

**PALM BEACH COUNTY
PLANNING, ZONING AND BUILDING DEPARTMENT
ZONING DIVISION**

Application No.: ZV-2022-01788
Application Name: Plaza Delray MUPD
Control No./Name: 2016-00078 / 2016-00078 (and FKA name if applicable)
Applicant(s): Pebb Atlantic LLC
Owner(s): Pebb Atlantic LLC
Agent(s): WGINC - Doug Murray
Telephone No.: (561) 687-2220
Project Manager: Phil Myers, Site Planner I

TITLE: a Type 2 Variance **REQUEST:** to allow a reduction in the sign setback on 4.83 acres

APPLICATION SUMMARY: The proposed request is for the 4.83-acre Plaza Delray. The site is currently developed with commercial uses. The developments last approval by the Board of County Commissioners (BCC) on April 22, 2021 for a rezoning and a Development Order Amendment to add land area and reconfigure the site plan.

The request is to allow a reduction in the sign setback. No other changes are proposed.

SITE DATA:

Location:	South side of West Atlantic Avenue, approx. 500 feet east of Lyons Road
Property Control Number(s)	00-42-46-20-20-001-0000 and 00-42-46-20-20-023-0000
Land Use Designation:	Commercial Low, with an underlying AGR (CL/AGR)
Zoning District:	Multiple Use Planned Development District (MUPD)
Acreage:	4.83 acres
Tier:	Agricultural Reserve
Overlay District:	N/A
Neighborhood Plan:	N/A
CCRT Area:	N/A
Municipalities within 1 Mile	N/A
Future Annexation Area	N/A
Commission District	District 5, Vice Mayor Sachs

STAFF RECOMMENDATION: Staff recommends approval of the request subject to the Conditions of Approval as indicated in Exhibit C.

PUBLIC COMMENT SUMMARY: At the time of publication, Staff had received no contacts from the public regarding this project.

PROJECT HISTORY:

Application No.	Request	Resolution	Approval
LGA-2022-00009	To revise conditions of approval adopted by Ordinance 2017-006	Ord. No. 2022-034	11/28/2022
PDD/DOA-2020-01117	To reconfigure the Site Plan to add land area and parking spaces; reconfigure building and Type 2 Restaurant square footage; and, reduce overall square footage	R-20210552	4/22/2021
	To allow a rezoning from the Agricultural Reserve (AGR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District	R-2021-0551	4/22/2021
LGA-2021-00006	A Large Scale Future Land Use Amendment to change a future land use designation from Agricultural Reserve (AGR) to Commercial Low with an underlying Agricultural Reserve (CL/AGR)	Ord. No. 2021-0010	4/22/2021
CRB-2017-01222	A Corrective Resolution to correct Resolution R-2017-0501 to delete Engineering Condition 11 which was not indicated in Exhibit C-1 of application PDD/R-2016-01241.	R-2017-0966	7/27/2017
PDD/R-2016-01241	To allow a rezoning from the Agricultural Reserve (AGR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District.	R-2017-0501	04/27/2017
	To allow a Type I Restaurant with Drive-through and a Type II Restaurant.	R-2017-0502	04/27/2017
	To allow a Type I Restaurant with Drive-through and a Type II Restaurant.	R-2017-0503	04/27/2017

Application No.	Request	Resolution	Approval
LGA-2017-0001	To change a future land use designation from Agricultural Reserve (AGR) to Commercial Low with an underlying Agricultural Reserve (CL/AGR)	Ordinance No. 2017-006	01/30/2017

SURROUNDING LAND USES:

TYPE 2 VARIANCE SUMMARY:

ULDC Article	Required	Proposed	Variance
Table 8.G.2.A Freestanding Sign Standards	10-foot setback from property line	1.6-foot setback from property line	8.4-foot reduction in required setback.

FINDINGS: When considering a Development Order application for a Type 2 Variance, the Zoning Commission shall consider Standards a through g listed under Article 2.B.7.E.6, Standards for Zoning or Subdivision Variance. The Standards and Staff Analyses are as indicated below. A Type 2 Variance that fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved.

- a. ***Special conditions and circumstances exist that are peculiar to the parcel of land, building, or structure, that are not applicable to other parcels of land, structures, or buildings in the same district:***

YES. The Plaza Delray MUPD property abuts the Lake Worth Drainage District Canal (LWDD) L-34, which transects the northern property line east to west, and is parallel to West Atlantic Avenue. The L-34 Canal has an 87-foot easement, 66.52 feet of which is located within the Property’s boundary, and 20.48 feet of easement located outside of the northern property line. The only access point to the overall development from West Atlantic Avenue crosses the L-34 canal and provides limited space where a sign can be located to sufficiently serve the businesses of the property. Shifting the sign further to the south has impacts on the canal and the infrastructure within the canal. If the sign is shifted to the south of the canal, it will have implications on the visibility of the sign from the road for drivers. The Applicant is to submitted a letter of support from LWDD in support of the location, and its proposed location.

- b. ***Special circumstances and conditions do not result from the actions of the Applicant:***

YES. There are special circumstances and conditions that exist on the property that validate this variance request not resulting from actions of the Applicant. As stated in the attached Applicant’s Justification Statement, the Property abuts Lake Worth Drainage District Canal (LWDD) L-34, which transects the Property east to west, parallel to West Atlantic Avenue and has an 87-foot easement. Of the 87-foot easement, 66.52 feet of it is located within the Property’s boundary and 20.48 feet of the easement is located north of the Property line. The Property’s entrance on West Atlantic Avenue crosses over the L-34 Canal and provides access to the overall development consisting of both the Property and parcel to the west. This access point is the only available land along the Property’s frontage that is not within the waterway of the L-34 canal, and the only feasibly area where a sign can be located that adequately serves and supports the businesses that operate on the Property.

The Applicant’s Justification states that at the entrance point along West Atlantic Avenue, the L-34 Canal has a reinforced concrete pipe (RCP) running parallel to West Atlantic Avenue that LWDD has determined no structures can be constructed directly over. In relationship to the property, the RCP is located approximately 19.75 feet away from the north property line along the main entrance point. The RCP is 72 feet in length. In order to protect the RCP, the sign must be offset from the centerline of the RCP by at least 4 feet to remain clear of compromising the RCP via the sign’s foundation. In addition to the RCP, LWDD requires access to the southern portion of the L-34 Canal that abuts the Property, which further restricts the feasible locations for the Property’s signage. This access is granted through 30 feet of drop-curb, beginning at the South side of the drainage ditch that must remain clear of objects so that LWDD can safely work and move along the L-34 Canal. The location of the eastern drop curb access is approximately 36.5 feet from the north property line. The sign that was approved and currently constructed on the Property is 14.17 feet long in total counting the constructed foundation.

The Applicant’s Justification states that locating the sign 10 feet from the property line as required by Code would overlap the sign’s foundation with the LWDD RCP and not be possible. Furthermore, the sign could not be located 4 feet offset from the southern portion of the RCP (a total of 23.5 feet from the property line) because then the sign would overlap with the required LWDD access along the south side of the L-34 Canal, creating a dangerous obstruction to their maintenance activities along the canal. Locating the sign south of the 30-foot LWDD eastern access curb is untenable and undue, as this would put the sign at least 66.52 feet setback from the property line and would require substantial site revisions to the already approved MUPD.

c. ***Granting the Variance shall not confer upon the Applicant any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district:***

YES. This variance will not grant any special privilege to the Applicant, and will allow the sign to continue to be used. The site has a LWDD along the frontage of the property that is 87 feet in depth. LWDD allows in some occasions for structures to be located within their easements, with their consent. Because of the location of the shared entrance and the infrastructure for the canal locating this sign 1.6 feet from the property line will not give them a special privilege, the sign will still be ~22 feet from the right of way. This variance will allow the Applicant to continue to advertise in a manner that is equivalent to the neighboring properties, eliminating a special privilege for those businesses' advertising ability.

d. ***Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship:***

YES. The literal interpretation of the Code would deprive the Applicant of rights commonly used by neighboring parcels of land in the same district. The Code as written would require the Applicant to relocate the sign 66.52 feet from the property line. The Code required setback of 10 feet combined with the unique characteristics associated with the LWDD L-34 Canal would require the setback to be increased to 66.52 feet. The sign being located this far away from the property line would deprive the Applicant of the rights that the neighboring parcels to the west enjoy, as these lots have signage located in the LWDD easement.

e. ***Granting the Variance is the minimum Variance that will make possible the reasonable use of the parcel of land, building, or structure:***

YES. Where the sign currently stands, it can continue to serve the business located on the property while not hindering any of the factors associated with the L-34 Canal. Locating a freestanding, ground-mounted sign more than 66.52 feet from the right-of-way where the speed limit is 45 miles per hour could result in motorists looking too far off the roadway to read the sign's contents and create a potentially dangerous situation.

f. ***Grant the Variance will be consistent with the purposes, goals, objectives, and policies of the Plan and this Code:***

YES. Granting the Variance will be consistent with the Palm Beach County Comprehensive Plan and the Unified Land Development Code (ULDC). This Variance will allow the Applicant to avoid undue hardship and will supplement the Applicant's ability to use, maintain, develop, and improve their private property. The Variance is aligned with policy 1.1-b of objective 1.1 of the property rights element of the Comprehensive Plan. The Variance also complies with all the required application materials for a Type 2 Variance located in the ULDC.

g. ***Granting the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare:***

YES. The proposed Variance to keep the sign where it currently stands will not be injurious to the area involved or detrimental to the public welfare. Protecting the safety of passing motorists is the main concern when relocating the sign. Guardrails are located on both sides of West Atlantic Avenue providing two layers of insulation, protecting motorists from the sign in the result of a motor vehicle accident.

CONCLUSION: Staff has evaluated the standards listed under ULDC Art. 2.B.7.E.6, Standards, and determined that there is a balance between the need for change and the potential impacts generated by this change. Therefore, Staff is recommending approval, subject to the Conditions of Approval as indicated in Exhibit C.

CONDITIONS OF APPROVAL

EXHIBIT C - Type 2 Variance - Standalone

VARIANCE

1. No later than June 6, 2023 the Property Owner shall submit to the Development Review Officer (DRO), an amendment to the approved Final Site Plan to show the approved Variance(s) and any associated Conditions of Approval. (DATE: ZONING - Zoning)
2. At time of application for a Building Permit, the Property Owner shall provide a copy of this Variance approval along with copies of the approved Plan to the Building Division. (BLDGPMPT: BUILDING DIVISION - Zoning)

COMPLIANCE

1. In Granting this Approval, the Zoning Commission relied upon the oral and written representations of the Property Owner/Applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance Condition of this Approval. (ONGOING: ZONING - Zoning)
2. Failure to comply with any of the Conditions of Approval for the subject property at any time may result in:
 - a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, owner, lessee, or user of the subject property; the Revocation of any other Permit, License or Approval from any developer, owner, lessee, or user of the subject property; the Revocation of any concurrency; and/or,
 - b. The Revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other Zoning Approval; and/or,
 - c. A requirement of the development to conform with the standards of the Unified Land Development Code at the time of the finding of non-compliance, or the addition or modification of Conditions reasonably related to the failure to comply with existing Conditions; and/or
 - d. Referral to Code Enforcement; and/or
 - e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval. (ONGOING: ZONING - Zoning)

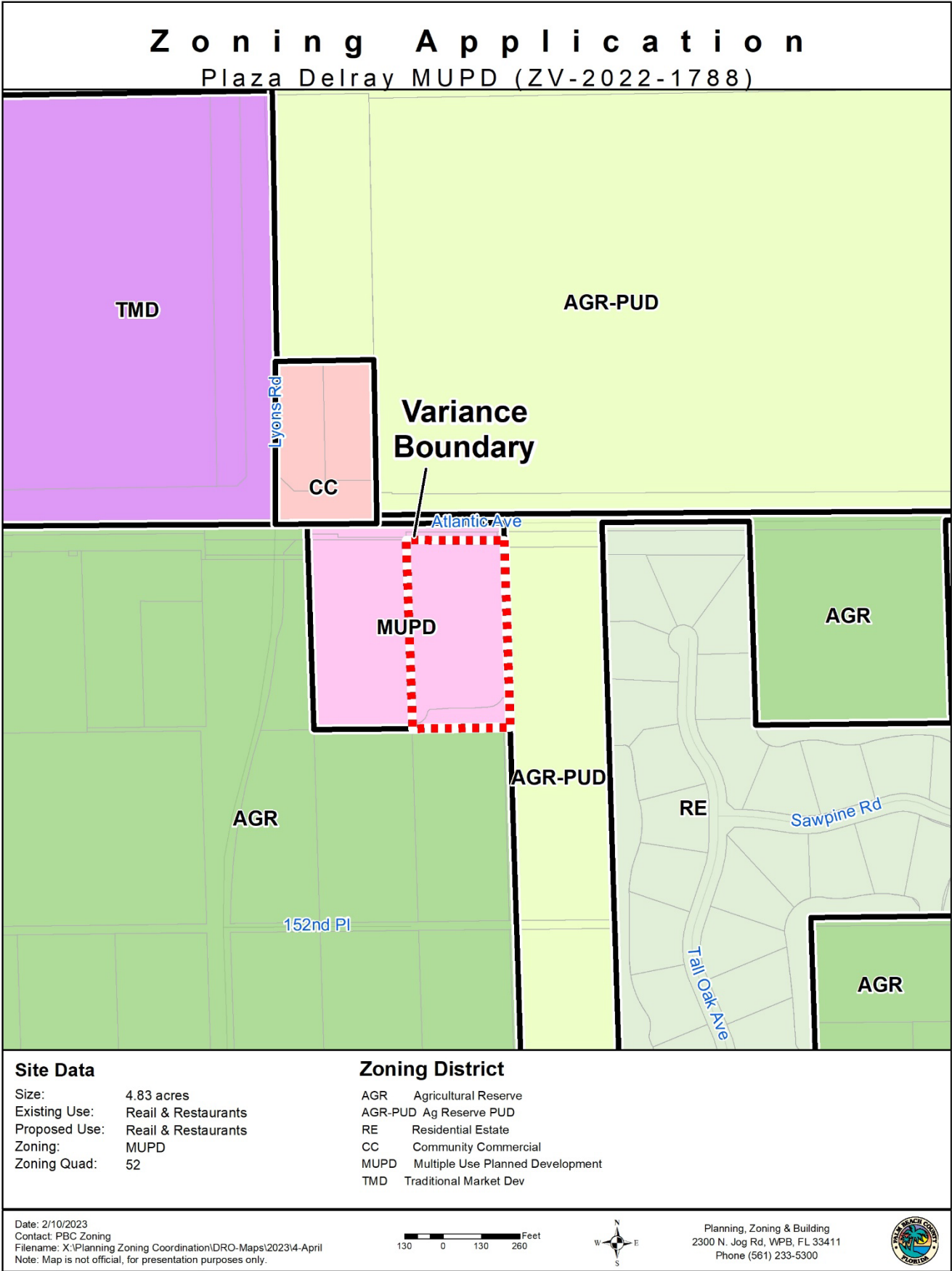
DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

Figure 1 - Land Use Map



Figure 2 - Zoning Map



Zoning Commission
App. No. ZV-2022-01788

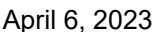


Exhibit D – Disclosure of Ownership

PALM BEACH COUNTY - ZONING DIVISION

FORM # 9

DISCLOSURE OF OWNERSHIP INTERESTS – PROPERTY

[TO BE COMPLETED AND EXECUTED BY THE PROPERTY OWNER(S) FOR EACH APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT OR DEVELOPMENT ORDER]

TO: PALM BEACH COUNTY PLANNING, ZONING AND BUILDING EXECUTIVE DIRECTOR, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Ian Weiner (Title AP), hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

- 1. Affiant is the [] individual or [x] Title AP PEBB Atlantic, LLC [position - e.g., president, partner, trustee] of PEBB Atlantic, LLC [name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership] that holds an ownership interest in real property legally described on the attached Exhibit "A" (the "Property"). The Property is the subject of an application for Comprehensive Plan amendment or Development Order approval with Palm Beach County.
- 2. Affiant's address is: 7900 GLADES ROAD SUITE 600 BOCA RATON, FL 33434
- 3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent or greater interest in the Property. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.
- 4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of application for Comprehensive Plan amendment or Development Order approval affecting the Property. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of any and all individuals or entities holding a five percent or greater interest in the Property.
- 5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Property that may occur before the date of final public hearing on the application for Comprehensive Plan amendment or Development Order approval.
- 6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

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7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief, it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Ian Weiner (Title AP), Affiant
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 10th day of November, 2022 by Ian Weiner (name of person acknowledging). He/she is personally known to me ~~or has produced~~ (type of identification) as (type of identification) identification and did not take an oath (circle correct response).

Kim Nizer Mareira
(Name - type, stamp or print clearly)

(Signature)

My Commission Expires on 5/25/2025

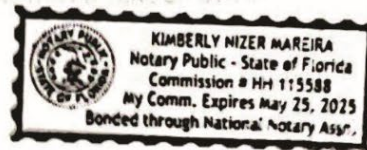


EXHIBIT "A"**PROPERTY**

DESCRIPTION PROVIDED BY THE CLIENT:
PARCEL 1 (FEE SIMPLE):

PARCEL A AND TRACT W-1, OF SENECA PROPERTY MUPD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 128, PAGE (S) 138, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 2 (EASEMENT):

NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS, INGRESS, AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS DESCRIBED IN THAT CERTAIN RECIPROCAL ACCESS EASEMENT AS RECORDED MARCH 14, 2017 IN OFFICIAL RECORDS BOOK 28946, PAGE 962; AND AS AFFECTED BY FIRST AMENDMENT TO RECIPROCAL ACCESS AGREEMENT AS RECORDED MARCH 7, 2019 IN OFFICIAL RECORDS BOOK 30462, PAGE 785, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, OVER AND ACROSS THE PROPERTY DESCRIBED THEREIN.

TOGETHER WITH:

PARCEL 3 (FEE SIMPLE):

THE EASTERLY 23.40 FEET OF TRACT 14, THE PALM BEACH FARMS CO. PLAT NO. 1, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 26, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT THE NORTHERLY 52.48 FEET CONVEYED TO THE LAKE WORTH DRAINAGE DISTRICT BY CHANCERY CASE NO. 407 RECORDED IN O.R. BOOK 6495, PAGE 761.

ALSO KNOWN AS:

ALL THAT PORTION OF PARCEL A AND TRACT W-1, SENECA PROPERTY MUPD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 128, PAGES 138 AND 139, LYING SOUTH OF THE LAKE WORTH DRAINAGE DISTRICT L-34 CANAL, AS RECORDED IN OFFICIAL RECORD BOOK 6495, PAGE 761, TOGETHER WITH A PORTION OF TRACT 14 OF SECTION 20, THE PALM BEACH FARMS COMPANY PLAT NO. 1, AS RECORDED IN PLAT BOOK 2, PAGE 26, ALL OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND NAIL AND DISK STAMPED "PRM LB3300", AS SHOWN MONUMENTING THE NORTHWEST CORNER OF SAID SENECA PROPERTY MUPD; THENCE S.01°58'54"E., ALONG THE WEST LINE THEREOF, A DISTANCE OF 0.19 FEET TO A POINT OF INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF THE LAKE WORTH DRAINAGE DISTRICT L-34 CANAL, AS RECORDED IN OFFICIAL RECORD BOOK 6495, PAGE 761 OF SAID PUBLIC RECORDS, AND THE POINT OF BEGINNING; THENCE CONTINUE S.01°58'54"E., ALONG SAID WEST LINE, A DISTANCE OF 638.21 FEET TO THE SOUTHWEST CORNER OF SAID SENECA PROPERTY MUPD; THENCE N.89°23'06"E. ALONG THE SOUTH LINE OF SAID SENECA PROPERTY MUPD AND TRACT 14 OF SECTION 20, A DISTANCE OF 330.61 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 14 OF SECTION 20; THENCE N.01°51'46"W. ALONG THE EAST LINE THEREOF, A DISTANCE OF 634.51 FEET TO A POINT OF INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID LAKE WORTH DRAINAGE DISTRICT L-34 CANAL, SAID RIGHT-OF-WAY LINE LYING 52.48 FEET SOUTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE NORTH LINE OF SECTION 20, TOWNSHIP 46 SOUTH, RANGE 42 EAST; THENCE N.89°58'57"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 332.03 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN SECTION 20, TOWNSHIP 46 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA. CONTAINING 210,751 SQUARE FEET/4.8382 ACRES MORE OR LESS.

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EXHIBIT "B"

DISCLOSURE OF OWNERSHIP INTERESTS - PROPERTY

Affiant must identify all entities and individuals owning five percent or more ownership interest in the Property. Affiant must identify individual owners. For example, if Affiant is an officer of a corporation or partnership that is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name	Address
Bruce Weiner	7900 Glades Rd, Ste. 600, Boca Raton, FL 33434
Ian Weiner	7900 Glades Rd, Ste. 600, Boca Raton, FL 33434
Laurel Weiner Rom	7900 Glades Rd, Ste. 600, Boca Raton, FL 33434
Bruce Weiner 2016 Trust I	7900 Glades Rd, Ste. 600, Boca Raton, FL 33434
Jared Weiner Decd. of Trust	7900 Glades Rd, Ste. 600, Boca Raton, FL 33434

Exhibit E – Justification Statement



JUSTIFICATION STATEMENT
Plaza Delray MUPD
Standalone Type 2 Zoning Variance
Application No. ZV-2022-01788 | Control No. 2016-00078
Initial Submittal: November 16, 2022
1st Resubmittal: January 23rd, 2023

REQUEST

On behalf of the Applicant, PEBB Atlantic LLC, WGI, Inc. is requesting the following:

- 1) Standalone Type 2 Zoning Variance to reduce to the required setback for ground mounted, free-standing monument signs from 10 feet to 1.6 feet.

ULDC Code Section	Required Standard	Proposed Standard	Variance Amount
Table 8.G.2.A Freestanding Sign Standards	10-foot setback from Property line	1.6-foot setback from Property line	8.4-foot reduction in required setback.

Please note that this sign was approved by Palm Beach County Building Permit No. B-2021-029872-0000 and has already been constructed at the time of this request.

SITE INFORMATION

The subject site is located approximately 500 feet southeast of the intersection between West Atlantic Avenue and Lyons Road, in the Agriculture Reserve Tier of unincorporated Palm Beach County. The Subject site can be identified by PCN: 00424620190010000 and is tied to control number 2016-00078. Under this control number, the subject site's control name is Plaza Delray MUPD. Plaza Delray MUPD will be referred to herein as the "Property". The Property is 4.83 acres large and consists of 30,440 SF of mixed-use retail. This application seeks to obtain a Type 2 Variance for a reduction in the required setback for ground mounted, freestanding signs. The ground mounted, freestanding sign on the property that is the focus of this request is currently located 1.6 feet from the north property line.

SUMMARY OF REQUEST

The standards within Table 8.G.2.A of the Palm Beach County Unified Land Development Code (ULDC) outline that the required setback distance must be 10 feet within the AG-R Tier. However, for reasons outside of the applicant's control, the sign cannot be located within the minimum setback distance without causing undue hardship to both the applicant and the businesses that operate on the Property. The four major conditions that necessitate the Type 2 Variance are listed below:

- 1) The Property is transected east/west by the L-34 Canal that has a 66.52-foot easement which restricts the available frontage on the Property to place a sign that can adequately serve it's purpose of providing identifying information for the site.
- 2) In conjunction with the L-34 Canal itself, there is a 30-foot LWDD maintenance access that is located on the southern side of the L-34 Canal that must be object free, further restricting the site's frontage.
- 3) There is a 72-foot-long reinforced concrete pipe running parallel to West Atlantic Avenue and through the center of the site's entrance way that is approximately 7.5 feet wide and cannot have any structures built over it.
- 4) The sign as it currently stands has been approved and permitted by the Palm Beach County Building Department. The applicant does not wish to incur the costs associated with removing and rebuilding the already approved and permitted sign.

Conditions 1 through 3 above directly answer why the sign cannot meet the minimum setback requirements. Conditions 1 through 4 above provide reasoning for why the sign cannot be moved without causing undue hardship to the applicant.

Further analyses of the standards and requirements for Type 2 Variances as outlined in Article 2.B.7.E.6 of ULDC are provided in the Standards sections of this Justification Statement.



SURROUNDING USES

The table below summarizes the surrounding uses for the property.

Adjacent Lands	Use	Future Land Use	Zoning
East	Vacant	AGR	AGR PUD
North	Agriculture	AGR	AGR PUD
South	Vacant	AGR	AGR
West	Multi-Use Retail	CL/AGR	AGR-MUPD

North: To the north of the Property is a 70 acre M.O.L. site that is currently being utilized for agricultural farming. The land is zoned as AGR-PUD and has a future land use of AGR.

South: To the south of the Property the land is currently vacant and does not have an applicable use type. The land is zoned as AGR and has a future land use of AGR.

East: To the east of the Property the land is currently vacant and does not have an applicable use type. The land is zoned as AGR-PUD and has a future land use of AGR.

West: To the west of the Property is a mixed use retail development that is comprised of multiple stores, businesses, and restaurants. The land is zoned as MUPD and has a future land use of CL/AGR.

APPROVAL HISTORY

The following Table outlines the approval history of the Property.

RESOLUTION/ORDINANCE	DATE	SUMMARY/PURPOSE	CONTROL NO. / APP. NO.
Ordinance No. 2017-006	01/30/2017	To change a future land use designation from Agricultural Reserve (AGR) to Commercial Low with an underlying Agricultural Reserve (CL/AGR)	LGA-2017-0001
Resolution-2017-0502	04/27/2017	To allow a Type I Restaurant with Drive-through and a Type II Restaurant.	PDD/R-2016-01241
Resolution-2017-0503	04/27/2017	To allow a Type I Restaurant with Drive-through and a Type II Restaurant.	PDD/R-2016-01241
Resolution-2017-0501	04/27/2017	To allow a rezoning from the Agricultural Reserve (AGR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District.	PDD/R-2016-01241
Resolution-2017-0966	07/27/2017	To correct errors within Resolution R-2017-0501 to delete Engineering Condition 11 which was not indicated in Exhibit C-1 of application PDD/R-2016-01241.	CRB-2017-01222



Ordinance No. 2018-01134	06/05/2018	To allow a Type 3 Concurrent Review (Zoning, Land Development and Building) for a Subdivision, and final Plan approval of an Official Zoning Map Amendment to allow a rezoning from the Agricultural Reserve (AGR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District, and Conditional Uses to allow a Type I Restaurant with Drive-through and a Type II Restaurant.	PAC-2018-01134
Ordinance No. 2018-01534	03/22/2019	To finalize the plans approved by the Board of County Commissioners for an Official Zoning Map Amendment, and to allow a Type 1 Restaurant and a Type 2 Restaurant.	DRO2/W-2018-01534
Ordinance No. 2019-01959-1	10/30/2019	Modifications to approved plans to update building B, C, and D facade/building footprint; as well as addition/modification of sidewalks, addition/revisions to dumpster enclosures, relocation of grease trap/parking, modification to foundation planting, and addition of FPL Transformer.	ZAR-2019-01959
Ordinance No. 2020-00816-1	06/23/2020	Modifications to the approved plans of record to reflect revised interior square footage changes associated with finalized layout for tenant bays.	ZAR-2020-00816
Ordinance No. 2021-0010	04/22/2021	To change a future land use designation from Agricultural Reserve (AGR) to Commercial Low with an underlying Agricultural Reserve (CL/AGR).	LGA-2021-00006
Resolution-2021-0551	04/22/2021	To allow a rezoning from the Agricultural Reserve (AGR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District.	PDD/DOA-2020-01117
Resolution-2021-0552	04/22/2021	To reconfigure the Site Plan to add land area and parking spaces; reconfigure building and Type 2 Restaurant square footage; and, reduce overall square footage.	PDD/DOA-2020-01117
Ordinance No. 2021-00828	06/04/2021	To finalize plans approved by the Board of County Commissioners.	DROE-2021-00828



Ordinance No. 2021-01130	08/09/2021	Modification of Approved Final Site Plan, Final Regulating Plan, and Final Phasing Plan to add covered pergolas, update gross floor area for Buildings B and D, increase square footage for Type 2 Restaurants and decrease square footage for Retail, and reduce parking by one per reduced parking requirements.	ZAR-2021-01130
Ordinance No. 2021-01630-0	09/14/2021	Restaurant, Type 1	BTR-2021-01630
Ordinance No. 2021-01704-1	10/26/2021	The FSP, FPHP, and FRP need to provide these modifications to match the plat that is being processed with PBC review.	ZAR-2021-01704
Ordinance No. 2021-01726-0	09/28/2021	Personal Services (Salon)	BTR-2021-01726
Ordinance No. 2021-02210-0	12/06/2021	Personal Services (Nail Salon)	BTR-2021-02210
Ordinance No. 2022-00223-0	01/18/2022	Medical Office	BTR-2022-00223

STANDARDS – STANDALONE TYPE 2 ZONING VARIANCE

Pursuant to Article 2.B.7.E.6 of the Palm Beach County Unified Land Development Code, Applications for Type 2 Variances require that seven (7) criteria related to variances are addressed prior to approval by the Zoning Commission (ZC). The ZC shall consider and find that all seven criteria listed below have been satisfied by the Applicant prior to making a motion for approval, of a Zoning or Subdivision Variance: [Ord. 2006-036]

The applicant's responses to each of the seven criteria are outlined below.

1. Special conditions and circumstances exist that are peculiar to the parcel of land, building, or structure, that are not applicable to other parcels of land, structures, or buildings in the same district;

Response

The Property has special conditions and circumstances that are not applicable to neighboring parcels within the same district.

The Property abuts Lake Worth Drainage District Canal (LWDD) L-34, which transects the Property east to west, parallel to West Atlantic Avenue. The L-34 Canal has an 87-foot easement. Of the 87-foot easement, 66.52 feet of it is located within the Property's boundary and 20.48 feet of the easement is located north of the Property line. The Property's entrance on West Atlantic Avenue crosses over the L-34 Canal and provides access to the overall development consisting of both the Property and parcel 00424620010000150. This access point is the only available land along the Property's frontage that is not within the waterway of the L-34 canal, and the only feasibly area where a sign can be located that adequately serves and supports the businesses that operate on the Property.

At this entrance point along West Atlantic Avenue, the L-34 Canal has a reinforced concrete pipe (RCP) running parallel to West Atlantic Avenue that LWDD has determined no structures can be constructed directly over. In relationship to the property, the RCP is located approximately 19.75 feet away from the north property line along the main entrance point. The RCP is 72 feet in length. In order to protect the RCP, the sign must be offset from the centerline of the RCP by at least 4 feet to remain clear of compromising the RCP via the sign's foundation. In addition to the RCP, LWDD requires access to the southern portion of the L-34 Canal that abuts the Property, which further restricts the feasible locations for the Property's signage. This access is granted through 30 feet of drop-curb, beginning at the South side of the drainage ditch that must



remain clear of objects so that LWDD can safely work and move along the L-34 Canal. The location of the eastern drop curb access is approximately 36.5 feet from the north property line. The sign that was approved and currently constructed on the Property is 14.17 feet long in total counting the constructed foundation (which is critical to include in this analysis given the underground RCP).

Revisiting the measurements above, it is impossible for the applicant to locate this sign 10 feet from the property line as required by code because if the sign were to be placed at exactly 10 feet from the property line, the sign's foundation would overlap with the LWDD RCP. Furthermore, it is impossible for the applicant to locate the sign 4 feet offset from the southern portion of the RCP (a total of 23.5 feet from the property line) because then the sign would overlap with the required LWDD access along the south side of the L-34 Canal, creating a dangerous obstruction to their maintenance activities along the canal. Locating the sign south of the 30-foot LWDD eastern access curb is untenable and undue, as this would put the sign at least 66.52 feet setback from the property line and would require substantial site revisions to the already approved MUPD.

Last, it stands to be mentioned that demolishing this sign, which was already approved by the PBC Building Department, and moving it to meet code required setbacks would result in undue hardship for the applicant. This would require the applicant to demolish an already built, permitted and approved sign and start the permitting process over, after following the applicable procedure to place the sign as it currently stands.

2. Special circumstances and conditions do not result from the actions of the Applicant;

Response:

Special circumstances and conditions that necessitate this variance request do not result from the actions of the Applicant. The special circumstances stem from the LWDD L-34 Canal, which is part of the vitally important LWDD Canal System. The special circumstances and conditions are explained in detail within the Applicant's response to variance criteria item 1. While invaluable to Palm Beach County, the LWDD Canal System creates divisions of land that affect certain properties more than others. The Property is heavily impacted by the L-34 Canal which abuts the northern property line. This L-34 Canal is located on the Property by no volition of the applicant and is wholly outside of their control.

3. Granting the Variance shall not confer upon the Applicant any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district;

Response:

Granting this variance will not confer upon the Applicant any sort of special privilege. The applicant seeks this variance in order to continue to actively use the sign as it is currently being used. Granting this variance will eliminate the potential undue hardship for the applicant as a result of having to demolish and/or move the already permitted and constructed sign. Moreover, granting this variance will allow the Applicant to continue to advertise the Property's businesses in a manner that is equivalent to neighboring parcels within the same district. If the Applicant were to strictly adhere to the code, the neighboring parcels would be awarded better advertising ability, creating a special privilege that benefits the competing businesses in the area and diminishes the advertising ability of the Applicant.

4. Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship;

Response:

Literal interpretation of the Code would impose an unnecessary and undue hardship on the applicant. If the code was interpreted and followed as written, the sign would be required to be located at least 66.52 feet from the Property line. While the code required setback is 10 feet, the unique characteristics associated with the property stemming from the LWDD L-34 Canal force the setback distance to increase to at least 66.52 feet if the sign is not located 1.6 feet from the property line. Furthermore, locating the sign at least 66.52 feet away from the property line would deprive the applicant of rights enjoyed by the parcels directly west of the property, as these lots have signage located in the LWDD easement.

Requiring the applicant to relocate the sign at least 66.52 feet from the property line results in an undue hardship, as this would require substantial time, resources, and space required to physically remove the sign. Moreover, the issue at the focus of this variance request stems from an already permitted and constructed sign. The approval and construction of this



sign were done so with the applicant's intentions to follow the required procedures for constructing ground mounted, free-standing signs.

5. Granting the Variance is the minimum Variance that will make possible the reasonable use of the parcel of land, building, or structure;

Response:

Granting the variance is the minimum variance that will allow the current placement of the sign. Where the sign currently stands, it can adequately serve the businesses located on the Property while not disturbing any of the factors associated with the L-34 Canal.

Relocating the sign to a distance at least 66.52 feet from the property line is unreasonable. While there is not a codified maximum setback limit for freestanding, ground-mounted signs in the Palm Beach County ULDC, there is a logical maximum setback distance. The logic fundamentally comes from the fact that signs, in general, serve the sole purpose of advertising what businesses and/or services are operating in a certain area. Logically, locating a freestanding, ground-mounted sign more than 66.52 feet from a roadway where the speed limit is 45 miles per hour is unreasonable. At the posted speed and distance from the property line, it would likely be very difficult to read or interpret the sign. Moreover, locating the sign too far from the roadway may create a dangerous situation where drivers are looking too far off the road to try and read the sign's contents.

6. Granting the Variance will be consistent with the purposes, Goals, Objectives, and Policies of the Plan, and this Code; and,

Response:

Granting this variance is consistent with the Palm Beach County Comprehensive Plan and the overall ULDC. Granting this variance furthers Palm Beach County's commitment to Property Rights as identified by objective 1.1 of the Property Rights Element of the Comprehensive Plan. As previously mentioned within the Applicant's response to criteria item 4, the granting of this variance will allow the Applicant to avoid undue hardship. By avoiding undue hardship this variance will also supplement the Applicant's ability to use, maintain, develop, and improve their private property. Thus, this variance is supplementally aligned with policy 1.1-b of objective 1.1 of the property rights element of the Comprehensive Plan. Furthermore, the proposed variance is consistent with the policies, procedures, and requirements found in the ULDC since the applicant intends utilize the awarding of this variance to remain consistent and all the required application materials for a Type 2 Variance have been adequately supplied to the best of the Applicant's ability.

7. Granting the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Response:

Granting the proposed variance to keep the sign where it currently stands will not be injurious to the area involved or detrimental to public welfare. The first concern with locating the sign closer to the property line is safety for passing motorists, but this is fortunately alleviated through the inclusion of 50 linear feet of guardrail that is located between the main entrance point on West Atlantic Avenue and the Property line. This guardrail creates a barrier between the sign and passing traffic so that in the event of a traffic crash, the motorists would collide with the guardrail instead of the sign. Moreover, in the event that traffic traveling westbound on West Atlantic Avenue were to cross the median on West Atlantic Avenue and collide with the Property, there is an existing guardrail along the roadway in addition to the guardrail that runs along the property line. Together, these guardrails create two layers of insulation, protecting motorists from the sign as it is currently located. Thus, granting the variance will not be injurious to the area or detrimental to public welfare.

Based on the above and attached information, the Applicant respectfully requests the approval of the Type 2 Variance request.