



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

Board of Adjustment

Meeting: March 5, 2020

File No.: 2020-114-VAR-BOA

Application Name: 1660 S. Congress Avenue

General Data:

Applicant/Agent: Mark Rickards/Kimley Horn

Owner: Wells Fargo Bank; National Association.

Location: 1660 S. Congress Avenue

PCN: 12-43-46-19-36-001-0000

Property Size: 0.77 Acres

FLUM: General Commercial (GC)

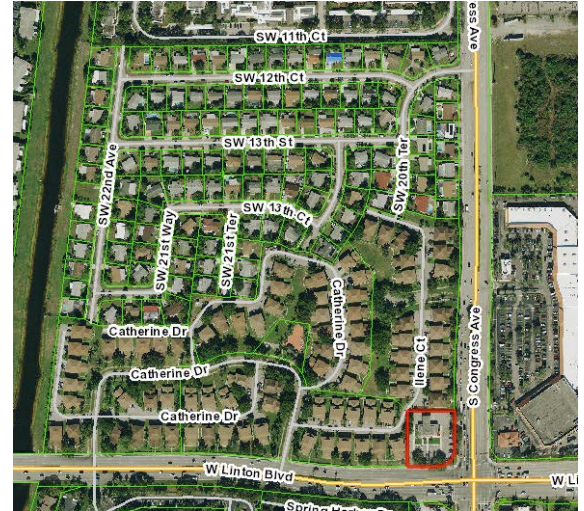
Zoning: Professional Office District (POD)

Adjacent Zoning:

- North: RM Multiple Family Residential
- East: MROC Mixed Residential Office and Commercial
- South: GC
- West: RM

Existing Land Use: Bank

Proposed Land Use: No Change



Item before the Board:

Consideration of a variance request from Land Development Regulation (LDR) Section 4.3.4 (K) to reduce the existing open space from 23.4% to 22.4%, whereas 25% is required.

Background:

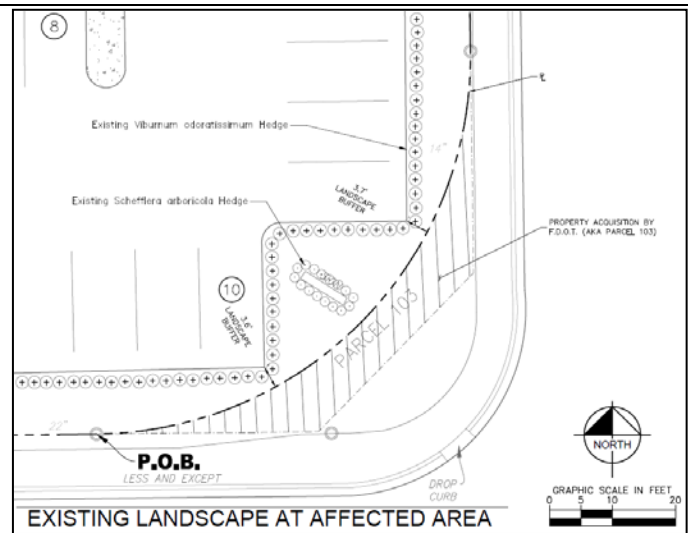
The subject property, which contains a one-story 2,750 sf bank constructed in 1984, is zoned Planned Office District (POD). The property consists of the Branch Bank of Lantana South, according to the plat thereof as recorded in Plat Book 45, Page 188, of the Public Records of Palm Beach County, Florida. The lot is 116.79 ft. wide on the south side, adjacent to West Linton Boulevard, 177 ft wide on the north side, 200 ft. wide on the west side, and 139.79 ft wide on the south side, adjacent to South Congress Avenue.

By Ordinance 99-82; the property was rezoned from RM-15 to Special Activities District (SAD). The property was rezoned to POD in 1990 with the City-wide rezoning efforts that occurred at that time.

Variance Analysis:

Per **LDR Section 4.3.4(K)**, in addition to the maximum lot coverage of 40%; a minimum of 25% non-vehicular open space must be met. The existing open space is non-conformity at 23.4%. Recently, a taking of property occurred by the Florida Department of Transportation (FDOT), which resulted in further reducing the open space to increase the non-conformity to 22.4%. Pursuant to **LDR Section 2.2.4 (D)(4) and (c)**, the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the General Development Standards (Article 4.3).

Pursuant to LDR Section 2.4.7 (A)(5)(a) through (f) **Variance Findings**, the following findings must be made prior to the approval of a variance:



Project Planner:
Jennifer Buce, Planner
buce@mydelraybeach.com
561-243-7138

Attachments

- Site Plan
- Renderings
- Justification Letter
- Other documents



- 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);

Applicants response: "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."

Staff Analysis: The special condition and circumstance are the direct result of the land acquisition from Florida Department of Transportation (FDOT) for future improvements to the intersection of Linton Boulevard and Congress Avenue to accommodate a right-turn lane to westbound traffic to aid turning movements as well as a new sidewalk.

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

Applicants response: "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."

Staff Analysis: The Land Use Designation of the subject property is GC, which is consistent with the current zoning and use of the property. The request is not associated with an increase of the existing use or intensity of the property, nor any additional improvements to the site. The 1% open space reduction is the result of the FDOT right-of-way taking; a literal interpretation of the regulations would require the applicant to make improvements to the site.

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

Applicants response: "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."

Staff Analysis: The reduction in open space, which was initially approved at 23.4% with the SAD rezoning, is not a result from actions of the applicant but the result of a taking from the FDOT to make improvements to a busy intersection. FDOT is making necessary improvements to accommodate a right-turn lane to westbound traffic to aid turning movements as well as a new sidewalk.

- 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;

Applicants response: "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."

Staff Analysis: The applicant is not seeking a change in the intensity of the current site development but only to maintain what is approved on the original site plan from 1982. A variance could be granted to a similar circumstance if requested. The takings resulted in additional non-conformities for the existing signage; on March 3, 2020 the applicant was approved for waivers to LDR 4.3.4(H)(6)(b)(4) and (5) to the special landscape setback and to 4.6.7(E)(3)(a) basic setback determinants (signs).

- 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,

Applicants response: "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."

Staff Analysis: As stated above, this is the minimal variance that will make possible the use of the land and existing building in its current condition. FDOT is taking the corner radius at West Linton Boulevard and South Congress Avenue for the purpose of providing improvements to benefit Delray Beach residents and visitors .

- 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

Applicants response: "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."

Staff Analysis: The granting of the variance will allow FDOT to provide necessary improvements to the corner of Congress Avenue and Linton Boulevard to an increasingly busy intersection and update necessary safety precautions to the corner, which include sidewalk and signage.

Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move approval of the Variance request (2020-114-VAR-BOA) from LDR Section 4.3.4 (K), to reduce the open space from 23.4% to 22.4%, whereas 25% is required for the property located at 1660 South Congress Avenue, by finding that the request is consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).
3. Move denial of the Variance request (2020-114-VAR-BOA) from LDR Section 4.3.4 (K), to reduce the open space from 23.4% to 22.4%, whereas 25% is required for the property located at 1660 South Congress Avenue, by finding that the request is inconsistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).



Notice

Pursuant to **LDR Section 2.4.2 (B)(1)(f)**, the City shall provide notice of the public hearing in accordance with Section 2.4.2(B)(1)(j) (i), (ii), and (iv) for variances before the Board of Adjustment.

LDR section	Date Posted
2.4.2 (B)(1)(j)(i) - Written notice provided to property owners within 500 feet	February 24, 2020
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	February 26, 2020
2.4.2 (B)(1)(j)(iv) - The notice posted at City Hall	February 26, 2020