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Ms. Jennifer Buce
Planner
Planning & Zoning Division
Development Service Department
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33483

**Re: Variance Justification Statement – Resubmission
Daukas Residence
1220 Crestwood Drive, Delray Beach, FL 33483**

Dear Jennifer:

This law firm represents Mr. Galan G. Daukas and Mrs. Denise M. Daukas, the owners of the above-referenced property. In connection with the Daukas's Variance Application, please see our Variance Justification Statement hereinbelow:

- a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning. Economic hardship shall not constitute a basis for the granting of a variance.**

The property is in the R-1-AAA zoning district and the North Beach Overlay District. The property was platted at a depth and width that is already less than would typically be required for the R-1-AAA district. This neighborhood has an array of lot sizes, a mix of both lots that are in the dimension as originally platted as well as lots that are a result of subdivisions of larger platted tracts of land. Furthermore, given that the existing width of right of way is significantly less than is required per the Code of Ordinances, and given that a right of way dedication is being required of the property owner in order to accommodate the increased right of way width, the nonconforming lot depth will be further reduced well below what is typically required for the R-1-AAA district. The increased setbacks established for the R-1-AAA district are intended to apply to lots of significantly greater size than the subject property. In addition to the lot depth, the property is lacking in overall lot size (approximately 8,755 sq. ft.) compared to the minimum typically required for the R-1-AAA district (12,500 sq. ft.).

- b) That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning.**

Because the existing property is smaller in size than is anticipated by the requirements of the R-1-AAA zoning district, the literal interpretation of the regulation would necessitate that the portion of the lot that is required for the front setback and side setbacks comprise a significantly greater percentage of the overall lot depth, thereby reducing the buildable area to a greater degree than is commonly enjoyed by other properties in the zoning district that meet or exceed the minimum lot size requirements.

- c) That the special conditions and circumstances have not resulted from actions of the applicant.**

The actions of the applicant did not produce the existing lot dimensions that are less than the minimums as required of the R-1-AAA district; and furthermore, the applicant has not subdivided or further reduced the size of their property. Likewise, the reduction in lot size that will occur as a result of the required right of way dedication is not due to the actions of the applicant. The right of way dedication is required per the Code of Ordinances and increases the difficulty to comply with the setback requirements.

- d) That granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance.**

The granting of a front setback and side setback variances would allow the applicant to develop the property in a manner consistent with the intent of the zoning district when compared with properties of a larger size. The relative percentage of the lot that would be necessary to accommodate the minimum required front setback and side setbacks on the subject property are more burdensome and restrictive than is intended given the ratio between minimum lot depth and setbacks. The granting of a front setback and side setback variances would not confer a special privilege but would instead rectify a hardship.

- e) That the reasons established in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.**

The request for the reduction of the setbacks is predicated in part on the fact that an additional eight foot right of way dedication is being required along Crestwood Drive. If the variance is justified because of the need to dedicate eight feet of land towards the expansion of the right of way, then a corresponding variance should be subtracted from the minimum required front setback resulting in a required setback of 27 feet from the existing Crestwood Drive right-of-way and 19 feet from the ultimate Crestwood Drive right-of-way. Further, please note that the applicant is requesting a subtraction of only 7 feet from the minimum required front setback from the existing Crestwood Drive right-of-way, resulting in a required setback of 28 feet from the existing Crestwood Drive right-of-way, **and a subtraction of only 15 feet from the minimum required front setback from the ultimate Crestwood Drive right-of-way, resulting in a required setback of 20 feet from the ultimate Crestwood Drive right-of-way.** The lot is already nonconforming in terms of lot depth and the side setbacks, and the required right of way dedication is further exacerbating the shortcomings with respect to size. The setback variance that is requested by the applicant is necessary to account for the fact the lot is already nonconforming with respect to lot depth even prior to the right of way dedication occurring.

To confirm, the resulting requested setbacks are as follows:

1. Front Setback: 20'-0";
2. West Side Setback: 10'-2.6"; and
3. East Side Setback: 10'-1".

- f) **That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, and will not be injurious to the neighborhood, or be otherwise detrimental to the public welfare.**

The intent of the variance is to allow for redevelopment of the site in a manner that maintains consistency with the existing neighborhood and falls within the intent of the R-1-AAA zoning district. There are other properties on the block that have existing setbacks less than the minimum required, and furthermore, the end cap lots at the furthest east and west of the block are oriented towards the north-south roads with their side property line along Crestwood Drive. As such, the structures provide a side street setback along Crestwood Drive which is far less than is required for a frontage. The variances are not incompatible with the existing development pattern found across the block, specifically in relation to the adjacent block to the east.

Should you have any questions please contact my office at (561) 276-6363.

Sincerely,
MacMillan & Stanley, PLLC

s/Tom Stanley

Thomas M. Stanley, Esq.

TMS/nar