



February 10, 2020

City of Delray Beach Development Services
Planning and Zoning Division
100 NW First Avenue
Delray Beach, Florida 33444

**RE: Wells Fargo Bank 1660 South Congress Avenue
(NW Corner Congress Ave and Linton Blvd)
Variance Request Justification Statement**

Proposed is an application to an existing financial institution with drive through, to incorporate the changes from a right of way taking which resulted from a Florida Department of Transportation District IV project which impacted the intersection of Linton Boulevard and Congress Avenue. The additional land area shown on the attached survey and site plan (known as Parcel 103 in the FDOT documentation). The project site is zoned POD (Professional and Office District).

The land area required by FDOT results in several nonconforming site development aspects including less **open space** than required by the development code, which is represented in the attached site plan, and can be summarized as follows:

	City of Delray Beach Land Development Code Reference	Required	Proposed	Variance
1	4.3.4. (K) Development Standards Matrix – Nonresidential Zoning Districts Note (3)	A minimum 25% non-vehicular open space	22.4%	2.6%

Please note this variance request is being submitted concurrent with a waiver and class II site plan application request.

Article 3.1 (Required Findings for Land Use and Land Development Application) provides for the following findings for all development applications:

<p>(A) <i>Future Land Use Map: The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Future Land Use Map</i></p>	<p>The Future Land Use Designation of the subject property is GC (General Commercial) and as such, the existing use (financial institution with drive through) is appropriate and consistent with the land use designation, and with the zoning designation of POD (Professional & Office District).</p>
<p>(B) <i>Concurrency: Concurrency as defined pursuant to Objective B-2 of the Future Land Use Element of the Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CI-GOP-1 of the adopted Comprehensive Plan of the City of Delray Beach</i></p>	<p>The subject property has been previously approved and developed and has not had any cessation of operations. The proposed application does not represent any increase to the existing use or intensity of the property, nor does it represent any change to the existing parking spaces or functionality of the parcel. The impetus for the application is a right of way taking by FDOT District IV that has created nonconforming open space which the applicant is seeking a variance to allow. This variance will protect the project from any perceived inconsistency with the land development code.</p>
<p>(C) <i>Consistency: finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict</i></p>	<p>The application does not represent any change to the existing and approved development in terms of use and intensity and does not create any conflict with performance standards other than the recognition of reduced open space caused by the taking of right of way action by FDOT District IV.</p>

<p>(D) <i>Compliance with LDRs: Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations</i></p>	<p>The proposed application does not represent any increase to the existing use or intensity of the property, nor does it represent any change to the existing parking spaces or functionality of the parcel. The impetus for the application is a right of way taking by FDOT District IV which creates a nonconforming condition for signage and landscape buffers which the applicant is seeking a formal waiver to recognize.</p>
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VARIANCE CRITERIA

The following findings must be made prior to approval of a variance:

- (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 (The matter of economic hardship shall not constitute a basis for the granting of a variance);*

The subject property is located on the northwest corner of Congress Avenue and Linton Boulevard, a heavily travelled intersection. The property was subject to an FDOT land acquisition for the construction of a radius return from the southbound Congress Avenue right-turn lane to westbound Linton Boulevard to aid in public safety associated with turning movements, as well as a new sidewalk and associated signalization improvements. The taking was part of an FDOT District IV action. This variance request is a direct result of the FDOT taking as the land area acquired by FDOT was predominantly pervious landscape buffer located on the perimeter of the site. This variance provides a local cure to an FDOT taking.

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

Complying with the current open space regulations would create a significant hardship for this applicant because it could not be done without creating a significant disturbance to the site, in addition to the new roadway work that has impacted their east and south perimeters. In order to increase the open space, the vehicular and parking areas would have to be redesigned and rebuilt. This work would cause a disturbance to a local business and their daily operation, as well as the patrons who are residents of the City. The resources required to repave the parking area for this nominal amount of open space does not equate to the benefit of 2.5% open space (835 SF), especially since no other improvements to the site are proposed in relation to this request.

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

The subject property was purchased by the property owner in 1982, before the roadway plans for the Congress Avenue & Linton Boulevard intersection were ever contemplated. The building was constructed two years later in 1984. The property was developed with perimeter landscape including large trees adjacent to Congress and Linton at this time.

Also noteworthy, the property was most likely developed before the current zoning requirement for open space (25%) was implemented and enforced. With only 23.4% previous area, the site did not meet the open space requirement before the FDOT taking.

Finally, the property owner is not proposing to redevelop the site or to add any intensity to the site. This variance is a direct result of an FDOT taking and the provided cure.

- (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;*

No special privilege would be conferred on this applicant by the approval of these variances. Any other property owner with the same or similar circumstances could request the same relief. A right of way taking is not a special privilege or common circumstance and did not result from the actions of the property owner. Again, the property owner is not proposing a new use or structure, or any additional intensity for the site.

- (e) *That the reasons set forth 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; and,*

The proposed variance is the minimum variance that will make possible the use of the land and existing building. The variance is a result of an FDOT taking for roadway improvements that will benefit the City for safety purposes. The property owner is not proposing any new development for the site. They are not benefiting from this variance, only hoping to continue their current day to day business operations which provides for a service to current Delray Beach residents.

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

The recognition of the developed site conditions following the right of way taking does not create an unsafe condition. As previously discussed, the right of way was taken to provide improvements to the adjacent intersection and to increase safety conditions at the subject intersection. The variance will allow the bank to continue to operate as it has been and serve its customers safely. Adding 2.5% open space to the site will not increase the safety of the City's residents. Disrupting the existing vehicular and parking areas could impact the safety of daily operations at the bank.

Thank you for your consideration of our variance request; I will make myself available in person or over the phone to discuss any questions or concerns you may have in advance of a scheduled review meeting or hearing.

Best Regards;

Mark Rickards, AICP

Cc: File