



**DUNAY  
MISKEL  
BACKMAN** LLP

Gary Dunay  
Bonnie Miskel  
Scott Backman  
Eric Coffman

Hope Calhoun  
Dwayne Dickerson  
Ele Zachariades  
Matthew H. Scott

Christina Bilenki  
Lauren G. Odom  
Nicole Jaeger  
Rachael Bond Palmer

**SE 3<sup>rd</sup> Avenue – Pierre Delray TWO LLC**

**Rezoning Justification Statement**

Pierre Delray Two LLC (“Petitioner”) is the owner of the +/- .0123 acre property generally located on the west side of SE 3<sup>rd</sup> Avenue, approximately two hundred (200) feet south of Atlantic Avenue, and the ground lessor of the +/- 0.1109 acre parcel immediately to its south and identified by Palm Beach County Property Appraiser Parcel Control Number (“PCN”) 12-43-46-16-01-085-0050 (collectively referred to as the “Property”) in the City of Delray Beach (“City”). The Property is designated as Community Facilities (“CF”) on the City’s Future Land Use Map (“FLUM”) and is zoned Community Facilities (“CF”). The Property is currently developed with a portion of a surface parking lot. Petitioner is proposing to incorporate the Property with an adjacent parcel in order to facilitate its development. More specifically, Petitioner is also the owner of the +/- 0.4245 acre parcel located at the southwest corner of Atlantic Avenue and SE 3<sup>rd</sup> Avenue (“North Parcel”), immediately north of the Property. On May 21, 2019, the City Commission approved a similar FLUM amendment from CF to CC and rezoning from CF to CBD for the North Parcel. On November 19, 2020, the City’s Site Plan Review and Appearance Board (“SPRAB”) approved a Class V Site Plan Application, landscape plans and architectural elevations for the development of a 49,282 square foot, three-story office, restaurant and retail building with three (3) arcades, and internal parking garage and roof top parking area (“Project”). Petitioner is proposing to incorporate the Property into the Project in order to create a better development plan. In order to develop the Project, Petitioner is requesting a FLUM amendment from CF to the Commercial Core (“CC”) designation, and a rezoning from CF to Central Business District (“CBD”).

At this time, the Property is the only area in the immediate vicinity that maintains the CF FLUM and zoning designations. The Property is surrounded by the CC FLUM designation to the north, south, east and west. Similarly, the Property is surrounded by the CBD zoning designation to the north, south, east and west. The 0.1109 acre Property is undevelopable on its own for CF uses, as uses permitted under the CF designation require larger land areas (governmental facilities, community centers, recreation centers, services, religious institutions, clubs and lodges, assisted living facilities, etc.) and is better suited for the CBD zoning designation, consistent with the surrounding area, so that it may be incorporated with an adjacent parcel for future development.

Pursuant to Section 2.4.5(D) of the City’s Land Development Regulations (“LDRs”), the City Commission, by ordinance, after review and recommendation for approval by the Planning and Zoning Board may amend the Official Zoning Map. Valid reasons for approving a change in zoning include: that the zoning had previously been changed, or was originally established, in error; that there has been a change in circumstances which makes the current zoning inappropriate; that the requested zoning is of similar intensity as allowed under the FLUM and that it is more appropriate for the Property based upon circumstances particular to the site and/or neighborhood. The last two (2) criteria apply to the subject Property as more particular demonstrated below.

There has been a change in circumstances which makes the current zoning inappropriate. More specifically, prior to 1990, the Property was zoned CBD. It was rezoned to CF with the citywide rezoning in October 1990. Further, in 2002, the City adopted the Downtown Master Plan, which references the possibility of passenger rail services along the FEC Railway and that having a built station along the rail line will have the advantage of securing a rail stop, the subject parcel was identified as only part of a much larger site that could accommodate a future multi-modal transit station with a train station, bus station, local transit terminal, as well as additional parking for the downtown area. However, on October 16, 2018, the City Commission approved the Tri-Rail Coastal Link Transit-Oriented Development Master Plan, which identified the location of the Delray Beach Tri-Rail Coastal Link station on the north side of East Atlantic Avenue adjacent to the FEC tracks. As such, the Property is no longer under consideration for a multi-modal transit station. Further, the remainder of the parcels under consideration for such a transit station has already been amended to the CBD zoning designation. The Property's central location in the downtown area makes the proposed zoning designation more appropriate as it is consistent with the surrounding CBD zoned parcels.

The purpose and intent of the CBD zoning district is to preserve and protect the cultural and historic aspects of the downtown and simultaneously provide for the stimulation and enhancement of the vitality and economic growth of this special area. The CBD is generally applied to the land areas designated as CC on the FLUM. The Property is also located in the Central Core. The LDRs state that the Central Code sub-district regulations are intended to result in development that preserves the downtown's historic moderate scale, while promoting a balanced mix of uses that will help the area evolve into a traditional, self-sufficient downtown. The requested zoning is more appropriate for the Property given its location within the center of the CBD Central Code sub-district. The rezoning will also allow for development that meets the purpose and intent of the CBD with a mix of uses that will promote a self-sufficient downtown.

The requested zoning is of similar intensity as allowed under the FLUM and that it is more appropriate for the Property based upon circumstances particular to the site and/or neighborhood. Further, the requested zoning is of similar intensity as allowed under the FLUM and that it is more appropriate for the Property based upon circumstances particular to the site and/or neighborhood. As noted above, Petitioner is also requesting a FLUM amendment to the CC designation. Once the FLUM amendment is approved, the requested zoning will be of a similar intensity as allowed under the FLUM and the proposed CBD zoning designation is more appropriate for the Property. Further, Table NDC - 1 of the Neighborhoods, Districts and Corridors Element of the Always Delray Comprehensive Plan identifies the zoning districts that are consistent with the FLUM designations. Pursuant to Table NDC - 1, the proposed CC FLUM designation and the proposed CBD zoning district are consistent. The CBD zoning designation also allows for mixed-use (office/retail) developments, consistent with the existing and proposed development within the downtown.

Pursuant to Section 3.1.1 of the City's LDRs, prior to approval of Land Use applications, certain findings must be made in a form which is part of the official record... These findings related to the FLUM, concurrency, Comprehensive Plan Consistency, and Compliance with the LDRs. Pursuant to LDR Section 3.1.1(A), Future Land Use Map, the resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Future Land Use Map. The proposed rezoning is being processed in conjunction with a FLUM amendment request from CF to CC. Table NDC - 1 of the Neighborhoods, Districts and Corridors Element of the Always Delray Comprehensive Plan identifies the zoning districts

that are consistent with the FLUM designations. Pursuant to Table NDC – 1, the proposed CC FLUM designation and the proposed CBD zoning district are consistent. The CBD zoning designation also allows for mixed-use (office/retail) developments.

Pursuant to Policy NDC 3.4.1 of the Always Delray Comprehensive Plan, the City shall amend the land use map only when a demonstrated need for the requested land use is based on circumstances that are verified and supported by data and analysis, such as shifts in demographic trends, changes in availability of land, changes in the existing character and land use map designations of the surrounding area, fulfillment of a comprehensive plan objective or policy, annexation into the municipal boundaries, or similar circumstances. In this instance, changes in the existing character and land use map designations of the surrounding area required the FLUM amendment and rezoning for the Property. More specifically, with the approval of the FLUM amendment and rezoning of the North Parcel to the CC designation on May 21, 2019, the 0.11 acre Property was left as the sole CF designated parcel in the immediate area. The adjacent parcels to the north, south, east and west all share the CBD designation. The Property is further located within the center of the downtown area, adjacent to the primary commercial street within the downtown. Commercial uses are consistent with the vision for this area and align with the approved development for the parcels to the north and south. The use as a surface parking area does not add to the charm of the downtown area. Incorporation of the Property into a larger development plan with retail on the ground floor, office uses in the upper stories and a parking garage furthers the revitalization of the downtown and better expands the commercial fabric of this area. The development will also better accommodate parking within a garage, eliminating surface parking areas from the downtown streetscape.

In addition to the above, Policy NDC 3.4.1. requires the following findings: that the requested land use designation is consistent with the goals, objectives and policies of the most recently adopted Comprehensive Plan; that development at the highest intensity possible under the requested land use designation meets the adopted concurrency standards; that the requested land use designation is compatible with the land use designations of the surrounding area; and that the requested land use designations are compliant with the provisions and requirements of the LDRs. Petitioner has demonstrated that the proposed FLUM amendment complies with these criteria as detailed below:

*The requested land use designation is consistent with the goals, objectives and policies of the most recently adopted Comprehensive Plan.*

The FLUM amendment to the CC land use designation is consistent with the goals, objectives and policies of the Always Delray Comprehensive Plan as follows:

- Policy NDC 1.1.11. *Use the implementing zoning district identified in Table NDC-1 to provide appropriate development and improvements that further the adopted strategies of and are compatible with the assigned land use designation.* Petitioner is proposing a rezoning to the CBD zoning district, consistent with the designation identified for the CC land use designation in Table NDC-1.
- Policy NDC 1.1.14. *Continue to require that property be developed or redeveloped or accommodated, in a manner so that the use, intensity and density are appropriate in terms of the soil, topographic, and other applicable physical considerations; encourage affordable goods and services; are complementary to and compatible with adjacent land uses; and fulfill remaining land*

*use need.* The proposed rezoning will be compatible with adjacent land uses and are appropriate in terms of the physical considerations of the Property.

- Policy NDC 1.3.5 *Use the Commercial Core land use designation to stimulate the vitality and economic growth of the City while simultaneously enhancing and preserving the cultural and historic downtown area.* Petitioner is proposing a rezoning to the CBD zoning district that will better foster desired economic benefits and provide for a more optimal utilization of the Property.
- Policy NDC 1.3.7 *Implement the Commercial Core land use designation using form-based code to provide for adaptive-reuse, development and redevelopment that preserves the downtown's historic moderate scale, while promoting a balanced mix of uses that will help the area continue to evolve into a traditional, self-sufficient downtown. This designation is applied to the community's downtown area. It includes a substantial portion of the TCEA. The Commercial Core designation accommodates a variety of uses including commercial and office development.* The Property is located within the downtown area and TCEA. The rezoning proposes to designate the Property as CBD consistent with this policy.
- Objective NDC 2.2 *Protect and enhance the "Village by the Sea" character of the downtown and neighborhoods located east of I-95.* The location of the Property is in the center of the downtown area and its utilization as a surface parking area does not contribute to the character of the downtown. Incorporation of the Property into an adjacent development and consistent with the surrounding parcels will better contribute to the "Village by the Sea" character.
- Policy NDC 2.2.7 *Within the CC, locate and designate off-street parking areas in a manner that does not detract from the character by providing standards in the LDRs, such as locating parking to the side or rear of buildings, limiting size of lots, and landscaping and façade requirements. Large fields of parking between building facades and streets are generally not desirable.* The rezoning will support the redevelopment of a surface parking lot into a commercial project that better enhances the character of the CC district.
- Policy NDC 2.7.13 *Evaluate and update the Downtown Delray Beach Master plan to assess the plan's vision for the growth and unification of the downtown area while maintaining the "Village by the Sea" character; identify new developments and improvements that have occurred since the Plans' adoption in 2002.* The Downtown Master Plan references the possibility of passenger rail services along the FEC Railway and that having a built station along the rail line will have the advantage of securing a rail stop, the subject parcel was identified as only part of a much larger site that could accommodate a future multi-modal transit station with a train station, bus station, local transit terminal, as well as additional parking for the downtown area. However, on October 16, 2018, the City Commission approved the Tri-Rail Coastal Link Transit-Oriented Development Master Plan, which identified the location of the Delray Beach Tri-Rail Coastal Link station on the north side of East Atlantic Avenue adjacent to the FEC tracks. As such, the Property is no longer under consideration for a multi-modal transit station. Further, the remainder of the parcels under consideration for such a transit station has already been rezoned to the CBD designation. The Property's central location in the downtown area makes the proposed CBD designation more appropriate as it is consistent with the surrounding CBD parcels.

*Development at the highest intensity possible under the requested land use designation meets the adopted concurrency standards.*

As part of the FLUM and rezoning applications, the City reviews the proposed development at the highest intensity possible with respect to traffic, water and sewer, drainage, parks and recreation, solid waste and school capacity determination. Based on the maximum Floor Area Ratio permitted of 3.0, development of the 0.1109 acre site would allow a maximum of 14,492 square feet of commercial development. The City maintains sufficient capacity to meet the water and sewer service demands that would result for the CC FLUM designation and CBD zoning designation for the Property. Further, there are no anticipated issues identified with drainage for the Property. As no new residential units are proposed, a concurrency determination for parks and recreation and school capacity are not required. In addition, the generation of solid waste is based on specific land use and building area, requiring such a determination to be made once specific development plans are submitted.

Lastly, Petitioner submitted a traffic statement detailing the traffic anticipated as a result of the FLUM amendment. The Property will be accessed on SE 3<sup>rd</sup> Avenue. Pursuant to the traffic study, 634 net new daily trips may be created through the FLUM amendment and rezoning, resulting in a decrease of twenty three (23) total AM Peak Hour Trips and 39 total new PM Peak Hour Trips. Based on the analysis conducted for both the short-term and long-term planning horizons, the adopted level of service standards is anticipated to be met on all relevant roadways and none of the surrounding links are significantly impacted by project traffic. Therefore, the FLUM amendment meets the applicable criteria of the City's Always Delray Comprehensive Plan. Further, the Property is located within the Traffic Concurrency Area of Exception ("TCEA") and is therefore exempt from traffic concurrency requirements. Based on the above, positive findings can be made with regards to concurrency for all services and facilities.

*The requested land use designation is compatible with the land use designations of the surrounding area.*

As previously noted, the Property is surrounded by parcels to the north, south, east and west that share the CBD designation. The rezoning to the CBD district is therefore consistent and compatible with the land use designations of the surrounding area. Further, the redevelopment of the Property consistent with the CBD zoning district will foster desired economic benefits and provide for a more optimal utilization of the Property, which is located within the City's downtown area and in close proximity to Atlantic Avenue, the main commercial street within the downtown.

*The requested land use designations are compliant with the provisions and requirements of the LDRs.*

The development of the Property will be required to meet the criteria and development standards set forth in the City's LDRs. Such a review for compliance will be completed by the City during review of a site plan application for the Property.