



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444
PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200

Board of Adjustment

Meeting: October 7, 2021 | File No.: 2021-159-VAR-BOA | Application Name: 626 SE 4th Avenue

Applicant/Agent: Thomas F. Carney, Jr; Carney Stanton, P.L.

Location: 626 SE 4th Avenue

PCN: 12-43-46-21-01-007-0070

Property Size: 0.15 Acres

FLUM: Single Family Residential

Zoning: Single Family Residential (R-1-A)

Adjacent Zoning:

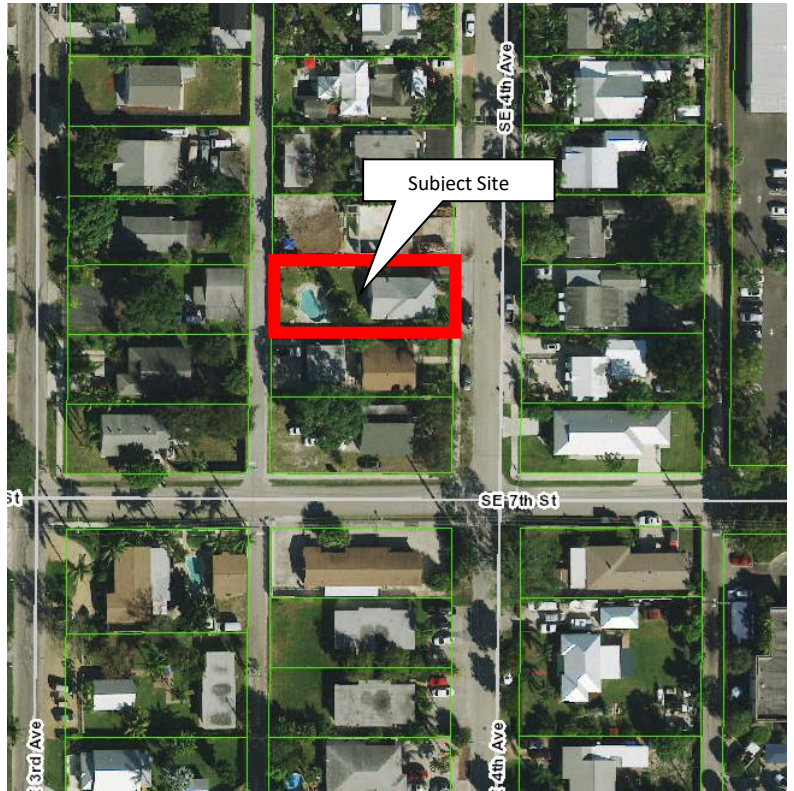
- North: R-1-A
- East: R-1-A
- South: R-1-A
- West: R-1-A

Existing Land Use: Single Family Residential

Proposed Land Use: Single Family Residential

Item before the Board:

Consideration of a variance request from Land Development Regulation (LDR) Section 4.3.4 (K) to reduce the rear setback from 10 feet to 5 feet and reduce the side interior setback from 7.5 feet to 5.8 feet to allow a tiki hut to encroach within the rear and side interior setback.



Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move **approval** of the variance request (2021-159-VAR-BOA) from LDR Section 4.3.4 (K) to reduce the rear setback from 10 feet to establish a 5 foot rear setback and the side interior setback from 7.5 feet to 5.8 feet for the Tiki Hut located at 626 SE 4th 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 requests (2021-159-VAR-BOA) from LDR Section 4.3.4 (K) to reduce the rear setback from 10 feet to establish a 5 foot rear setback and the side interior setback from 7.5 feet to 5.8 feet for the Tiki Hut located at 626 SE 4th Avenue, by finding that the request is inconsistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).

Request:

The variance requests is to consider the encroachment of a Tiki Hut into the required 10 foot rear setback area and into the required 7.5 feet side interior setback area. Currently, the Tiki Hut has a 5 foot rear setback and a 5.8 foot side interior setback. The request is to reduce the required 10 foot rear setback by 5 feet and to reduce the required 7.5 foot side interior setback by 1.7 feet. The Tiki Hut was constructed without a permit, therefore, the applicant is requesting relief from the required rear and side interior setback areas to allow for the Tiki Hut to remain in its current location.

Background:

The property consists of Lot 7, Block 7, of Osceola Park, according to the plat thereof as recorded in Plat Book 3, Page 2, of the

<p>Project Planner: Rachel Falcone, Planner FalconeR@mydelraybeach.com</p>	<p>Review Dates: <u>Board of Adjustment:</u> October 7, 2021</p>	<p>Attachments</p> <ol style="list-style-type: none"> 1. Property Survey 2. Existing Survey 3. Justification Statement 4. Photos
---	---	---



Public Records of Palm Beach County, Florida. The lot is 50.50 feet wide by 132.50 feet deep based on the survey dated January 11, 2021. It is located in the Single Family Residential (R-1-A) Zoning District. The property contains a single-family home structure.

In November 2019, a Tiki Hut at the rear of the property was constructed by "Seminole Tiki Hut," the company is certified with the Seminole Tribe of Florida, therefore, it is exempt from payment of all permit fees related to the issuance of a construction permit. Due to the exemption of permit fees, the applicant was unaware that the company did not receive a permit, therefore, the Tiki Hut was constructed 5 feet within the required 10 foot rear setback and 5.8 feet within the required 7.5 side interior setback. On January 6, 2020, a Code Enforcement Violation (Action #: 20-00000108) was issued due to the construction of the Tiki Hut without a permit.

Now before the Board, is a variance request to reduce the rear setback to 5 feet from 10 feet and the side interior setback to 5.8 feet from 7.5 feet for the Tiki Hut.

Variance Analysis:

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). The applicants justification statement is attached.

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(s):

- 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);**

Staff Analysis: The subject property is located in the Ocaseola Park neighborhood which was platted in 1913. The platted lots range from 46 ft to 52 ft wide and 130 ft to 135 ft deep like many lots throughout the City. As the size of the subject property is typical throughout the City, special conditions and circumstances would not apply to the property. The subject property has sufficient area to accommodate a Tiki Hut that conforms with the setback requirements for the R-1-A zoning district

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

Staff Analysis: The literal interpretation of the regulations would not deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning. A Tiki Hut is a permitted accessory structure in the R-1-A zoning district and must abide by the setback requirements pursuant to LDR Sec. 4.3.4(K). As exists, the Tiki Hut is encroaching within the rear and side interior setbacks, therefore, creating non-conformities on the subject site.

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

Staff Analysis: The special conditions and circumstances of the Tiki Hut have resulted from the actions of the applicant. The applicant contracted a company called "Seminole Tiki Hut" to construct the Tiki Hut. Although this company is certified with the Seminole Tribe of Florida and is exempt from the payment of all permit fees related to the issuance of a construction permits; it was the company's responsibility to submit a permit and receive approval from the Development Services Department prior to the construction of the Tiki Hut. Therefore, this is a result of the 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;**



Staff Analysis: Should the Board grant the variance, the applicant would be conferred a special privilege that is denied to other lands, structures, and buildings that are subject to not only the same zoning regulation, but all other zoning district regulations. The applicant seeks relief through a variance which would provide them with a rear and side interior setback less than that of other properties within the R-1-A zoning district.

- 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,**

Staff Analysis: The subject property is developed with a single-family home and pool which meets the setback requirements for the R-1-A zoning district. The property contains sufficient area to construct a Tiki Hut that conforms with the minimum setback requirements for the zoning district. If granted, the rear and side interior variance requests would allow the Tiki Hut to remain in its current location, however, not granting the variance would not preclude the applicant from proposing the Tiki Hut in an alternate area of the property that meets the LDR requirements.

- 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**

Staff Analysis: As a result, the granting of the variances would generally not be injurious to the neighborhood, or otherwise detrimental to the public welfare. However, the general purpose and intent of the existing regulations is to provide setback requirements for each zoning district to mitigate the impact of structures to neighboring properties and provide adequate buffering. If granted, the variances will not be in harmony with the general purpose and intent of the existing regulations due to the setback encroachments.

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	September 24, 2021
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	September 24, 2021
2.4.2 (B)(1)(j)(iv) - The notice posted at City Hall	September 24, 2021