

**REQUEST BY REG ARCHITECTS FOR THE TOWN COMMISSION
TO WAIVE A CONFLICT OF INTEREST**

Request

Rick Gonzalez is requesting a waiver from the Town Commission on behalf of REG Architects and himself to continue to represent The Adler (developer for Kelsey on Park) in connection with its petition for a certificate of appropriateness (COA) to demolish the locally designated historic building at 918 Park Avenue. Please see Attachment 1 for his request.

The Adler has submitted a new petition to in essence demolish the 918 building, and as such Mr. Gonzalez would continue to advocate for his client, including at the Historic Preservation Board (HPB)) Hearing and any actions beyond.

REG currently has a continuing service contract with the Town, and as such a conflict of interest is created if the firm continues to serve both the Town and The Adler. Under terms of the contract, in **order to represent a client doing business with the Town the REG must ask the Town Commission to waive any conflict of interest with the Town created by representing The Adler.**

The Town Commission may grant or deny the waiver. If the waiver is granted REG can continue to represent and advocate for The Adler, as well as continue under contract with the Town. If the waiver is not granted REG cannot continue to represent both the Town and The Adler. In that instance REG would have to end its contractual association with either the Adler or the Town. If REG decides to end its contractual relationship with The Adler on the petition new supporting documentation will be required from The Adler for their historic preservation board application in order for Staff to be able to process that application (which is concurrently on hold pending the outcome of this conflict waiver request).

Current contract the Town

The Town has continuing services contracts with various consultants to provide expertise in specific areas needed from time to time. The current firms were selected through an RFP process in 2023. Among the requested specialties was Architecture with experience in historic preservation. Three firms were selected: REG Architects, Engenuity (with REG as the architectural sub-consultant) and Kimley-Horn (with Tim Hullihan as the architectural sub-consultant).

Within the executed contracts, the standard language as set out in Section 13. CONFLICTS reads:

“The Town recognizes and acknowledges that the Consultant is engaged in a business which provides consulting services to multiples clients including other governmental entities. Further, the Town recognizes and acknowledges that the Consultant may presently, or may in the future, represent clients who are or may be soing business in or with the Town. The Town agrees that the Consultant may perform services for clients who are or may have matters before the Town Commission, provided Consultant discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come before the Town Commission for its consideration and, provided further, that the Town Commission waives the actual or potential conflict of interest created by the Consultant's representation of the other client.”

This information was communicated to the Adler in an August letter to their attorney, contained in attachment 3.

Background: REG and Town

As stated above, REG was selected for a continuing services contract regarding architecture with historic preservation experience, and a contract signed in December 2023. REG was also identified by Engenuity as their sub-consultant for architecture in their contract with the Town. REG has previously done work for the Town including the Town Hall interior renovations and reviews of certificates of appropriateness. At the time the continuing services contracts were signed in 2023 REG was already working for The Adler. While REG did not formally disclose this during the selection process, staff was aware.

In August 2023, The Adler had submitted a request for de-designation that included a report from REG. Mr. Gonzalez had also represented his client at the October 2, 2023 Historic Preservation Board meeting, advocating that the 918 building had no historical value and should be demolished.

Evidence was presented by Community Development staff that in 2017 when REG was under contract with the Town to review a request to renovate the 918 building, Mr. Gonzalez concluded “Overall, the existing building retains a moderate degree of historic integrity of location, setting, materials, design, proportion, massing, feeling, and association”

Both the 2017 and 2023 reports described the exact same changes that had occurred to the building over time. However, what was summarized as “**minor changes**” when the consultant for the Town, became “**significant changes**” in the 2023 report for The Adler. (See attachment # 23 for verbiage comparison)

Mr. Gonzalez's explanation of this inconsistency due to not having read the master file in 2017 is questionable.

The Adler filed an appeal petition before the Town Commission, which was denied. Mr. Gonzalez and REG continued to represent them.

A new application for a certificate of appropriateness proposing demolition of the structure has recently been submitted. Now that REG is under a continuing services contract with the Town, the request for a waiver is required and the conflict must be waived in order for the application to proceed.

Factors for Town Commission to Consider in Decision

The purpose of the waiver clause

From time to time a consultant under contract with the Town may be hired by a private sector applicant with a project before the Town. This may result in a potential conflict of interest, depending on the nature of the work. The waiver clause requires that when this occurs, the consultant must receive the Town Commission's approval to represent both parties.

For example, Kimley-Horn provided engineering consulting services for the Kelsey on Park Project. Subsequently, the Town desired to hire the planning branch of the firm to prepare a planning study on the PADD. The Town Attorney determined there was no need for Kimley-Horn to request a waiver, as the engineering contract for the Kelsey on Park project was completed and Kimley Horn was no longer doing work for the project, nor was the Town contracting with Kimley-Horn for engineering, but for planning for the PADD.

What should be considered in a waiver request?

In representing the Adler, Mr. Gonzalez has taken a position that is clearly adverse to the Town's position and interest, due to not only the report, but also his advocacy at the hearings.

The Adler has refiled its petition to in essence demolish the 918 building, and Mr. Gonzalez desires to continue to advocate for his client, including at the Historic Preservation Board Hearing and any actions beyond. As he is under contract with the Town this presents a conflict of interest. The question is, should the conflict be waived.

Some of the questions that the Commission may consider are:

- Is there a potential or actual conflict of interest?
- Is the representation of the Adler's interests directly adverse to the Town's position?
- Is there is a significant risk that the REG's ability to consider, recommend or carry out an appropriate course of action for the Town would be materially limited by the loyalties to the other client?
- If REG continues to represent The Adler, will theTown lose its confidence in hiring REG for other work?

The Town Commission may feel uncomfortable that a firm they have under contract is arguing against the Town's position to preserve the building. Further, the change in opinions in 2017 and 2023 based on his client at the time may be concerning. If so, the Commission may choose not to waive the conflict.

The Commission may feel that the Firm should not be penalized for zealously representing a client, as they would expect the same. They may have confidence that whatever the outcome of this, REG will represent the Town's interest or provide an unbiased opinion on future COA reviews. If so, the Commission may choose to waive the conflict.

As stated at the beginning of the report, if the waiver is granted REG can continue to represent and advocate for The Adler.

If the waiver is not granted REG cannot continue to represent both the Town and The Adler in its request to demolish the historic building at 918 Park Ave. The firm would need to either end its continuing contract with the Town (and as the architectural sub-consultant under Engenuity) and proceed to represent the Adler, or end its relationship with the Adler and continue to represent the Town.

Should REG decide to end its contract with The Adler, The Adler must resubmit a new application with a new architect of record and a new report so that the application can be processed.

Attach1: Letter from REG

Attach 2: Comparison of Report Summaries REG

Attach 3: Letter from Attorney Baird to Attorney Nason