



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

100 NW 1<sup>ST</sup> AVENUE, DELRAY BEACH, FLORIDA 33444  
PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200

## Site Plan Review and Appearance Board

Meeting: August 26, 2020 | File No.: 2019-266-SPF-SPR-CLV (Waivers) | Application Name: Pierre Delray II

### General Data:

**Applicant:** Pierre Delray One, LLC.  
**Agent:** Bonnie Miskel, Esq., Dunay, Miskel & Backman, LLP  
**Location:** 298 E. Atlantic Avenue  
**PCN:** 12-43-46-16-01-085-0040  
**Property Size:** 0.4245 Acres  
**FLUM:** Commercial Core (CC)  
**Zoning:** Central Business District – Central Core (CBD)

### Adjacent Zoning:

- North: CBD
- East: CBD
- South: CF
- West: CBD

**Existing Land Use:** Parking Lot

**Proposed Land Use:** Office/Retail

**Floor Area Ratio:** 2.62

### Items before the Board:

- 1) A waiver request seeking relief from the two story height limit for arcades per LDR Section 4.4.13 (E)(4)(f)1.f.
- 2) A waiver request seeking relief from 5' minimum Side Interior setback for walls with openings along the west side of the property per LDR Section 4.4.13 (D)(1)(b)2.b.
- 3) A waiver request seeking relief from front corner setback as at the intersection of E. Atlantic Avenue and SE 3<sup>rd</sup> Avenue per LDR Section 4.4.13 (D)(2)(a) Table 4.4.13 (C) Dimensional Requirements by Central Business District (CBD) Sub-District.



### Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move to recommend approval of waiver (1) from LDR Sections 4.4.13 (E)(4)(f)1.f., which sets forth that the arcade area extending over the public right-of-way may contain a second story or incorporate roof terraces; additional stories are not permitted, whereas a three-story arcade is being proposed over the public right-of-way at the southeast corner of the site adjacent SE 3<sup>rd</sup> Avenue.
3. Move to recommend approval of waiver (2) from LDR Section 4.4.13 (D)(1)(b)2.b., which sets forth that buildings with openings, including doors, windows, and glass wall materials, facing an interior side property line must setback a minimum 5' setback from the property line, whereas a 2'-2 $\frac{3}{8}$ " side interior setback on the west side of the site adjacent to the FEC train tracks is proposed.

#### Project Planner:

Kent Walia, AICP, Senior Planner  
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#### Review Dates:

SPRAB Meeting Date:  
08/26/2020

#### Attachments

1. Waiver request letters
2. Waiver justification statements
3. Waiver resolutions
4. Waiver exhibits



4. Move to recommend approval of waiver (3) from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub District, which sets forth a minimum 10' and a maximum 15' front setback for buildings in the CBD commercial core, whereas a minimum 10" front setback is proposed for the second and third floors at the northeast corner of the property.
5. Move to recommend denial of waiver (1) from LDR Sections 4.4.13 (E)(4)(f)1.f., which sets forth that the arcade area extending over the public right-of-way may contain a second story or incorporate roof terraces; additional stories are not permitted, whereas three-story arcade is being proposed over the public right-of-way at the southeast corner of the site adjacent SE 3rd Avenue.
6. Move to recommend denial of waiver (2) from LDR Section 4.4.13 (D)(1)(b)2.b., which sets forth that buildings with openings, including doors, windows, and glass wall materials, facing an interior side property line must setback a minimum 5' setback from the property line, whereas a 2'-2 $\frac{3}{4}$ " side interior setback on the west side of the site adjacent to the FEC train tracks is proposed.
7. Move to recommend denial of waiver (3) from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub District, which sets forth a minimum 10' and a maximum 15' front setback for buildings in the CBD commercial core, whereas a minimum 10" front setback is proposed for the second and third floors at the northeast corner of the property.

**Project Description:**

The Pierre Delray II Class V Site Plan application is associated with the construction of a 52,453 gross square foot (g.s.f), three story office/retail building with an internal garage and roof top parking area located at 298 E. Atlantic Avenue (subject site) with adjacent utility and paving improvements in the public Right-Of-Way (R-O-W). The development proposal includes three waiver requests which require City Commission action prior to consideration of the Class V Site Plan application by the Site Plan Review and Appearance Board (SPRAB):

1. A waiver request seeking relief from LDR Sections 4.4.13 (E)(4)(f)1.f., which sets forth that the arcade area extending over the public right-of-way may contain a second story or incorporate roof terraces; additional stories are not permitted, whereas a three-story arcade is proposed over the public right-of-way at the southeast corner of the site adjacent SE 3rd Avenue.
2. A waiver request seeking relief from LDR Section 4.4.13 (D)(1)(b)2.b., which sets forth that buildings with openings, including doors, windows, and glass wall materials, facing an interior side property line must setback a minimum 5' setback from the property line, whereas a 2'-2 $\frac{3}{4}$ " side interior setback on the west side of the site adjacent to the FEC train tracks is proposed.
3. A waiver request seeking relief from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub-District, which sets forth a minimum ten foot (10') and a maximum fifteen foot (15') front setback for buildings in the CBD commercial core, whereas a minimum 10" front setback is proposed for the second and third floors only at the northeast corner of the property.

Pursuant to LDR Section 4.4.13 (K)(5)(a), "Section 2.4.7(B)(1)(a) authorizes the waiver of certain regulations irrespective of a property's zoning district. Those waivers may be considered within the CBD in accordance with those specific provisions. When reviewing applications that include waivers than can only be granted by the City Commission, the SPRAB shall make formal recommendations to the City Commission regarding those waivers prior to site plan consideration."

**Background:**

The 0.4245-acre subject site (Parcel C) is all of the North 199' of Block 85, lying East of the FEC Railway right-of-way, in the City of Delray Beach, according to the Plat of the MAP OF THE TOWN OF LINTON (now Delray Beach), on file at the Office of the Clerk of Court in and for Palm Beach County, Florida as recorded in Plat Book 1, Page 3. Currently situated on the site is a vacant parking lot. The following is a list of events involving the site:

- Prior to 1990, the subject property was zoned CBD. Records indicate that the site was historically used for surface parking only.



- In October 1990, the property was rezoned to CF as part of the citywide rezoning. Records show that the parcel was designated Community Facilities-Recreation (CF-R) on the Future Land Use Map.
- In 2004, the “Recreation” suffix was removed, and the parcel remained CF.
- In November 2010, the City commission approved a conditional use to allow the establishment of a commercial “for pay” parking lot to be operated jointly for utilization for SunTrust Bank customers (302 E. Atlantic Avenue) and paying public patrons.
- On May 21, 2019, the City Commission adopted Ordinance 05-19 approving the rezoning and re-designation of the re-designating the future land use map designation (FLUM) of the subject site from Commercial Facilities (CF) to Commercial Core (CC). Subsequently, the City Commission adopted Ordinance 06-19 approving a re-designating and rezoning of the subject site from Commercial Facilities (CF) to Central Business District (CBD) Commercial Core.

**Waiver Analysis:**

**Required Findings:**

Pursuant to LDR Section 2.4.7 (B)(5), prior to granting a waiver, the granting body shall make findings that the granting of the 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;
- 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.

**CBD Waiver Criteria:**

Pursuant to LDR Section 4.4.13 (K)(5)(b)(2), within the CBD, the following standards shall be used by the City Commission, SPRAB, or HPB when considering waiver requests, in addition to the findings in Section 2.4.7(8)(5):

- a. 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.
- b. The waiver shall not allow the creation of significant incompatibilities with nearby buildings or use of land.
- c. The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan.
- d. The waiver shall not reduce the quality of civic open spaces provided under this code.

**Staff Assessment of the Required Findings and CBD Waiver Criteria per request:**

**Required Findings LDR Section 2.4.7 (B)(5):**

- a. *Shall not adversely affect the neighboring area.*

**Waiver (1) – Request to increase maximum number of stories for an Arcade to three stories**

A waiver request seeking relief from LDR Section 4.4.13 (E)(4)(f)1.f., which sets forth that the arcade area extending over the public right-of-way may contain a second story or incorporate roof terraces; additional stories are not permitted, whereas a three-story arcade is being proposed over the public right-of-way at the southeast corner of the site adjacent SE 3rd Avenue.

The proposed 3-story arcade is located on the southeast side of the building along SE 3rd Avenue. The arcade would function as an extension to the internal garage on the 2<sup>nd</sup> and 3<sup>rd</sup> floors. The first 18'-8" of the garage would be located within the Atlantic Avenue Limited Height Area. The arcade height at the edge of the Atlantic Avenue Limited Height Area is 38'. The remaining portion of the arcade would reach a maximum height of 38'-6", which is less than the maximum 54' allowed in the CBD Central Core. As the property is situated, E. Atlantic Avenue is considered the Primary street, and SE 3<sup>rd</sup> Avenue is the Secondary street. Secondary Streets can accommodate service functions and vehicular-oriented development needs such as parking, loading, and drive-through facilities. The project is proposing a garage entrance within the first story of the arcade along SE 3<sup>rd</sup> Avenue. By choosing an arcade frontage, the 2<sup>nd</sup> and 3<sup>rd</sup> floors of the building are able to extend over the sidewalk into the public right-of-way creating a covered walkway for



pedestrians within the minimum 15' wide streetscape.

Currently, there are no 3 story arcades in the downtown. If granted, the waiver would allow the maximum height allowed for the garage arcade to increase to 3 stories. The proposed arcade would be the first of its kind in the downtown. It's important to note that the property is required to provide 57 parking spaces. Without the arcade waiver the internal garage and roof parking area would accommodate approximately 34 spaces (23 space deficiency). If the waiver were to be granted the additional space provided by the arcade would allow the garage to provide 65 parking space (8 space surplus). The LDR section indicates that additional stories are not permitted. If granted, it does not appear that the waiver would adversely affect the neighboring properties because the arcade would be an extension of the building with a height 38'-6" height which is less than the maximum 54' allowable building height in the CBD Central Core.



#### **Waiver (2): Reduce the Side Interior Setback**

Pursuant to LDR Section 4.4.13 (D)(1)(b)2.b., *Buildings with openings, including doors, windows, and glass wall materials, facing an interior side property line must setback a minimum of five feet from the property line.* The intent of the LDR section is to allow for air and light between buildings with openings (i.e., doors, windows, and glass wall materials). The site situated at the corner of E. Atlantic Avenue and SE 3<sup>rd</sup> Street, has two front setbacks (E. Atlantic and SE 3<sup>rd</sup> Avenue) and two side interior setbacks (south property line and FEC train tracks). The proposed building design has openings on the west side of the property and not the south, thus a minimum 5' setback is required for the west side interior setback only. The waiver request proposes a 2'-2 $\frac{3}{8}$ " side interior setback, in-lieu of the minimum 5' required which equates to a 2'-9 $\frac{1}{8}$ " reduction. The waiver requested appears to have no adverse effect on the affect the neighboring area since the setback reduction is adjacent to the Florida East Coast (FEC) train tracks and it highly unlikely that a abutting building would be built on the west side.

#### **Waiver (3): Reduced front setback for the 2<sup>nd</sup> and 3<sup>rd</sup> stories**

Pursuant to LDR Section 4.4.13 (D)(2)(a) Table 4.4.13 (C), the front setback for buildings in the CBD Central Core are required to be a minimum 10' or a maximum of 15'. LDR Section 5.3.1 (D)(3), *"A right-of-way dedication will be required at all intersections in the Central Business District (CBD). This right-of-way dedication will consist of an area of property located at the corner formed by the intersection of two or more public rights-of-way with two sides of the triangular area being 20 feet in length along the abutting public right-of-way lines. This right-of-way dedication will be referred to as a "corner clip" and is provided to ensure adequate right-of-way for the safe movement of pedestrians in the CBD."* LDR Section 4.4.13 (K)(5)(b)1.b., mentions that *"Waivers to decrease the minimum front setback depth are permitted if the reduction would not result in a streetscape that does not meet the minimum requirements of Section 4.4.13(E)(2).*

Currently, the development's property line extends into the public sidewalk area. A 20'x20' "Corner Clip" dedication is required to order to ensure adequate right-of-way for the safe movement of pedestrians in the CBD. The proposed project provides the Corner Clip dedication as required. As a result of the dedication, the property line is shifted 15'-2 $\frac{3}{4}$ " adjacent to the right-of-way intersection creating new re-located property line at the corner (see illustration below). Pursuant to LDR Section 4.4.13 (D)(2)(a)1., *front setback or side setback facing a street or park is a minimum of 10 feet and a maximum of 15 feet, which is coordinated with streetscape requirements in Section 4.4.13(E)(2).* Building setbacks are applied to all floors. The setback from the re-adjusted property line creates a chamfer at the northeast corner of the building when the minimum 10' front setback used. Setback are applied to all the floors.

The applicant is requesting a waiver from LDR Section 4.4.13 (D)(2)(a) Table 4.4.13 (C), to allow for a 10" front setback for the 2<sup>nd</sup> and 3<sup>rd</sup> floor only at the northeast corner of the property only. If granted, the waiver would not diminish the minimum 15' streetscape required, as approximately 30' would be provided and maintained on the ground floor level of this area. The proposed waiver does not appear to adversely affect neighboring area, as a majority of the buildings in the CBD have right angled corners and not chamfers resulting from corner clip dedications. Furthermore, the desired pedestrian area will be maintained at the intersection.



- b. *Shall not significantly diminish the provision of public facilities.*

**Waiver (1) – Request to increase maximum number of stories for an Arcade to three stories**

If granted, the waiver LDR Sections 4.4.13 (E)(4)(f)1.f, would not diminish the provision of public facilities such as sewer, water, solid waste, drainage and street systems. Specifically, the request would not diminish the public facilities because the request is for additional space and use above the public right of way.

**Waiver (2): Reduce the Side Interior Setback**

If granted, the waiver from LDR Section 4.4.13 (D)(1)(b)2.b., would not significantly diminish the provision of public facilities because the reduced interior side setbacks would be on the private property and would not affect utility lines.

**Waiver (3): Reduced front setback for the 2<sup>nd</sup> and 3<sup>rd</sup> stories**

If granted, the waiver from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub District, would not would not significantly diminish the provision of public facilities because the request are for the 2<sup>nd</sup> and 3<sup>rd</sup> floors only. The first floor would still comply with the minimum streetscape requirements while providing a covered entrance to the building.

- c. *Shall not create an unsafe situation.*

**Waiver (1) – Request to increase maximum number of stories for an Arcade to three stories**

If granted, the waiver LDR Sections 4.4.13 (E)(4)(f)1.f, would not create an unsafe situation. Specifically, the arcades would be installed over the public right-of-way and comply with the sight line visibility triangles and would provide the required depth and column spacing. Lastly, an arcade maintenance agreement would be required prior building permit issuance which would ensure the safety of the structure by the property owner in the public R-O-W.

**Waiver (2): Reduce the Side Interior Setback**

If granted, the waiver from LDR Section 4.4.13 (D)(1)(b)2.b., would not create an unsafe situation as presently designed. As mentioned, the FEC train track runs parallel to the west interior side of the building and it would be unlikely that there would ever be a development built that would obstruct view or ventilation of the proposed development.



**Waiver (3): Reduce front setback for the 2<sup>nd</sup> and 3<sup>rd</sup> stories**

If granted, the waiver from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub District, would not create an unsafe situation because the request are for the 2<sup>nd</sup> and 3<sup>rd</sup> floors only.

- 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.*

**Waiver (1) – Request to increase maximum number of stories for an Arcade to three stories**

If granted, the waiver LDR Sections (E)(4)(f)1.f., would not result in the granting of a special privilege because the same waiver could be granted to another property under similar circumstances. Moreover, arcades are allowed to have a second floor in accordance with LDR Sections 4.4.13 (E)(4)(f)1.f. The second story of an arcade functions as an extension of the second-floor use of commercial buildings. Since the project is proposing a garage area at the south side of the property, the 2<sup>nd</sup> and, if approved, the 3<sup>rd</sup> floor would be extensions of the garage. The garage would provide off street parking spaces required for the commercial uses on site, as well as provide available public parking in the downtown during the hours when businesses onsite are closed. In accordance with Table 4.4.13 (A) Allowable Uses and Structures in the CBD Sub-Districts, Public Parking Garages are allowed as a primary use in the CBD Central Core when located on secondary streets. The parking garage is attached to the primary building. If the waiver were to be approved, a similar waiver could be granted under comparable conditions.

**Waiver (2): Reduce the Side Interior Setbacks**

If granted, the waiver from LDR Section 4.4.13 (D)(1)(b)2.b., would not result in the granting of a special privilege because the same waiver could be granted to another property under similar circumstances, given the proximity to the railroad R-O-W.

**Waiver (3): Reduced front setback for the 2<sup>nd</sup> and 3<sup>rd</sup> stories**

If granted, the waiver from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub District, would not result in the granting of a special privilege because the same waiver could be granted to another property under similar circumstances.

Required Findings LDR Section 4.4.13 (K)(5)(b)(2)

- a. 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.

**Waiver (1) – Request to increase maximum number of stories for an Arcade to three stories**

If granted, the waiver LDR Sections 4.4.13 ((E)(4)(f)1.f., would not result in an inferior pedestrian experience or create large expanses of blank walls. Specifically, the arcade would be treated with paint, stucco, and metal panels. The arcade constructed over the right-of-way would create a shaded walkway to protect pedestrians from the sun and rain, while providing the minimum 15' wide streetscape required.

**Waiver (2): Reduce the Side Interior Setbacks**

If granted, the waiver from LDR Section 4.4.13(D)(1)(b)2.b., would not result in an inferior pedestrian experience or create large expanses of blank walls, since the public sidewalks are not affected by as waiver to the side interior setback.

**Waiver (3): Reduced front setback for the 2<sup>nd</sup> and 3<sup>rd</sup> stories**

If granted, the waiver from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub District, it would not result in an inferior pedestrian experience because the 2<sup>nd</sup> and 3<sup>rd</sup> stories would overhang 14'-11" above the public right-of-way creating a covered entry to the building. If granted, the waiver would not diminish the minimum 15' streetscape required, as approximately 30' would be provided and maintained on the ground floor level of this area.



- b. The waiver shall not allow the creation of significant incompatibilities with nearby buildings or uses of land.

**Waiver (1) – Request to increase maximum number of stories for an Arcade to three stories**

If granted, the waiver LDR Sections 4.4.13 ((E)(4)(f)1.f., would not create significant incompatibilities with nearby buildings or uses of land. Specifically, the 3<sup>rd</sup> story arcade at 38'-6" in height would function as an extension of the building over the public right-of-way on the 2<sup>nd</sup> and 3<sup>rd</sup> floors. The ground floor level of the arcade would meet the size and scale listed in the LDR.

**Waiver (2): Reduce the Side Interior Setbacks**

If granted, the waiver from LDR Section 4.4.13 (D)(1)(b)2.b., would not create significant incompatibilities with nearby buildings or uses of land because it is highly unlikely that a development would ever be built replacing the FEC train tracks on the west of the property.

**Waiver (3): Reduced front setback for the 2<sup>nd</sup> and 3<sup>rd</sup> stories**

If granted, the waiver from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub District, would not create significant incompatibilities with nearby buildings or uses of land uses because most of the corner buildings in the CBD do not have chamfered corners throughout all floors.

- c. The waiver shall not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan.

**Waiver (1) – Request to increase maximum number of stories for an Arcade to three stories**

If granted, the waiver LDR Sections 4.4.13 (E)(4)(f)1.f., would not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan. Specifically, the arcade would be constructed over the 6' wide pedestrian clear zone and the 4' wide paved remaining front setback area within the minimum required streetscape width. The arcade would improve the walking conditions in the area by providing a covered pedestrian area. Lastly, the subject site is not located within planned bicycle or pedestrian master planned area.

**Waiver (2): Reduce the Side Interior Setbacks**

If granted, the waiver from LDR Section 4.4.13 (D)(1)(b)2.b., would not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan.

**Waiver (3): Reduced front setback for the 2<sup>nd</sup> and 3<sup>rd</sup> stories**

If granted, the waiver from LDR Section 4.4.13 (D)(2)(a) Table (C) Dimensional Requirements by Central Business District (CBD) Sub District, would not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/pedestrian master plan. Specifically, the front setback waiver would be for the 2<sup>nd</sup> and 3<sup>rd</sup> floor only, leaving the chamfer on the 1<sup>st</sup> floor resulting from the corner clip dedication to provide over the minimum required pedestrian area. The chamfer would create a covered overhang at the northeast corner of the site that would provide a shaded area for pedestrians.

- d. The waiver shall not reduce the quality of civic open spaces provided under this code.

**Staff Assessment:**

LDR Section 4.4.13 (D)(2) Table (G), lists that sites smaller than 20,000 sf are not required to provide civic open space. Civic open spaces as described in the LDR are privately maintained outdoor spaces such as plazas, courtyards, or passageways that are accessible by the general public to aesthetically improve the pedestrian environment. The proposed Pierre Delray II site is approximately 18,880 sf, thus no civic open space is required or provided.