

# CONRAD & SCHERER

ATTORNEYS AT LAW

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May 13, 2020

**Via Hand Delivery**

Michelle Hoyland, Principal Planner  
Development Services Department  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444  
[HoylandM@mydelraybeach.com](mailto:HoylandM@mydelraybeach.com)

**Re: Variance Justification / Rear Pool Setback  
53 SE 7<sup>th</sup> Avenue, Marina Historic District**

Dear Michelle:

Please accept this correspondence as a justification statement for the currently pending variance request for the property located at 53 SE 7<sup>th</sup> Avenue, Delray Beach, Florida (the "Property"). The applicant has requested a variance from Land Development Regulation ("LDR") 4.6.15(G)(1) to reduce the required rear pool setback from 10 feet to 5 feet. This letter is being submitted along with revised plans for the Property.

The Property has dimensions of roughly 50 feet by 100 feet, which is undersized but still buildable under current LDR standards. Accordingly, the owner is limited in the extent of development that can be proposed. The requested variance would allow the owner of the Property to have more flexibility and allow the Property to be developed and used in a manner consistent with the general character of the neighborhood. Furthermore, the City has previously granted a variance request to reduce pool setbacks on the Property, just for a different development configuration than is currently proposed (*See File No. 2015-239*). In granting the previous variance request, the City found that the request met the requirements of LDR Section 2.4.7(A)(5). To find otherwise with the current request would be arbitrary and capricious, and thus unlawful.

According to LDR Section 2.4.7(A)(5), the following findings must be made prior to approval of a variance:

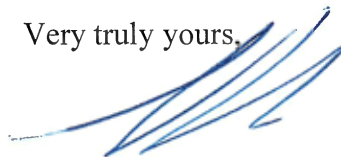
- a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting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

- b) That the literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;
- c) That the special conditions and circumstances have not resulted from actions of the applicant;
- 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;
- 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,
- 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.

Due to the undersized nature of the Property, which has served as the basis for prior variance requests, as well as a currently pending waiver request regarding the Building Height Plane, the proposed variance to reduce the rear pool setback from 10 feet to 5 feet is both justified and proper in light of the above-listed LDR criteria. Positive findings can be made with respect to each of the criteria. Furthermore, the fact that the City has previously approved a similar pool variance for the Property signifies that the City itself has already deemed such a request to be appropriate. Any deviation from that prior consideration would be arbitrary and unsupported by the facts.

As always, please feel free to contact me if you have any questions or concerns or if there is any further information that you would like me to provide. I hope you are staying healthy and safe during these difficult times.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Michael E. Dutko, Jr.", with a stylized flourish at the end.

Michael E. Dutko, Jr.  
For the Firm

MED/



# CONRAD & S SCHERER

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February 4, 2020

**Via Email and Hand Delivery**

GianniotesA@mydelraybeach.com

Anthea Gianniotes, AICP  
Development Services Director  
Department of Planning, Zoning, and Building  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

***Re.: Waiver Request – LDR Section 4.5.1(E)(8)(b)  
53 SE 7th Ave., Delray Beach, FL***

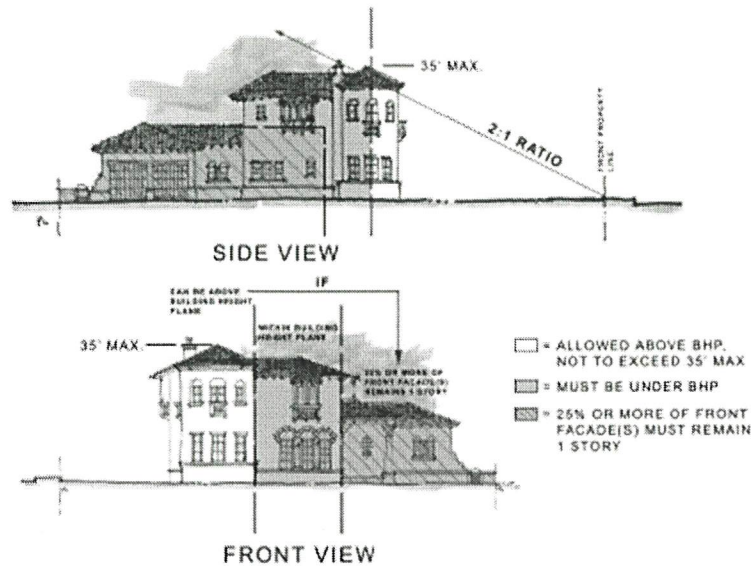
Dear Ms. Gianniotes:

The law firm of Conrad & Scherer, LLP, represents the owner of the real property located at the above-referenced address (the “Property”). Please accept this correspondence as a request for a waiver to Delray Beach Land Development Regulation (“LDR”) Section 4.5.1(E)(8)(b), in conjunction with development applications currently pending for the Property, and pursuant to the processes and requirements set forth in LDR Section 2.4.7(B). Because the requested waiver (i) will not adversely affect the neighboring area, (ii) will not significantly diminish the provision of public facilities, (iii) will not create an unsafe situation, and (iv) will 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, and indeed because the request is consistent with the intent of LDR Section 4.5.1(E)(8)(b), a waiver is appropriate in this instance.

**LDR Section 4.5.1(E)(8)(b) and Zoning Verification Request**

LDR Section 4.5.1(E)(8)(b) provides as follows:

***Front elevation.*** Up to 25 percent of the front elevation(s) can extend above the Building Height Plane (BHP) to a maximum height of 35 feet, provided 25 percent or more of the front elevation(s) remains one story as defined by LDR Section 4.5.1(E)(7)(a)(2). The total width of the extension shall not exceed 18 feet along the front elevation(s). See illustration below. [Amd. Ord. 38-07 2/5/08]



This section is one of the “visual compatibility incentives” contained within the historic preservation framework of the LDRs. The language of the section is sufficiently vague and imprecise such that it was the basis of a Request for Zoning Verification/LDR Interpretation submitted by the undersigned on November 20, 2019, seeking a clarification of the provision as well as its application. Specifically, we sought guidance on the application of the section when 2<sup>nd</sup> floor development is stepped back so that 25% or more of the 2<sup>nd</sup> floor air conditioned space on the front elevation is behind the BHP at +/- 50 foot front property setback. In response to our zoning verification request, we were advised that the stepped-back 2<sup>nd</sup> story development would still be a part of the “front elevation” of the Property and would thus not qualify for the exemption contained above.

### **Waiver Request and Proposed Development**

The Property is zoned RM (Medium Density Residential) and is located within the Marina Historic District. The Property is generally located along SE 7<sup>th</sup> Avenue, between East Atlantic Avenue and SE 1<sup>st</sup> Street. The Property is roughly 50 ft. x. 100 ft. in dimension, which is undersized but still buildable by current LDR standards.

The development proposed for the Property is a 2-story, 2,094 sq. ft. single family home that complies with the requirements of the LDRs in all material respects, except for the above LDR Section 4.5.1(E)(8)(b). The front (West) elevation, as well as the 2<sup>nd</sup> floor plan, are below and depict stepped back development on the 2<sup>nd</sup> floor, including an open-air balcony, a stepped-back bunk room, and a further stepped back roofed balcony.

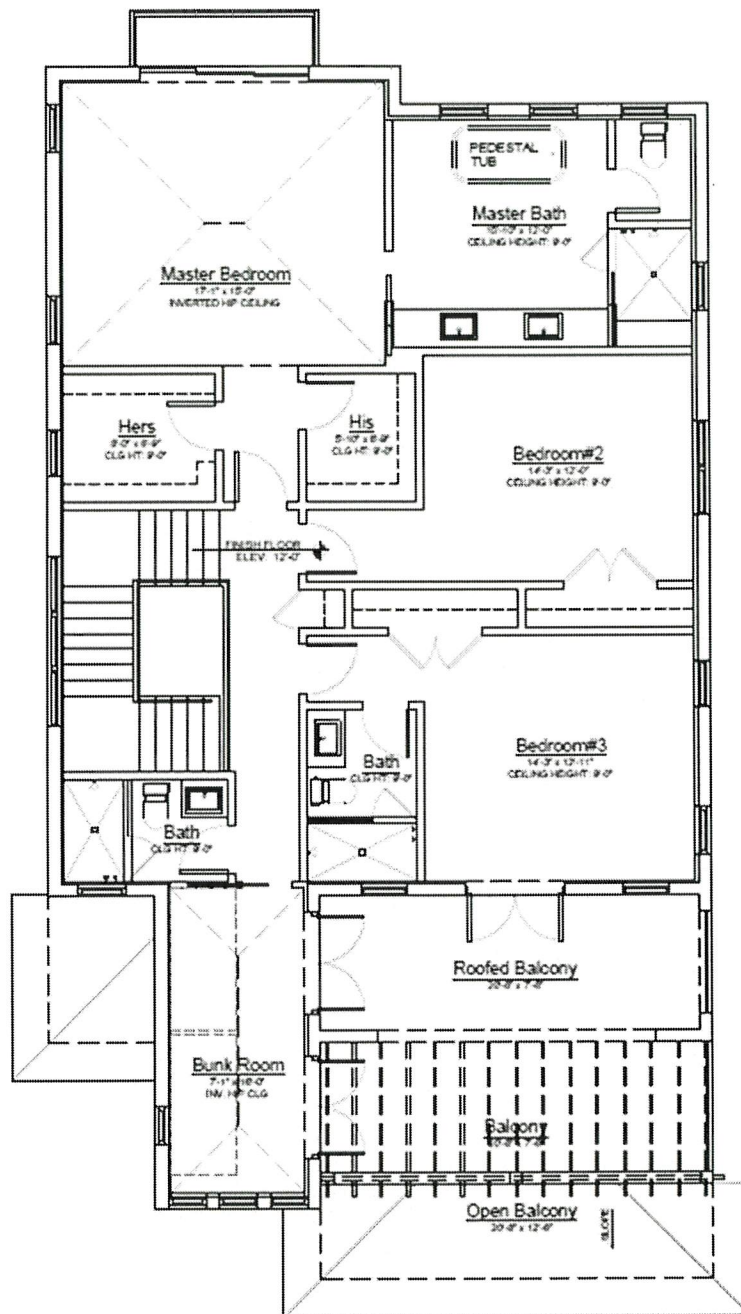




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Second Floor Plan

Scale: 1/4"=1'-0"

Portions of the proposed structure extend above the BHP but are below the 35 ft. threshold established by LDR Section 4.5.1(E)(8)(b). However, the Property would not otherwise qualify for the stated visual compatibility incentive because, despite the stepped back development on the 2<sup>nd</sup> floor, the City interprets the proposed structure as not having “25 percent or more of the front elevation(s) [that] remains one story.” Our initial belief was that stepped back development on the



LDR Section 2.4.7(B)(5) provides the factors the City is to consider in reviewing an application for a waiver request and states:

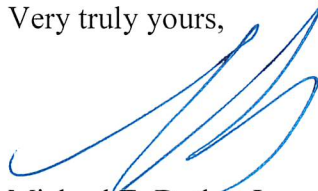
- (a) Shall not adversely affect the neighboring area;
- (b) Shall not significantly diminish the provision of public facilities;
- (c) Shall not create an unsafe situation; and
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.



In weighing those factors, granting a waiver in this instance would be appropriate. Whether the stepped back portions of the 2<sup>nd</sup> floor are considered part of the front elevation or not, the proposed development accomplishes the ultimate goal of LDR Section 4.5.1(E)(8)(b), which is to reward less development on the front part of the structure. Without question, there is sufficient evidence to make positive findings with respect to each issue listed above.

As always, please feel free to contact me with any questions or concerns. We appreciate your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, consisting of a series of fluid, overlapping loops and strokes, representing the name Michael E. Dutko, Jr.

Michael E. Dutko, Jr.  
For the Firm.

MED/emd

