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August 18, 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 Table 4.4.13(C) 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 Table 4.4.13(C) to allow a ten inch (10”) minimum front setback on the second and third levels of the building located at the intersection of SE 3<sup>rd</sup> Avenue and E. Atlantic Avenue (Corner Clip) where ten feet (10’) is required (“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. Also enclosed in this Waiver request are two checks collectively in the amount of seven thousand five hundred dollars (\$7,500.00), covering all fees for each waiver application associated with the proposed development. Should you have any questions regarding the Waiver please feel free to contact me at [lodom@dmblaw.com](mailto:lodom@dmblaw.com), 561-405-3351. Thank you.

Sincerely,

Lauren 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 Table 4.4.13(C)	10' front setback	10" Setback / Waiver of 9'-2"

\*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>

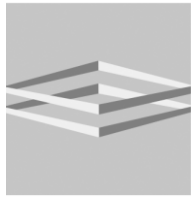
\*If additional adjustments are requested, please provide a copy of this page with the additional information.

☐ 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 – Table 4.4.13(C)**

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 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 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 second and third floor front setback of the building at the intersection of SE 3<sup>rd</sup> Avenue and Atlantic Avenue (“Intersection”). Pursuant to Section 4.4.13(F)(8)(d) of the LDR, a minimum ten foot (10’) front building setback from the property line to exterior façade of the building is required within the CBD.

Per Section 5.3.1 of the City’s LDR’s, “a right-of-way dedication will be required at all intersections in the Central Business District,” and “this right-of-way dedication will be referred to as a ‘corner clip’”. As the northeastern corner of the Property at the Intersection meets these criteria, a right-of-way dedication is required. The proposed exterior façade of the building’s ground floor of the Project at the Intersection is currently proposed 25’ – 2 ¾” from the current property line. Post-corner clip dedication, the ground floor façade at the Intersection will be 10’ from the property line – still meeting the City’s front setback requirements of 10’, as detailed in Table 4.4.13(c). However, while the second and third floor of the building are currently proposed 15’ – 2 ¾” away from the existing property line at the Intersection, after the corner clip dedication the second and third floor of the building will be ten inches (10”) away from the new property line.

It is important to note that the proposed second and third floor jut out of the building at the Intersection will create a shaded area for pedestrians and will create a more compatible exterior façade for the building, more consistent with the proposed arcades along the Project’s frontages. Further the Applicant is providing the requisite 15-foot streetscape area on all frontages – both SE 3<sup>rd</sup> Avenue and Atlantic Avenue – but also at the Intersection – dramatically improving the pedestrian mobility and connectivity in the surrounding area. As such, in order to develop the Project, the Applicant is requesting the following waiver:

*Waiver from LDR Table 4.4.13(C)) to allow a minimum ten inch (10”) front setback for the second and third floors of the project at the Intersection in lieu of the ten-foot (10’) front 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 ten inch (10") 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, the requisite CBD development standard restrictions, and the requisite corner clip dedication from Section 5.3.1 of the City's LDRs.

As the Property is only 96.44' wide, after the corner clip dedication "consisting 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", (pursuant to Section 5.3.1 of the City's LDRs), the location and size of the building at the Intersection is limited. By dedicating this corner clip area for the public's benefit, the Project is even more restricted. And while the second and third floors of the building at the Intersection will not provide the full ten foot (10') setback from the property line, the ground floor ten foot (10') front setback from the property line is still being provided as well as the fifteen-foot (15') streetscape area for pedestrian's use. It is important to note that as this Project is being constructed in a primarily developed area, the majority of the surrounding properties are vested, failing to provide the fifteen-foot (15') streetscape area. Finally, the Intersection is a significant focal point along Atlantic Avenue for pedestrians. By jutting out the proposed second and third floors of the building at the Intersection, a more visually consistent building is created – unifying the design along both frontages, creating a more aesthetically appealing building.

Thus, the Project's proposed building at the Intersection is an improvement for pedestrian access and mobility in the area 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.*

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, Section 5.3.1 of the City's LDRs require the Applicant to dedicate to the City "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". The second and third floor of the building are currently proposed 15'–2 ¾" away from the existing property line at the Intersection; however, after the corner clip dedication, the second and third floor of the building will be ten inches (10") away from the new property line. It is important to note that pre and post corner clip dedication, the building is still the same distance away from the street – it is only the property line that has moved, the location of pedestrian activity in relation to the street will not change. Further, the Waiver will not impact the pedestrian area – the fifteen-foot (15') streetscape area and ten foot (10') front setback are still being provided on all frontages, including along the ground floor frontage at the Intersection. As such, 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. Due to the narrow width of the Property, the City's required corner clip dedication dramatically limits the development on the Property. As noted above, the City's corner clip dedication requirements and CBD streetscape requirements are fairly new in the City, and the majority of the existing projects and properties in the CBD along Atlantic Avenue have not previously been required to comply. The Applicant is still dedicating the corner clip area, providing the required ground floor front setback and providing the required streetscape area; however, the Applicant is merely asking for relief from the required front setback for the upper portions of the building. It is important to note that this relief will actually make the exterior façade of the building at the Intersection more consistent with the exterior façade of the building along both frontages where arcades are proposed. Should another vacant property be situated on a narrow property in the CBD and qualify for the corner clip dedication, a similar waiver would be granted; as such, the Waiver request satisfies this criterion.

*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. The Intersection is the meeting point of Atlantic Avenue (Primary Street) and SE 3<sup>rd</sup> Avenue (Secondary Street). As mentioned above, the Intersection is a significant focal point along Atlantic Avenue for pedestrians. By jutting out the proposed second and third floors at the Intersection, a more visually consistent building is created – unifying the design along both frontages, creating a more aesthetically appealing façade for pedestrians. Further, the Waiver does not reduce or impact the fifteen-foot (15') streetscape area – as that is still being proposed along both frontages and at the Intersection. Thus, the proposed Waiver will improve the pedestrian experience; as such, this criterion has been met.

*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 both Atlantic Avenue and the west side of SE 3<sup>rd</sup> Avenue. As discussed above, the second and third floor of the building are currently



proposed 15' – 2 ¾" away from the existing property line at the Intersection; however, after the corner clip dedication, the second and third floor of the building will be ten inches (10") away from the new property line. The Applicant is merely asking for a Waiver from the front setback after the property line changed post-corner clip dedication; it is important to note that the location of pedestrian activity in relation to the street will not change. The Waiver will allow for development of the Project, improving the street-front along both Atlantic Avenue and SE 3<sup>rd</sup> Avenue, creating a unified building aesthetics theme and improving pedestrian flow. For many years, the Property was a vacant lot without any space activated for pedestrian's 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 Intersection's street frontage and align the pedestrian zones along SE 3<sup>rd</sup> Avenue and E. Atlantic Avenue, creating a more continuous and covered pedestrian activity area with an aesthetically compatible and functional building. While the proposed second and third floor of the building at the Intersection will not meet the required ten foot (10') front setback post the corner-clip dedication, the Project is still providing the requisite ten foot (10') front setback on the ground floor, and the requisite fifteen-foot (15') streetscape area. The Project will be more inviting and more compatible with the current LDR architectural requirements. Further, it is important to note that many of the surrounding properties are already vested prior to the new fifteen-foot (15') streetscape area requirements, and thus, do not provide the requisite pedestrian area. As such, the proposed Project providing the requisite fifteen-foot (15') streetscape area is a significant improvement of the existing street and sidewalk network conditions and will positively impact the pedestrian and bicycle circulation in the area. Thus, 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 is designing its fifteen-foot (15') streetscape area within an arcade – providing shade and protection to pedestrians and creating a consistently designed and continuous pedestrian area. While the proposed jut out at the Intersection is not an arcade, it is still more aesthetically similar to the Project's proposed arcade frontages. This Waiver will only positively impact the quality of civic open spaces – creating a more visually consistent and aesthetically appealing design for the Project along both frontages and at the Intersection. As such, the Waiver request meets this requirement.