

# CONRAD & S SCHERER

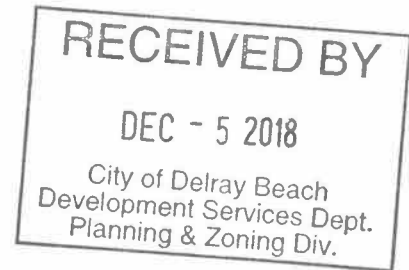
ATTORNEYS AT LAW

Michael E. Dutko, Jr  
(954) 847-3367 Direct Line  
mdutko@conradscherer.com  
633 South Federal Highway  
Fort Lauderdale, FL 33301

December 5, 2018

Via Email and Hand Delivery  
Email: stillings@mydelraybeach.com

TIM STILLINGS  
City of Delray Beach City Hall  
Development Services Department  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444



**Re.: Waiver Application – Updated and Restated Justification Statement  
302 and 306 SE 5<sup>th</sup> Street**

Dear Mr. Stillings:

As you know, the law firm of Conrad & Scherer, LLP, represents Paul Sheehan and 302 Delray LLC (collectively, “Owner”), owner of the real property located at 302 and 306 SE 5<sup>th</sup> Street, Delray Beach, Florida (the “Property”). We submitted an initial waiver application to you on October 16, 2018; however, we were recently informed of the need to request an additional waiver per your office’s review of our application. Please accept this correspondence as an Updated and Restated Waiver Application for the Property, requesting partial or total relief from the provisions of Land Development Regulation (“LDR”) Sections 4.1.4(B) and 4.1.4(D) (Use of lots of record). A waiver of said regulations is justified for the reasons set forth herein.

### The Property – Lots of Record

The Property is legally described as OSCEOLA PARK LTS 1 & 2 BLK 5 – lots identified in the original Osceola Park plat from circa 1913. Though its history may be slightly more nuanced than that simple description, the Property is a “lot of record” as that term is defined in the LDRs. The Property is located within the R-1-A (Single Family Residential) zoning district and has a Future Land Use Map designation of LD (Residential – Low Density).

At some point after the original 1913 Osceola Park plat, the lots comprising the Property were combined. Then, at some point a portion of the eastern end of the Property was conveyed to the City of Delray Beach. From our research, we have been unable to determine the purpose of

that conveyance or, further, whether that portion of the Property was ever actually used by the City. Regardless, where two lots consistent with the surrounding properties originally existed, this series of events left one larger lot, out of step with the development patterns on the remainder of the block.

The Owner has recently been able to re-acquire the portion of the Property that had been conveyed to the City of Delray Beach, putting back together the original lots listed within the 1913 Osceola Park plat. To that end, the Palm Beach Property Appraiser now recognizes the legal description of the Property as those original lots.

Appendix A to the LDRs defines a lot of record as, "**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." (Emphasis added). According to that definition, the Property is unquestionably a lot of record despite its nuanced history. The Property is comprised of the original lots as described in the 1913 Osceola Park plat, which have not been subsequently replatted.

#### **Use of Lots of Record – Waiver Analysis**

LDR Section 4.1.4(B) establishes minimum lot frontage requirements for development of a residential structure on property that qualifies as a lot of record. That section provides:

**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." (Emphasis added).

Furthermore, staff has interpreted LDR Section 4.1.4(D) as allowing for only Workforce Housing units to be constructed on residential property with frontage of less than 50 feet. That section provides:

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.

Accordingly, the LDRs require at least 50 feet of frontage in order to develop a non-Workforce Housing residential structure on a lot of record. The Property has approximately 47 feet of frontage on each lot. The Owner is requesting a total or partial waiver of the above LDR provisions in order to develop non-Workforce Housing residential structures on the lots of the Property.

LDR Section 2.4.7(B)(1)(b) provides in pertinent part, “[T]he City Commission may grant a waiver to any provision of these regulations when there is no other avenue for relief available in these regulations.” Furthermore, LDR Section 2.4.7(B)(5) specifies the findings that the City Commission must make in granting such a waiver request:

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 of owner.

This analysis will address each of those required findings in turn.

A partial or total waiver of LDR Section 4.1.4(B)’s 50 foot frontage requirement and LDR Section 4.1.4(D)’s Workforce Housing requirement is specifically justified for the following reasons: The Property is located within Osceola Park, an older area of the City, substantially developed prior to the current iteration of the LDRs and their lot dimensional requirements. In this case, the lots comprising the Property are the original lots listed within the Osceola Park plat circa 1913, over a century ago. Many of the lots within Osceola Park (and, indeed, within many of the older areas of the City) are substandard when judged by the LDR’s current dimensional requirements. The City has recognized time and again the need to encourage responsible development within Osceola Park in order to protect its residential nature and combat the blight



that sadly crept into the neighborhood in the latter half of the 20<sup>th</sup> century. Granting this current waiver request would further both of those goals, as it would allow for new residential development in an area that sorely needs it. Furthermore, a survey of the surrounding area demonstrates that many lots surrounding the Property have less than 50 feet of frontage. When the lots comprising the Property were originally aggregated into one larger lot, it created a lot that was inconsistent with the surrounding properties. Staff has interpreted LDR Section 4.1.4(D) as requiring that residential structures constructed on properties with less than 50 feet of frontage be constructed as Workforce Housing. While we disagree with that position and don't believe 4.1.4(D) makes any affirmative requirement (assuming a waiver to LDR Section 4.1.4(B) is obtained), we are expanding this request to also include a waiver to LDR Section 4.1.4(D), in line with staff's interpretation. Granting this current waiver request would bring the Property back in line, and would make the Property consistent, with the development trends and history of the surrounding properties.

Furthermore, positive findings can be made with respect to the requirements of LDR Section 2.4.7(B)(5):

- (a) [The waiver shall] not adversely affect the neighboring area;

*Granting this waiver request would bring the Property back in line, and would make the Property consistent, with surrounding properties, as well as their development trends and histories. This will not adversely affect the neighboring area. To the contrary, responsible, new residential development would positively affect the neighboring area, as it is exactly the type of development envisioned by the City in the Osceola Park Redevelopment Plan. The City has recognized the vital need of such redevelopment in Osceola Park.*

- (b) [The waiver shall] not significantly diminish the provision of public facilities;

*The current waiver request is to allow for the development of residential structures on two lots, whereas one residential structure currently exists on the combined lots. Granting this request will only net one additional residential structure. As such, granting the request will not significantly diminish the provision of public facilities.*

- (c) [The waiver shall] not create an unsafe situation;

*The current waiver request is to allow for the development of residential structures on two lots, whereas one residential*





*structure currently exists on the combined lots. Granting this request will only net one additional residential structure. Furthermore, this is exactly the type of redevelopment that was envisioned by the City in the Osceola Park Redevelopment Plan, recognizing that responsible residential development can help combat the crime and code violation problems associated with blight in the area. Therefore, not only will the waiver not create an unsafe situation, but also it will assist in creating a safer environment within Osceola Park.*

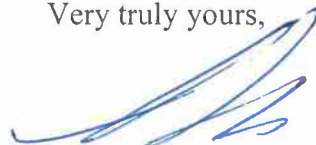
- (d) [The waiver does] not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

*Granting this waiver request would not grant a special privilege to the Owner. This request would bring the Property back in line, and would make the Property consistent, with surrounding properties, as well as their development trends and histories. Furthermore, the issue of substandard lots that pre-exist the current dimensional requirements of the LDRs, but that don't technically meet the Lot of Record requirements, is an issue that the City continues to deal with in older areas, especially Osceola Park. The City has recognized that it is impracticable and counterproductive to prohibit residential development on lots on which residential development has historically been allowed. Granting this request would be consistent with the way the City has treated other similarly situated lots.*

In sum, this waiver request is supported by the development of the neighboring area, by the history of development of Osceola Park, as well as by the treatment the City has given to other substandard, old lots that might not meet every requirement of the Lot of Record provisions within the LDRs. Accordingly, we respectfully request that the City support and grant this request.

As always, please feel free to contact me if you have any questions or concerns, or if there is any further information I can provide that may be helpful.

Very truly yours,



Michael E. Dutko, Jr.  
For the Firm

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