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August 14, 2020

*Via Email*

City of Delray Beach  
Development Services Department, Planning and Zoning Division  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444  
Attn: Kent Walia, Senior Planner

Re: Pierre Delray Two – Formal Request for Waiver from Section 4.4.13(E)(4)(f)(1)(f) of the City of Delray Beach (“City”) Land Development Regulations (“LDR”).

Dear Mr. Walia,

Please consider this letter as Pierre Delray Two LLC’s (“Applicant”) formal request for a waiver from LDR Section 4.4.13(E)(4)(f)(1)(f) to allow a maximum of three-story arcade in lieu of the two-story arcade permitted (“Waiver”) for the proposed development located at E. Atlantic Avenue in the City, PCN # 12434616010850040 (“Property”). The justification for the Waiver is described in the justification statement included with this Waiver request. Should you have any questions regarding the Waiver please feel free to contact Lauren Odom at [lodom@dmblaw.com](mailto:lodom@dmblaw.com), 561-405-3351. Thank you.

Sincerely,

Lauren G. Odom, Esq.  
*Dunay, Miskel and Backman, LLP*

Enclosures

## PROJECT RELIEF

Does any component of the project require relief from any of the applicable requirements noted in the Land Development Regulations? ☒ Yes ☐ No

### WAIVERS:

☐ No waivers are requested

Fee: See Section 2.4.3(K)

Pursuant to LDR Section 2.4.7(B), a waiver involves the granting of partial or total relief from a specific regulation. A formal letter of request with reference to the Section and a justification for granting the waiver is required.

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; 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.

The following waiver(s) are requested:

<u>LDR Section</u>	<u>Requirement</u>	<u>Relief Requested</u>
LDR 4.4.13(E)(4)(f)(1)(f)	2-story maximum arcade	3-story maximum arcade

\*If additional waivers are requested, please provide a copy of this page with the additional information.

☒ Required fee(s) and justification statement(s) is/are attached:

### VARIANCE:

☒ No variances are requested

Fee: See Section 2.4.3(K)

☐ Variances have been requested. See attached copy of the Board of Adjustment Variance application. Review by the Board of Adjustment is scheduled for \_\_\_\_\_. If any variances have already been approved, please provide such verification.

### INTERNAL ADJUSTMENT:

☒ No internal adjustments are requested

Fee: See Section 2.4.3(K)

Pursuant to LDR Section 2.4.7(C), An adjustment involves the lessening, or a total waiver, of those development standards which affect the spatial relationship among improvements on the land. A formal letter of request with reference to the Section and a justification for granting the adjustment is required.

The following internal adjustment(s) are requested:

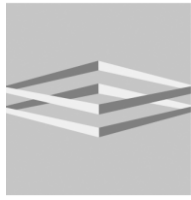
<u>LDR Section</u>	<u>Requirement</u>	<u>Relief Requested</u>

\*If additional adjustments are requested, please provide a copy of this page with the additional information.

☐ Required fee(s) and justification statement(s) is/are attached:

**IN-LIEU OF PARKING:** Fee: See Section 4.6.9(E)(3). ☒ No in-lieu of parking is requested

☐ In-lieu of parking is requested; the Application is attached.



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**Pierre Delray Two - East Atlantic Avenue, Delray Beach, Florida**  
**Waiver Request and Justification – 4.4.13(E)(4)(f)(1)(f)**

Pierre Delray Two LLC (“Applicant”), is the owner of a 0.43-acre parcel of land located on the southwest corner of Atlantic Avenue and SE 3<sup>rd</sup> 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 is currently developed with a surface parking lot. In an effort to improve the Property and surrounding area in accordance with the City’s redevelopment plan for E. Atlantic Avenue, the Applicant proposes to develop the Property with a three-story mixed-use building comprised of retail and office uses and parking garage (“Project”).

The Project proposes to meet the City’s Land Development Regulations (“LDR”) to the greatest extent possible. However, due to the existing constraints associated with the size and narrowness of the Property, the Applicant is requesting a waiver from the LDR related to the parking garage arcade height along SE 3<sup>rd</sup> Avenue. Pursuant to Section 4.4.13(E)(4)(f)(1)(f) of the LDR, a maximum of two stories is permitted for an arcade’s height within the CBD.

As required by the City’s LDRs, the Applicant is providing a fifteen-foot (15’) streetscape area along the Property’s E. Atlantic Avenue frontage and the SE 3<sup>rd</sup> Avenue frontage limiting ground level uses. Per the City’s LDRs, Atlantic Avenue (as a primary street) is intended to be a lively, highly active pedestrian frontage with requisite retail frontage. However, per 4.4.13.B.1, secondary streets “can accommodate service functions and vehicular-oriented development needs, including parking, loading, and drive-through facilities.” SE 3<sup>rd</sup> Avenue is a secondary street. Accordingly, the Petitioner’s proposed design of the Project – lining Atlantic Avenue with the office/retail uses and positioning the parking garage on the south side of the building with the exterior façade of the parking garage facing SE 3<sup>rd</sup> Avenue – is exactly the design contemplated and envisioned by the City’s LDRs for the CBD zoning district.

In order to enhance the pedestrian experience and provide consistent pedestrian connectivity along SE 3<sup>rd</sup> Avenue and between SE 3<sup>rd</sup> Avenue and Atlantic Avenue, the Petitioner is proposing an arcade along SE 3<sup>rd</sup> Avenue that consistently aligns throughout the SE 3<sup>rd</sup> Avenue frontage. The upper level of the arcade for the portion of the Project’s office/retail uses along Atlantic Avenue and SE 3<sup>rd</sup> Avenue will include a roof top terrace for guests use – which the Code specifically encourages in the CBD. Further, the upper portion of the parking garage arcade, while not an active outdoor area for guests due to safety concerns for pedestrians, instead is proposing using the roof-top terrace as a parking area. Accordingly, the Petitioner is proposing to extend the Project’s arcade height to the parking garage roof floor along SE 3<sup>rd</sup> Avenue and to the third story roof top terrace along Atlantic Avenue – each located at a maximum of three (3) stories – in order to more efficiently utilize the upper portions of the building to service the Project and area by

providing additional parking, better aesthetic views of the building and activated pedestrian space.<sup>1</sup> As such, in order to develop the Project, the Applicant is requesting the following waiver:

*Waiver from LDR Section 4.4.13(E)(4)(f)(1)(f) to allow a maximum three (3) story arcade height for the Project in lieu of the two (2) story arcade height permitted ("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 Waiver will not adversely affect the neighboring area. The Property is bordered to the left by railroad tracks, to the south by a vacant lot, and to the east by an existing vested building with frontage along SE 3<sup>rd</sup> avenue. Since the Project is a new development, the Project is required to comply with the CBD zoning district regulations. However, since the Project is located in a primarily fully developed area along E. Atlantic Avenue, there are certain elements that make development on the Property challenging – most specifically, the narrow width of the Property and the requisite CBD development standard restrictions.

The City's CBD regulations require the Project to provide a fifteen-foot (15') streetscape area along all frontages (both the E. Atlantic Avenue and SE 3<sup>rd</sup> Avenue frontages) to improve and enhance pedestrian mobility in the area. The Property is only 96.44' wide – by incorporating the requisite fifteen-foot (15') streetscape area along the ground floor of SE 3<sup>rd</sup> Avenue, the building's width is restricted even more. Further, the Project cannot utilize additional height along the majority of the building as a portion of the Property is within the City's limited height district. Accordingly, the Petitioner is proposing extending the parking garage arcade's height along SE 3<sup>rd</sup> Avenue - this will allow for a consistent and aligned pedestrian area adjacent to the Project along SE 3<sup>rd</sup> Avenue, and will allow utilization of the upper level of the arcade as additional parking for the area instead of wasted space. Thus, the Project's SE 3<sup>rd</sup> Avenue frontage is an improvement for pedestrian access and mobility in the area, and an improvement of parking conditions, that does not exist today, and as such, the Waiver does not adversely affect the neighboring area.

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

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<sup>1</sup> The Property is +/- 200 feet in width; the north 125 feet of the Property is subject to the Atlantic Avenue Limited Height Area restrictions of 38'; however, the south 75 feet of the Property is subject to a maximum height restriction of 54'. The highest point of the parking garage is thirty four feet, four inches (34'-4") within the Atlantic Avenue Limited Height area; however, the highest point of the parking garage is thirty-eight feet, six inches (38'-6") for the portion of the Property outside of the limited height area. Accordingly, the maximum height arcade waiver request referenced herein is 38'-6".

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. As mentioned above, the Property is bordered to the left by railroad tracks, to the south by a vacant lot, and to the east by an existing vested building with frontage along SE 3<sup>rd</sup> Avenue. That existing building's SE 3<sup>rd</sup> Avenue frontage does not provide the requisite fifteen foot (15') 15-foot streetscape area as it was constructed before the City imposed such requirements. Thus, by designing the fifteen-foot (15') streetscape area within an arcade consistently aligned along SE 3<sup>rd</sup> Avenue, the Project is able to not only create a safer space for pedestrian mobility along SE 3<sup>rd</sup> Avenue, but also provide pedestrians a more direct path between Atlantic Avenue and SE 3<sup>rd</sup> Avenue, and provide a shaded area to shield them from the hot Florida sun and rain. As such, the Waiver will allow for a safe place for customers, residents and visitors of the City to safely navigate from SE 3<sup>rd</sup> Avenue to E. Atlantic Avenue.

*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 mentioned above, the requested arcade height extension is not a part of the building where the Project's office/retail uses are proposed, but instead is on the exterior façade of the parking garage facing SE 3<sup>rd</sup> Avenue. On areas of the building where arcades are proposed adjacent to the active uses in the building, the Petitioner instead incorporated outdoor terrace areas for guests. However, since an active outdoor area in a parking garage is not pedestrian-friendly, the Applicant is instead trying to incorporate and accommodate additional parking in the parking garage atop the arcade. Since the Property is very narrow, and with the required 15' streetscape area incorporated along SE 3<sup>rd</sup> Avenue, design of development on the Property is very limited. As mentioned above, the Petitioner's proposed design of the Project – lining Atlantic Avenue with the office/retail uses and the parking garage on the south side of the building, positioning the exterior façade of the parking garage along SE 3<sup>rd</sup> Avenue – is exactly the design contemplated and envisioned by the City's LDRs for the CBD zoning district. Further, the LDRs also contemplate that secondary streets, like SE 3<sup>rd</sup> Avenue, be utilized to “accommodate service functions and vehicular-oriented development needs, including parking, loading, and drive-through facilities.” Thus, by requesting the Waiver adjacent to a parking use along a secondary street, the Project's design is meeting the intent of the LDR to the greatest extent possible. Accordingly, should a similarly situated property owner propose a new building along a secondary street with a similar arcade design configuration, the same waiver would also likely be applicable in that situation. Thus, Petitioner's situation is unique and by granting this Waiver, would not result in the granting of a special privilege. 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 a Primary Street as the requested Waiver is located along SE 3<sup>rd</sup> Avenue, which per Figure 4.4.13-5 in the City's CBD regulations, SE 3<sup>rd</sup> Avenue is not a Primary Street. Accordingly, this criterion does not apply to this Waiver request.

*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 west side of SE 3<sup>rd</sup> Avenue. The Applicant is proposing an arcade along SE 3<sup>rd</sup> Avenue adjacent to the parking garage to accommodate the fifteen-foot streetscape area – similar to many of the existing buildings along the perpendicular primary street – E. Atlantic Avenue. The only difference in this Waiver request is that the Applicant is asking to extend the arcade to the roof floor of the parking garage instead of to the second floor. This will not create any significant incompatibilities with the surrounding area, especially since the upper levels of the arcade are solely for the parking garage use and is not space that could be utilized for outdoor activated space for the retail or office uses. The Waiver will allow for development of the Project, improving the street-front along SE 3<sup>rd</sup> Avenue by aligning the arcades and pedestrian connectivity, building aesthetics, and pedestrian flow. For many years, the Property was a vacant lot without any space activated for pedestrians' use. The plan for the Project is to convert the vacant property currently being used as a surface parking lot into a +/- 68,096 SF mixed use building with multiple retail and office uses and a parking garage. By developing the Property and updating same with the current CBD streetscape regulations, the Property will be activated and be 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 the SE 3<sup>rd</sup> Avenue street frontage and better align the pedestrian zone along SE 3<sup>rd</sup> Avenue with E. Atlantic Avenue, creating a more continuous and covered pedestrian activity area with an aesthetically compatible and functional building. As previously noted, the parking garage component of the building's exterior façade along SE 3<sup>rd</sup> Avenue is being designed as an arcade to connect the streetscape area fronting the parking garage to E. Atlantic Avenue. The Project will be more inviting and more compatible with the current LDR architectural requirements and provide a covered parking option for the public that doesn't exist today. Thus, since the proposed three (3') story / maximum 38'-6" proposed arcade height will not impact the street or sidewalk network or negatively impact any adopted bicycle / pedestrian master plan, the Waiver request meets this criterion.

*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 Project's parking garage along SE 3<sup>rd</sup> Avenue is being designed with a fifteen-foot streetscape area underneath an arcade. This proposed arcade will not only improve connectivity to E. Atlantic Avenue from SE 3<sup>rd</sup> Avenue with a pedestrian-focused area but will also provide a shaded entrance for pedestrians and bicyclists into the parking garage – where the bike racks will be located. Thus, utilizing an arcade design along SE 3<sup>rd</sup> Avenue for the entire parking garage, requiring the waiver of the maximum two (2) story / twenty-foot (20') height, is consistent with the surrounding development's civic open space design. As such, the Waiver request meets this requirement.