318 SE 5TH STREET APPLICATION FOR WAIVER TO SECTIONS 4.1.4(B) & 4.1.4(D) Justification Statement

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City of Delray Beach Development Services Dept. Planning & Zoning Div.

This Justification Statement provides the background and analysis for an application for Waiver from Sections 4.1.4(B) and 4.1.4(D) of the City of Delray Beach Land Development Regulations for the property located at 318 SE 5th Street, Delray Beach, Florida. The subject site includes an existing single-family home which, based on information from the Property Appraiser, was built in 1930 and consists of 653 square feet including screen porches. The lot was platted in 1913 as part of the Osceola Park subdivision, Lot 5, Block 5, and remains in the original platted configuration with dimensions of 46.8' wide by 130.2' deep. As such the property is a "lot of record" as defined by the City of Delray Beach Land Development Code and which is as follows:

"A lot which is part of a subdivision recorded in the office of the Clerk of the Circuit Court of Palm Beach County, Florida. Whenever a portion of an existing lot of record is replatted and contained in a new plat, that portion of the lot on the original plat which has not been replatted and included in the new plat shall not be considered a lot of record and shall not be presumed to satisfy the definition of lot as contained in this section or in 172.03."

The subject site is located in the R-1-A zoning district and according to City Code Section 4.3.4(K) Development Standards Matrix — Residential Zoning Districts, the R-1-A requires a minimum lot area of 60' wide by 100' deep. Although this property does not comply with the minimum width, it is a nonconforming lot of record having been recorded long before the City's zoning regulations were adopted. City Code Section 1.3.2 Nonconforming lots of record states the following:

"Any lot or parcel which qualifies as a lot of record may be used only as allowed in Section 4.1.4.

(A) **Definition**. A nonconforming lot may mean a lot of record that was lawfully created but does not comply with the lot standards of this Code, or a parcel of land that does not meet the lot standard of the applicable code."

Consequently, as a nonconforming lot or record, this property "may only be used" in accordance with Section 4.1.4. Although the existing single-family use has been established since 1930 as evidenced by the records of the Palm Beach County Property Appraiser (thus currently being used for single-family), and there is no proposed change of use, the City has interpreted this to mean that demolition the existing structure and reconstruction of a new single-family home must comply with Section 4.1.4.

City Code Section 4.1.4 Use of Lots of record states that a nonconforming lot of record which does not comply to minimum lot area and minimum lot dimensions specified for the zoning district in which it is located may be used subject to compliance with certain requirements. Those requirements and their respective applicability to this property is provided below:

(A) Duplex and multiple family structures may not be constructed on a lot which has an area less than that provided for as the minimum lot area within the zoning district.

Applicability: This section is not applicable since the existing single-family home is proposed to be replaced by another single-family home.

(B) A residential structure shall not be constructed on any lot, within a residential zoning district, which has frontage of less than 50 feet. However, this provision shall not prevent construction of a residential structure on a Single-Family Lot (or Parcel) of Record which conforms with all other aspects of minimum lot size requirements, but which has no frontage. Further, such a Lot of Record with no suitable access may achieve private access for a single-family residence and similar uses by means of a nonpublic (private) access easement.

Applicability: The subject site was platted in 1913 as part of the Osceola Park subdivision with a lot width of 46.8', and as such although this is a legal lot of record and a home currently exists on the property, however the City has interpreted that the existing home cannot be demolished, and a new home constructed without obtaining a waiver, and as such this application includes a request for waiver from these provisions.

(C) Except for single family residences subject to the R-1-A (Single Family Residential) zoning district standards, if two or more adjoining lots (or combination of lots and portions of lots) of record were under the same ownership as of October 18, 1994, and if the total frontage and the total area is equal to or greater than that which is required by the zoning district regulations, said property shall not be developed except in accordance with the minimum frontage and lot area requirements of the district. Ownership shall be determined by the property tax rolls on file in the Palm Beach County Property Appraiser's Office as of October 18, 1994

Applicability: This is not applicable as the owner of the subject site owns only the subject site and no adjoining lots.

(D) Within the R-1-A, RL and RM zoning districts, lots of record having at least 40 feet of frontage may be used for Workforce Housing, as long as the workforce housing unit meets the typical designs represented by the sketches set forth in Section 4.7.12(a), the lot is a minimum of 4,000 square feet and conforms to setbacks; provided, however, the minimum side setback may be reduced to a minimum five feet if necessary to accommodate the designs set forth in Section 4.7.12(a) and meets other development standards in the zoning district. The Workforce Housing unit on a lot with frontage as herein described must include rear access via an alley, if available. The unit must also contain design features such as, but not limited to, front porches, eyebrows, outriggers, gables, dormers, arbors, trellises, shutters, balconies,

decorative vents, siding, textured stucco finishes, undulating facades and other such appropriate architectural features.

Applicability: Although this paragraph clearly provides the allowance for lots with at least 40' of frontage to be utilized for Workforce Housing, there is no language requiring the development of Workforce Housing and a single-family home currently exists on the site. However, the City has interpreted this section to mean that if the existing home is demolished the new home must be used for Workforce Housing. As such this application includes a request for a Waiver from this code section.

(E) Variances for lot size, dimensions and frontage, and building setbacks and minimum floor area may be granted for the relocation of a historic structure onto a lot in order to protect the structure. If the relocation lot is not individually designated historic or located within a historic district, then an individual historic designation shall be required in accordance with Section 4.5.1(C) and shall be reviewed concurrently therewith in order for a variance to be granted. All variance requests for relocation of historic structures must be submitted to the Historic Preservation Board in accordance with Sections 4.5.1 (D) and (J) for consideration

Applicability: The proposal does not include relocation of a historic and as such this section is not applicable.

Based on the above, a waiver from City Code Section 4.1.4(B) is needed for the demolition of the existing single-family home and construction of a new single-family home, and a waiver is required from City Code Section 4.1.4(D) to enable construction of the new single-family home to be market rate and not a workforce housing unit. In that regard, waivers are regulated under the provisions of Section 2.4.7(B)(5) Findings. The following lists those findings and provides a response to each regarding the respective waiver request.

(a) Shall not adversely affect the neighboring area:

Waiver from minimum lot frontage: Granting a waiver from the lot frontage requirement will enable the demolition of the existing 653 square foot single family home and construction of a new single family home which would comply with all current zoning and building codes. This would include meeting the minimum standards for the R-1-A district including minimum floor area and setbacks, where the existing structure is nonconforming; and, the minimum standards of the Florida Building Code including minimum hurricane standards where the existing structure is nonconforming. Consequently, granting the waiver will have a positive effect on the neighboring area.

Waiver from Workforce Housing requirement: Based on the Palm Beach County Property Appraiser, the assessed "improvement value" for 2022 is \$59,723 and the assessed "land value" for 2022 is \$262,570. The neighboring area is a mix of older homes similar to the

existing home at 318 SE 5th Street, and newer homes. Some of the newer homes have been constructed for workforce/affordable housing by the Delray Beach Community Land Trust and some constructed without any affordability limits. Best practices for urban planning and housing affordability encourage mixtures of income ranges for diversity in neighborhoods. Consequently, granting the waiver will have a positive effect on the neighborhood area as it will add to the neighborhood diversity and enable the construction of a new home meeting all current codes.

(b) Shall not significantly diminish the provision of public facilities:

<u>Waiver from minimum lot frontage</u>: there is an existing single-family home at the subject location, and it is proposed to be replaced by another single-family home. The net impact on public facilities will be negligible and will not diminish the provision of public facilities as it will be a like-for-like replacement of a single-family home.

<u>Waiver from Workforce Housing requirement</u>: there is an existing single-family home at the subject location, and it is proposed to be replaced by another single-family home. Both are market rate units with no Workforce Housing assistance or restrictions. The net impact on public facilities will be negligible and will not diminish the provision of public facilities as it will be a like-for-like replacement of a single-family home.

(c) Shall not create an unsafe situation:

Waiver from minimum lot frontage: Granting a waiver from the lot frontage requirement will enable the demolition of the existing 653 square foot single family home and construction of a new single family home meeting current zoning and building codes. This would include compliance with the minimum standards for the R-1-A district including minimum floor area and setbacks, where the existing structure is nonconforming; and, compliance with the minimum standards of the Florida Building Code including minimum hurricane standards as well as current structural, mechanical, electrical and plumbing codes where the existing structure is nonconforming. Consequently, granting the waiver will create a safer condition than currently exists by constructing a new home meeting all current codes.

<u>Waiver from Workforce Housing requirement</u>: There is an existing single-family home at the subject location, and it is proposed to be replaced by another single-family home. Both are market rate units with no Workforce Housing assistance or restrictions. As such granting the waiver to allow a market rate unit will not create an unsafe situation and will replace the existing home with one that meets all current zoning and building codes.

(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 from minimum lot frontage: Granting a waiver from the lot frontage requirement will enable the demolition of the existing 653 square foot single family home and construction of a new single family home meeting current zoning and building codes on an existing legal lot of record which is in the same configuration as it existed when platted in 1913. Because the subject property is a legal lot of record and despite its nonconforming status, denial of the waiver would deny the property owner a reasonable use of the land, would deny rights commonly enjoyed by all other property owners with legal lots of record and could be considered a taking. Consequently, granting this waiver would not result in a special privilege.

Waiver from Workforce Housing requirement: Based on the Palm Beach County Property Appraiser, the assessed "improvement value" for 2022 is \$59,723 and the assessed "land value" for 2022 is \$262,570. The city code requires construction of a home with a minimum square footage of no less than 1,000 square feet. Assuming new construction cost at approximately \$150 per square foot (which is low in the current market) and construction of a home that just meets the minimum zoning code requirement for square footage (which is less than the current market for new homes) the total cost would be \$150,000 to construct a new home. When this cost is added to the value of the land (\$262,570) it results in a total cost of \$412,570. According to Palm Beach County the Workforce Housing sales prices limits are as follows, and are attached for reference:

- Low income (60%-80% of median income): \$189,630
- Moderate income (80%-120% of median income): \$297,990
- Middle income (120%-140% of median income): \$352,170

Based on the information supplied by the Palm Beach County Property Appraiser and the Palm Beach County Planning Division, it is impossible to construct a new home on this property and have it comply with Workforce Housing sales limits without substantial governmental subsidy to reduce that cost for sale as Workforce Housing. With no subsidy being offered, the requirement for construction of Workforce Housing becomes an unfunded mandate, would prevent construction of a new home and as such approval of the waiver would not result in granting of a special privilege.

In addition to the above, following are recent sales of several nearby properties. None of these are on lots less than 50' of frontage, but illustrate the current market:

- 229 SE 4th Avenue: This is a home that was built (according to the PB County Property Appraiser) in 1925, and sold in July 2021 for \$580,000.
- 339 SE 3rd Avenue: This is a home that was built (according to the PB County Property Appraiser) in 1953, and sold in December 2020 for \$450,000.
- 414 SE 4th Avenue: This is a vacant lot that (according to the PB County Property Appraiser) sold in July 2021 for \$449,000.

• 932 SE 4th Avenue: This is a home that was built (according to the PB County Property Appraiser) in 1987, and sold in January 2021 for \$400,000.

Consequently, current market conditions preclude the construction and sale of a new home in this area without substantial governmental subsidy. As a result granting this waiver would not result in a special privilege and enforcement of this section of the code on new construction is not reasonable.



Workforce Housing Program (WHP) 2022 Prices and Incomes Effective July 1, 2022

WHP prices are set annually, based on the provisions of Article 5.G.1.A.3.c of the Unified Land Development Code reflected below, and the following:

2022 PBC Median Family Income: \$90,300 (per HUD)

WHP Sales Prices (homes cannot be sold at a higher price)

	WHP Income Cate	2022 (WHP) Sales Prices	
Low	60 -80% of MFI	\$54,180 - \$72,240	\$189,630
Moderate 1	>80 -100% of MFI	>\$72,240 - \$90,300	\$243,810
Moderate 2	>100 -120% of MFI	>\$90,300 - \$108,360	\$297,990
Middle	>120 -140% of MFI	>\$108,360 - \$126,420	\$352,170*

^{*}Middle Income category does not apply to WHP units in projects approved under WHP Code adopted 8/22/2019.

For information on WHP pricing, contact Michael Howe, Planning Division, at mhowe@pbcqov.org or 561-233-5361

PAPA Banner	•
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Location Address 229 SE 4TH AVE

Municipality DELRAY BEACH

Parcel Control Number 12-43-46-16-01-103-0170

Subdivision DELRAY TOWN OF

Official Records Book 32663

Page48

Sale Date JUL-2021

Legal Description TOWN OF DELRAY LT 17 BLK 103

Owners

VENUTO ANTHONY

Mailing address

121 WALLINGFORD AVE

WALLINGFORD PA 19086 6131

Sales Date	Price	OR Book/Page	Sale Type	Owner
JUL-2021	\$580,000	32663 / 00048	WARRANTY DEED	VENUTO ANTHONY
MAR-2004	\$248,000	16869 / 01527	WARRANTY DEED	CACACE VINCENT J
APR-2003	\$202,000	15150 / 01800	WARRANTY DEED	KAKNES JOSEPH
AUG-2002	\$103,020	14092 / 01336	WARRANTY DEED	ALBANESE JEROME H
APR-1998	\$45,000	10398 / 00602	WARRANTY DEED	PAYNE OTIS
12				

No Exemption Information Available.

Number of Units 1

*Total Square Feet 1326

Acres 0.1521

Use Code 0100 - SINGLE FAMILY

Zoning R-1-A - R-1-A-SINGLE FAMILY (12-DELRAY BEACH)

Tax Year	2022	2021	2020
Improvement Value	\$114,403	\$93,989	\$80,777
Land Value	\$477,400	\$280,000	\$270,000
Total Market Value	\$591,803	\$373,989	\$350,777

Tax Year	2022	2021	2020
Assessed Value	\$591,803	\$215,097	\$195,811
Exemption Amount	\$0	\$0	\$0
Taxable Value	\$591,803	\$215,097	\$195,811
Tax Year	2022	2021	2020
Ad Valorem	\$11,521	\$5,431	\$5,071
Non Ad Valorem	\$248	\$242	\$237
Total tax	\$11,769	\$5,673	\$5,308

Property Information

Owner Name: VENUTO ANTHONY

Parcel Control Number: 12-43-46-16-01-103-0170

Location Address: 229 SE 4TH AVE

Structural Details

Structural Element for Building 1

1. Exterior Wall 1 WSF: WOOD SIDING

Year Built
 Air Condition Desc.
 HTG & AC
 Heat Type
 FORCED AIR DUCT

5. Heat Fuel NONE
6. Bed Rooms 3
7. Full Baths 2
8. Half Baths 0
9. Exterior Wall 2 NONE
10. Roof Structure GABLE/HIP

11. Roof Cover ASPHALT/COMPOSITION
12. Interior Wall 1 WOOD PANEL OR CUSTOM

13. Interior Wall 2
14. Floor Type 1
15. Floor Type 2
N/A

16. Stories 1

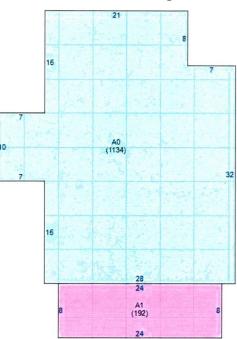
Subarea and Sq. Footage for Building 1

Code Description Sq. Footage

FOP Finished Open Porch 192 BAS Base Area 1134

Total Square Footage: 1326
Total Area Under Air: 1134

Sketch for Building 1



Extra Feature

Description Year Built Units
Patio 1925 405

Unit may represent the perimeter, square footage, linear footage, total number or other measurement of the feature depending on the feature described.

Land Details

 Land Line #
 Description
 Zoning
 Units
 Acres

 1.
 SFR
 R-1-A
 1
 0.1521

PA	PA	Banner

Location Address 339 SE 3RD AVE

Municipality DELRAY BEACH

Parcel Control Number 12-43-46-16-04-096-0100

Subdivision LINNS ADD TO OSCEOLA PARK

Official Records Book 32038

Page922

Sale Date DEC-2020

Legal Description LINNS ADD TO OSCEOLA PARK LT 10 BLK 96

Owners
SINGER NIKKI S
SINGER STEVEN L &

Mailing address

516 S MALLORY CIR DELRAY BEACH FL 33483 5287

Sales Date	Price	OR Book/Page	Sale Type	Owner
DEC-2020	\$450,000	32038 / 00922	WARRANTY DEED	SINGER STEVEN L &
DEC-2013	\$180,000	26514 / 01244	WARRANTY DEED	TURNER CHRISTINE E
NOV-2011	\$75,800	24867 / 00266	WARRANTY DEED	TOW WENDI L
NOV-2009	\$60,000	23609 / 01235	WARRANTY DEED	RODRIGUEZ VICTORIA
JUN-2005	\$289,900	18787 / 01382	WARRANTY DEED	GREENE BRIAN R
123				

No Exemption Information Available.

Number of Units 2	*Total Square Feet	1446	Acres 0.1520	
Use Code FAI	0 - SINGLE MILY	Zoning J	R-1-A - R-1-A-SINGLE FAN DELRAY BEACH)	MILY (12-
Tax Year	2	022	2021	2020

Tax Year	2022	2021	2020
Improvement Value	\$147,743	\$119,862	\$104,744
Land Value	\$429,660	\$252,000	\$243,000
Total Market Value	\$577,403	\$371,862	\$347,744

Tax Year	2022	2021	2020
Assessed Value	\$409,048	\$371,862	\$173,422
Exemption Amount	\$0	\$0	\$50,000
Taxable Value	\$409,048	\$371,862	\$123,422
Tax Year	2022	2021	2020
Ad Valorem	\$9,061	\$7,500	\$2,687
Non Ad Valorem	\$348	\$338	\$237
Total tax	\$9,409	\$7,838	\$2,924

Property Information

Owner Name: SINGER STEVEN L

Parcel Control Number: 12-43-46-16-04-096-0100

Location Address: 339 SE 3RD AVE

Structural Details

Structural Element for Building 1

Exterior Wall 1
 Year Built
 Air Condition Desc.
 Heat Type
 Heat Fuel
 Bed Rooms
 MSY: CB STUCCO
 H953
 HTG & AC
 FORCED AIR DUCT
 NONE
 0

6. Bed Rooms 0
7. Full Baths 2
8. Half Baths 0
9. Exterior Wall 2 NONE
10. Roof Structure FLAT

11. Roof Cover ROLLED COMPOSITION

12. Interior Wall 1 PLASTER
13. Interior Wall 2 N/A
14. Floor Type 1 HARDWOOD

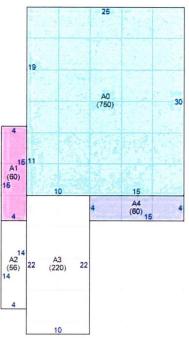
15. Floor Type 2N/A16. Stories1

Subarea and Sq. Footage for Building 1

Code Description	Sq. Footage
BAS Base Area	750
UOP Unfinished Open Porch	60
UOP Unfinished Open Porch	60
UST Unfinished Storage	56
LICP Unfinished Carport	220

Total Square Footage: 1146
Total Area Under Air: 750

Sketch for Building 1



Extra Feature

 Description
 Year Built
 Units

 Shed
 2014
 80

 Deck
 2013
 600

Unit may represent the perimeter, square footage, linear footage, total number or other measurement of the feature depending on the feature described.

Land Details

Land Line # Description Zoning Units Acres
1. SFR R-1-A 1 0.1520

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A	PΑ	Ban	ner

Location Address 414 SE 4TH AVE

Municipality DELRAY BEACH

Parcel Control Number 12-43-46-21-01-004-0072

Subdivision OSCEOLA PARK IN

Official Records Book 32665

Page 578

Sale Date JUL-2021

Legal Description OSCEOLA PARK S 69.58 FT OF LTS 7 & 8 BLK 4

Owners

MYGATT CHRIS M

Mailing address

909 BANNOCK ST APT 1512 DENVER CO 80204 4192

Sales Date	Price	OR Book/Page	Sale Type	Owner
JUL-2021	\$449,000	32665 / 00578	WARRANTY DEED	MYGATT CHRIS M
MAR- 2019	\$235,000	30526 / 01286	WARRANTY DEED	211 SE 4TH AVENUE DELRAY LLC
JAN-2016	\$220,000	28031 / 01969	WARRANTY DEED	MAN DEVELOPMENT GROUP LLC
JUN-2015	\$320,000	27627 / 01179	WARRANTY DEED	WALKER DAMIAN
FEB-2013	\$125,000	25868 / 00486	WARRANTY DEED	KENNEDY PAUL M
12				

No Exemption Information Available.

Number of Units *Tota	ll Square Feet 0	Acres 0.1497	
Use Code VACA	NT Zoning R-1-A	A - R-1-A-SINGLE FAN AY BEACH)	MILY (12-
Tax Year	2022	2021	2020
Improvement Value	\$0	\$0	\$0
Land Value	\$381,920	\$224,000	\$216,000
Total Market Value	\$381,920	\$224,000	\$216,000

Tax Year	2022	2021	2020
Assessed Value	\$381,920	\$224,000	\$216,000
Exemption Amount	\$0	\$0	\$0
Taxable Value	\$381,920	\$224,000	\$216,000
Tax Year	2022	2021	2020
Ad Valorem	\$7,435	\$4,518	\$4,395
Non Ad Valorem	\$19	\$19	\$19
Total tax	\$7,454	\$4,537	\$4,414

	DA	D
PA	PΑ	Banner

Location Address 932 SE 4TH AVE

Municipality DELRAY BEACH

Parcel Control Number 12-43-46-21-01-010-0080

Subdivision OSCEOLA PARK IN

Official Records Book 32090

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Sale Date JAN-2021

Legal Description OSCEOLA PARK LT 8 BLK 10

Owners

ROSENSTEIN JAN T & ROSENSTEIN MICHAEL S

Mailing address

932 SE 4TH AVE

DELRAY BEACH FL 33483 3415

 Sales Date
 Price
 OR Book/Page
 Sale Type
 Owner

 JAN-2021
 \$400,000
 32090 / 00593
 WARRANTY DEED ROSENSTEIN MICHAEL S &

 NOV-2017
 \$340,000
 29486 / 00065
 WARRANTY DEED KAHN STEVEN A &

 JUL-2005
 \$315,000
 18976 / 00649
 WARRANTY DEED LEVY MICHAEL F &

 MAR-2004
 \$50,000
 16746 / 01358
 QUIT CLAIM
 OTT DENESE &

 AUG-2000
 \$72,500
 11942 / 00187
 WARRANTY DEED MCALISTER DENESE

12

Exemption Applicant/Owner	Year	Detail
ROSENSTEIN JAN T &	2022	

Number of Units 1

Ton Voor

*Total Square Feet 1632

Acres 0.1493

Use Code 0100 - SINGLE FAMILY

Zoning R-1-A - R-1-A-SINGLE FAMILY (12-DELRAY BEACH)

2021

2020

Tax Year	2022	2021	2020
Improvement Value	\$203,265	\$168,588	\$143,594
Land Value	\$262,570	\$154,000	\$148,500
Total Market Value	\$465,835	\$322,588	\$292,094

2022

lax year	2022	2021	2020
Assessed Value	\$465,835	\$321,303	\$292,094
Exemption Amount	\$50,000	\$0	\$0
Taxable Value	\$415,835	\$321,303	\$292,094
Tax Year	2022	2021	2020
Ad Valorem	\$8,259	\$6,489	\$5,943
Non Ad Valorem	\$248	\$242	\$237
Total tax	\$8,507	\$6,731	\$6,180

Property Information

Owner Name:

ROSENSTEIN JAN T

Parcel Control Number:

12-43-46-21-01-010-0080

Location Address:

932 SE 4TH AVE

Structural Details

Structural Element for Building 1

1. Exterior Wall 1 WSF: WOOD SIDING

2. Year Built

1987

3. Air Condition Desc.

HTG & AC

4. Heat Type

FORCED AIR DUCT

5. Heat Fuel

ELECTRIC

6. Bed Rooms

3

7. Full Baths

2

8. Half Baths

0

9. Exterior Wall 2

NONE

10. Roof Structure

GABLE/HIP

11. Roof Cover

ASPHALT/COMPOSITION

12. Interior Wall 1

, 151 111 121 7 00

13. Interior Wall 2

DRYWALL

14 Fl--- T -- 1

N/A

14. Floor Type 1

BAMBOO CERAMIC/QUARRY TILE

15. Floor Type 216. Stories

1

Subarea and Sq. Footage for Building 1

Code Description

Sq.

code Description

Footage

FOP Finished Open Porch

105

FOP Finished Open Porch

24

BAS Base Area

1503

Total Square Footage: 1632

Total Area Under Air: 1503

Sketch for Building 1



Extra Feature

Description

Year Built

Units

Pool - In-Ground

2021

1

Unit may represent the perimeter, square footage, linear footage, total number or other measurement of the feature depending on the feature described.

Land Details

Land Line #

Description

Zoning

Front

Depth

Units

Acres

1.

SFR

R-1-A

49.00

132.71

1

0.1493