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**302 East Atlantic Avenue, Delray Beach, Florida**  
**Waiver Request and Justification**

Pierre Delray One, LLC (“Applicant”), is the owner of a parcel located on the southeast corner of Atlantic Avenue and SE 3rd Avenue (“Property”) within the City of Delray Beach (“City”). The Property has a future land use map (“FLUM”) designation of Commercial Core (“CC”) and is zoned Central Business District (“CBD”). The Property is further located within the Central Core subdistrict of the CBD. The Property currently consists of a two-story building with a first floor building façade that is recessed and located approximately sixteen feet, three inches (16’-3”) from the Property line, an arcade along the frontage, and a second floor extending beyond the first floor northerly façade to the limits of the arcade structure attached to the front façade of the building (“Building”). Structural columns are located within the arcade supporting the second story of the Building. The Building was approved in accordance with a prior set of regulations, and certain elements of the Building are now considered legally nonconforming. In an effort to make the Property more conforming with the current regulations, as well as to revitalize the Property with a vibrant commercial retail development, the Applicant proposes to renovate the Building, which includes (among other things) enclosing a majority of the area within the arcade and creating a new façade (“Project”).

The Project proposes to meet the City’s Land Development Regulations (“LDR”) to the greatest extent possible. However, due to a change in the LDR’s and existing constraints associated with the size and narrowness of the Property, the Applicant is requesting a waiver from the LDR related to the storefront building setback. Pursuant to Section 4.4.13(E)(4)(e) of the LDR, a minimum ten (10) foot building setback is required to meet the storefront building setback requirements for storefronts within the CBD. The storefront building setback is measured from the face of the 1<sup>st</sup> floor of the Building to the property line. In the case of the Project, a storefront setback of seven feet, ten inches (7’-10”) is being provided at the closest point to the northerly property line; however, the proposed storefront setback is further away from the property line than the existing columns and northern façade of the upper story of the Building.

Atlantic Avenue is fully developed with pedestrian zones and setbacks consistent throughout the block from SE 4<sup>th</sup> Avenue to SE 3<sup>rd</sup> Avenue (“Corridor”) which were developed in some instances long before the LDR change and in others more recently but still prior to current LDR. The existing storefront setback for the Property is different from the balance of properties along the Corridor to the extent that it is set back much further from Atlantic Avenue, leaving its frontage less connected to neighboring pedestrian zones and Atlantic Avenue. Unlike the neighboring properties with storefronts much closer to Atlantic all with lesser storefront building setbacks, the Property creates a break in the line of stores creating a cavernous feel which results in a dead-end condition (see Exhibit “A”) for the eastern portion of its store frontage. The easterly portion of the Building’s frontage is disconnected from the neighboring retail building to the east (Urban Outfitters building) pedestrian zones, thereby impeding the flow of traffic, leaving a darker open space not activated by the continuous flow of pedestrian traffic, and making it a prime location for the homeless and a potential hiding spot for criminals targeting pedestrians. As such, in order to revitalize the Property and improve pedestrian flow, Applicant is requesting the following waiver:

*Waiver from LDR Section 4.4.13(E)(4)(e) to allow a minimum seven-foot, ten-inch (7'-10") storefront building setback in lieu of the ten-foot (10') setback required ("Waiver").*

In support of the Waiver, the Applicant will demonstrate compliance with LDR Section 2.4.7(B)(5) and LDR Section 4.4.13(K)(8)(b)(2) of the City Code. Pursuant to LDR Section 2.4.7(B)(5), 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; and 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. Further, pursuant to LDR Section 4.4.13(K)(8)(b)2., the Applicant will demonstrate that the waiver a) will not result in an inferior pedestrian experience along a primary street, such as exposing parking garages or large expanses of blank walls; b) will not allow the creation of significant incompatibilities with nearby buildings or uses of land; c) will not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/ pedestrian master plan; and d) will not reduce the quality of civic open spaces provided under the LDR.

*Section 2.4.7(B)(5) Waiver Criteria:*

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

The Applicant's request for the minimum two-foot, two-inch (2'-2") Waiver will not adversely affect the neighboring area. The neighboring parcels and commercial development along both the north and south side of Atlantic Avenue provide for pedestrian zones that align and flow continuously with the remainder of the commercial properties fronting along Atlantic Avenue. The purpose of the requested Waiver is for the Project to provide Atlantic Avenue frontage that is consistent with the surrounding properties between SE 4<sup>th</sup> and 3<sup>rd</sup> Avenue. The Waiver will allow for a continuous zone that is both well planned and compatible with the pedestrian zones of the neighboring properties. The alignment resulting from this Waiver request will not adversely affect the neighboring area as the pedestrian zone will be much more consistent in proportion to the neighboring pedestrian zones and provide for a more continuous access with better and more direct connectivity to adjacent parcels. Notwithstanding the requested relief from the storefront building setback, the Building will continue to maintain a greater storefront setback than its neighbors as the location of the Building must maintain a streetscape area no less than 15 feet which the neighboring properties do not maintain. The existing sidewalk also creates a safer design by eliminating the "dead-end" space between the Building and the Urban Outfitters building. Accordingly, the pedestrian experience will be maintained, and enhanced from its current condition and as such, 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, and therefore 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. This request is consistent with those properties contiguous to the subject site and most other properties within the block. The immediate neighbor, Urban Outfitters, extends well beyond the Building, closer to the Atlantic Avenue right-of-way, leaving the Arcade disconnected from the arcade/pedestrian area in front of the Urban Outfitter retail use.

This existing disconnect between the Building arcade and the Urban Outfitters building creates an inset space, essentially where the existing sidewalk dead-ends into the Urban Outfitters building. This “dead-end”, in addition to creating a disconnect impeding the flow of pedestrian traffic, creates an empty, secluded space not activated by the existing pedestrian flow along Atlantic Avenue, making it a prime location for the homeless and a potential hiding spot for criminals targeting pedestrians. Thus, by aligning the sidewalk and eliminating this “dead-end” space, the Applicant is making the Atlantic Avenue frontage safer and more pedestrian friendly. The proposed condition allows pedestrian access to flow and connect in a more fluid manner. As such, the Waiver will allow for a safe place for customers, residents and visitors of the City to safely enjoy the retail spaces, restaurants, art galleries and other amenities that the downtown area has to offer.

*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 a grant of a special privilege. This request is consistent with those properties contiguous to the subject site and if approved will result in conditions nearly identical to all other buildings along the south side of Atlantic Avenue between SE 3<sup>rd</sup> Avenue and 4<sup>th</sup> Avenue. As mentioned above, the immediate neighbor, the Urban Outfitters building, extends well beyond the Building such that the pedestrian area within the arcade is disconnected from the arcade/pedestrian area in front of the Urban Outfitter retail use. The proposed condition will allow pedestrian access to flow and connect in a more fluid manner. This Waiver request asks for no less storefront setback than the neighboring properties already enjoy. In fact, assuming approval, the Building will still be further away from Atlantic than other buildings on the block. As the block was developed prior to the LDR change, a pattern has been established that is inconsistent with the current regulations. Although the Property was also developed before the LDR changed, the Property’s store frontage is atypical of the rest of the block. The granting of this request will put the properties within the block at par with one another as to the location of the storefront line. As such, the Waiver request meets this requirement.

*Section 4.4.13(K)(8)(b)2. Waiver Criteria:*

*a) 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 requested Waiver will not result in an inferior pedestrian experience along Atlantic Avenue, which is the primary street abutting the Property, or along the active portions of SE 3<sup>rd</sup> Avenue or SE 4<sup>th</sup> Avenue. The Building is old, outdated and does not meet any of the design criteria within the updated LDR. The proposed facade changes and building improvements will take a legally non-conforming structure and greatly improve the architecture to bring it more in keeping with the updated regulations. As previously noted, the Building’s exterior façade is being redesigned to be more inviting and aesthetically in-line with the surrounding area. Approval of the Waiver will allow the Applicant to do long over-due façade improvements, as well as street-front improvements enhancing pedestrian access, and thereby improving the pedestrian experience due to the improved continuity and connectivity of the pedestrian zone. The commercial uses will also wrap around to SE 3<sup>rd</sup> Avenue in order to continue the pedestrian experience for the portion of this frontage that is adjacent to Atlantic Avenue. Accordingly, the Waiver will not result in an inferior pedestrian experience but rather improve the aesthetics of the Property

*b) 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 as the envisioned development will provide better, more direct connectivity for pedestrians along the south side of Atlantic Avenue. The Applicant is asking to create a pedestrian zone that is comparable to what has been established as the storefront line east of the Property from SE 3<sup>rd</sup> Avenue to 4<sup>th</sup> Avenue and beyond. The Waiver will allow for development of the Project which will improve the street-front and building esthetics and will also improve pedestrian flow. For many years, the Building was occupied by a SunTrust Bank on the first floor with offices on the second level. The plan for the Project is to convert the single tenant building to a multi-tenant use including a bank and retail uses on the first floor while maintaining office uses on the second floor. By converting the Building to multi-tenant uses, the storefront area will be activated more consistent with the neighboring properties. As such, the Waiver will not create significant incompatibilities with nearby buildings or uses of land.

*c) 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, but rather, will better activate its street frontage and better align the pedestrian zone along Atlantic Avenue, creating a more continuous flow with a much more aesthetically compatible and functional building. As previously noted, the Building's exterior façade is being redesigned to be more inviting and more compatible with the current LDR architectural requirements. The existing street frontage configuration is set back so much further than neighboring properties that it seems dark, uninviting and disconnected from the remainder of the block. The proposed change will open up the storefront, activate the frontage by locating the first floor uses closer to the street consistent with the established storefronts of the properties within the block and the established pedestrian zone for the block, and provide a more inviting experience, enhancing connectivity and the pedestrian flow.

*d) 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. As discussed above, the Building's exterior façade is being redesigned to be more inviting and aesthetically in-line with the surrounding area. Further, as stated above, the immediate neighbor, Urban Outfitters, extends well beyond the Building, leaving the Building's arcade disconnected from the arcade/pedestrian area in front of the Urban Outfitter retail use. The inset portion of the Building dead-ends into the Urban Outfitters building. This "dead-end" not only creates this disconnect impeding the flow of traffic, but also creates an empty, uninviting and secluded space. By aligning the sidewalk and eliminating this "dead-end" space, the Applicant is making the Atlantic Avenue frontage safer and more pedestrian friendly. As such, the Waiver will improve the quality of civic open spaces provided under the LDRs.

## EXHIBIT "A"

