

**Request for Waiver/Modification of Wetlands and Street Bufferyard Requirements, Ocean Walk Housing Project**

OCEAN WALK KEY WEST OWNER, LLC, seeks waiver or modification of the right-of-way buffering requirement of *Code* §108-413 (“Requirements along street frontages”). This request is filed pursuant to *Code* § 108-517, which provides that waivers or modifications may be granted where they are not contrary to the intent of the landscaping code, literal enforcement of the landscaping code would be impracticable, and the requested waiver or modification would not violate the criteria specified in *Code* § 108-517 (b) (1-6).

Applicant has filed an application for Major Development Plan approval pursuant to Ch. 108 of the LDRs. In connection with the proposed Major Development Plan, waiver or modification of the 50’ wetlands buffer will be sought in order to enable the development to retain and improve parking areas, recreational facilities and drainage features that currently encroach along the perimeter of the Property into the 50’ buffer contemplated in *Code* §110-91; and waiver of the 40’ right-of-way street buffer requirement is sought to enable the development to retain and to improve existing structures, paved areas and other existing improvements such as existing utility infrastructure, that would otherwise encroach into the 40’ buffer contemplated in *Code* §108-413.

1. The requested waivers or modification are not contrary to the intent of the landscaping code.

When a development plan is submitted for review pursuant to Ch. 108 of the LDRs, the *Code* specifically provides a non-variance mechanism for “Reducing landscape and/or bufferyard requirements”, “upon review of the development plan.” Authorization for waiving the street bufferyard along Seaside Drive is provided by *Code* §108-352, which lists “existing native vegetation located within the bufferyard” as one of the “sound reasons for reducing the general requirements for bufferyard and/or landscape requirements”. The bufferyard contiguous to the short segment of Seaside Drive abutting the Property is occupied by undisturbed native vegetation, except for a paved driveway, a sign, and utility boxes. Because the landscaping code expressly authorizes and provides a mechanism for reducing bufferyard and landscape requirements under the above-referenced circumstances, the requested waiver is not contrary to the intent of the landscaping code.

2. Literal enforcement of the buffer requirements would be impracticable.

It would be impracticable to apply the prescribed wetlands and street bufferyard requirements to Ocean Walk, because there are existing impervious surfaces, including driveways, paved parking, a tennis court, a swimming pool and drainage facilities located closer than 50’ from adjacent wetlands or 40’ from the street, and those would have to be demolished to create the prescribed buffers.

3. The requested waiver or modification would not violate the criteria specified in Code § 108-517 (b) (1-6).

(1) *Public interest; adjacent property.* The requested waiver or modification is consistent with the public interest because the approved stormwater management system, which will be enhanced by additional drainage facilities, incorporates and requires ready access to and use of portions of the buffer zone. The stormwater improvements proposed by Applicant include swales for disposing of stormwater, located in the wetlands bufferyard. The City officially recognizes the public benefit of such facilities. The improved stormwater management system will provide a substantial benefit to water quality, to adjacent parcels, and to Ocean Walk.

(2) *Not discriminatory.* The waivers or modifications are not discriminatory. Ocean Walk's existing and proposed improvements located within the bufferyards, including its stormwater system, provide public benefits to adjacent and surrounding developed properties, each of which enjoys similar features within its respective bufferyards.

(3) *Superior alternatives.* Development of the project proposed by the development plan provides an alternative landscape, stormwater control and buffering solution that utilizes a combination of new and existing vegetation and drainage features that achieves the purposes of the buffering requirement through superior design.

(4) *Protection of significant features.* The sites of the new buildings comprising the proposed Ocean Walk addition were carefully chosen to preserve significant existing environmental features, including adjacent wetland communities. The new units will be built entirely on scarified or disturbed land.

(5) *Deprivation of reasonable use.* Strict application of the buffering requirements would effectively deprive the owner of reasonable use of available land due to the Property's unusual size, shape, and location in close proximity to wetlands on three sides. Imposing a 40' - 50' buffer at virtually every point on the Property's perimeter would be unduly burdensome and would interfere with existing use of long-established residential amenities, including recreational facilities, driveways and parking.

(6) *Technical impracticality.* As demonstrated in paragraph 2, above, strict application of the buffering requirements would be technically impractical.