<sup>nd</sup> Avenue that lines up with the existing brick and concrete path that continues along this roadway. Similarly, Petitioner proposes to provide a minimum seven foot ten inch (7'10") pedestrian path along NE 1<sup>st</sup> Street that continue in line with the existing pathway traveling east. The alternate design would force the sidewalk café to be placed immediately adjacent to the streets and create a jog in the pedestrian pathway from the balance of these streets. It would also create a less desirable situation for pedestrians who would have to walk between the building rows of seating areas and avoid intersecting with servers delivering food and beverages to tables. Rather, this compact design allows for a better customer experience, and pedestrian travel, and still allows for the necessary placement of landscaping and other requirements within the existing green spaces.

Further, the Project is proposing to revitalize a dark corner that provides the entrance to the Pineapple Grove community. Currently, with the parking garage to the west, office uses on the ground level to the north and this vacant and dated office space, this prominent intersection is lacking vitality, especially in the evening hours. Petitioner is proposing to revitalize this dated and lifeless building structure in the Main Street Vernacular style with a simple structure consisting of large doors that will transform the appearance of this old brick office building and open it up to a sidewalk café with attractive awnings. The architectural style will flow seamlessly with the neighboring PurLife fitness center building to the south and activate this prominent corner of the Pineapple Grove district that is currently dark due to the vacant

office space. As a result, the proposed restaurant will create life at this prominent intersection and help transition pedestrian activity from Atlantic Avenue to the Pineapple Grove area and enhance the pedestrian experience from what exists today.

*2. The waiver will not allow the creation of significant incompatibilities with nearby buildings or uses of land.*

The requested Waiver will not result in incompatibilities with nearby buildings or uses of land. The Project is located adjacent to the PurLife Fitness to the south, ground floor office and upper floor residential to the north, and the City's parking garage to the west. With this vacant structure, there is currently a dead space in terms of the vibrancy of the entranceway into the Pineapple Grove community. While Petitioner is seeking to deviate from the required pedestrian streetscape requirements, the Waiver will provide for a streetscape design that is in line with the existing NE 1<sup>st</sup> Avenue and SE 2<sup>nd</sup> Street streetscape designs with a pedestrian pathway that continues seamlessly along these roadways. The architectural style will flow effortlessly with the neighboring PurLife fitness center building to the south and activate this prominent corner of the Pineapple Grove district that is currently dark due to the vacant office space. As a result, the proposed restaurant will create life at this prominent intersection and help transition pedestrian activity from Atlantic Avenue to the Pineapple Grove area and enhance the pedestrian experience from what exists today. The Project is also in line with many other restaurant uses along NE 1<sup>st</sup> Avenue have the outdoor seating areas positioned in a similar manner, immediately adjacent to the building, specifically along the block immediately to the north. However, those parcels do not provide for any green space or planting of required street trees, where the Project is still able to accommodate the required street trees within existing green areas greater than six feet (6') in width. The alternate design would create more incompatibilities, by forcing the sidewalk café to be placed immediately adjacent to the streets and create a jog in the pedestrian pathway from the balance of these streets. It would also create a less desirable situation for pedestrians who would have to walk between the building rows of seating areas and avoid intersecting with servers delivering food and beverages to tables. Rather, this compact design is more compatible with nearby buildings and uses.

*3. The waiver will not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/ pedestrian master plan*

The requested Waiver will not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle or pedestrian master plan. The Project continues to provides for a minimum six foot (6') pedestrian path along NE 2<sup>nd</sup> Avenue that lines up with the existing brick and concrete path that continues along this roadway and a minimum seven foot ten inch (7'10") pedestrian path along NE 1<sup>st</sup> Street that continue in line with the existing pathway traveling east. The alternate design would force the sidewalk café to be placed immediately adjacent to the streets and create a jog in the pedestrian pathway from the balance of these streets. It would also create a less desirable situation for pedestrians who would have to walk between the building rows of seating areas and avoid intersecting with servers delivering food and beverages to tables. As the Project still provides the minimum six foot (6') pedestrian pathway and street trees, the Waiver will not impact the street or sidewalk network or negatively impact any adopted bicycle / pedestrian master plan.

*4. The waiver will not reduce the quality of civic open spaces provided under this code.*

The requested Waiver does not negatively impact the quality of civic open spaces. The Property was previously approved with a +/- 4,355 square foot civic space along NE 2<sup>nd</sup> Avenue and between buildings 45 and 114, as identified on the site plan (the PurLife fitness center and Raman Lab Eatery buildings). The Project will have no impacts to this civic open space plaza.