



PLANNING AND ZONING BOARD STAFF REPORT
November 7, 2023, Planning and Zoning Board Meeting

Scarcella, Mirko
Variance (Side Yard Setback)
P23-162

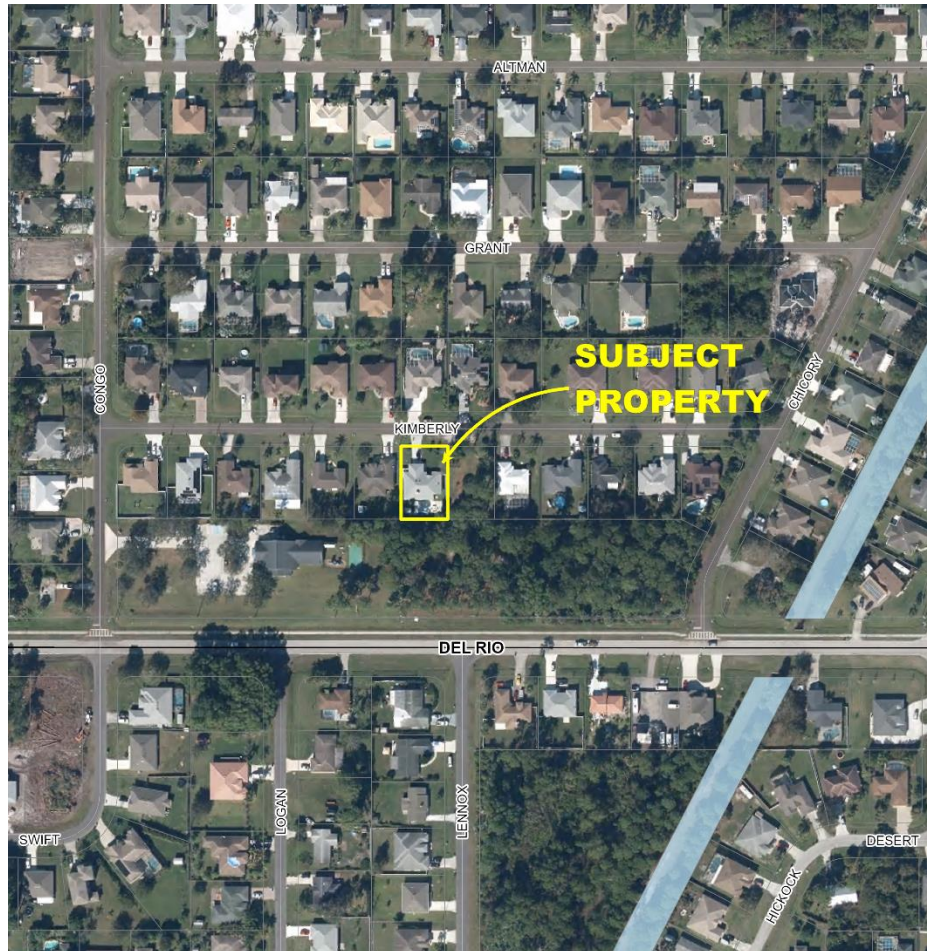


Figure 1. Aerial Map

SUMMARY

Applicant's Request:	To grant a variance to Section 158.217(C) of the City Code to allow for a three foot and four- inch (3.4 feet) encroachment into the side yard setback resulting in a 6'6" side yard where 10' is required, for an existing outdoor kitchen and grill.
Application Type:	Variance, Quasi-Judicial
Property Owner:	Mirko Scarcella
Address:	1856 SW Kimberly Ave
Location:	South side of SW Kimberly Avenue, north of SW Del Rio Boulevard and west of SW Congo Street.
Project Planner:	Francis Forman, Planner II

Project Description

The owner is requesting a variance of three feet and four inches (3.4 feet) to allow a six foot and six-inch (6.6 foot) setback from the side property line where 10' is required for an existing outdoor kitchen and grill. Section 158.127(C) Accessory Uses in Single-Family Residential Districts, states that the minimum side yard setbacks for this property are 10 feet as set forth by the applicable zoning district of RS-2.

Review Criteria

An application for a variance is reviewed for consistency with Article XV of the Zoning Code, Sections 158.295 through 158.299. Final action on the application (approval or denial) is in the form of an Order of the Planning and Zoning Board following a quasi-judicial public hearing. A vote of approval by five (5) members of the Planning and Zoning Board is required to grant a variance.

Public Notice Requirements

Public notice was mailed to owners within 750 feet and the file was included in the ad for the Planning & Zoning Board's agenda.

Location and Site Information

Parcel Number:	3420-595-0481-000-3
Property Size:	+/- 0.23 acres
Legal Description:	Lot 7 - Block 1249 - Port St. Lucie Section 20
Future Land Use:	RL (Low Density Residential)
Existing Zoning:	RS-2 (Single-Family Residential)
Existing Use:	Single-Family Residence

Surrounding Uses

Direction	Future Land Use	Zoning	Existing Use
North	RL	RS-2	Single-Family Residence
South	I	I	Religious Institution
East	RL	RS-2	Single-Family Residence
West	RL	RS-2	Single-Family Residence

RL, Low Density Residential – RS-2, Single Family Residential – I, Institutional

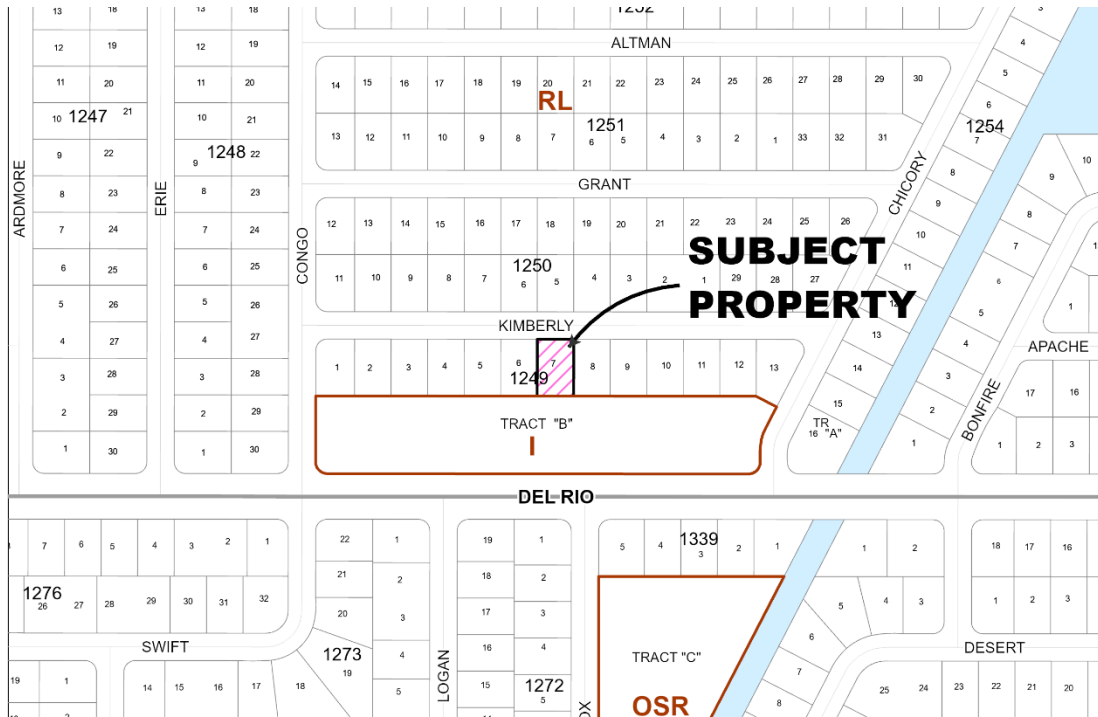


Figure 2. Land Use Map

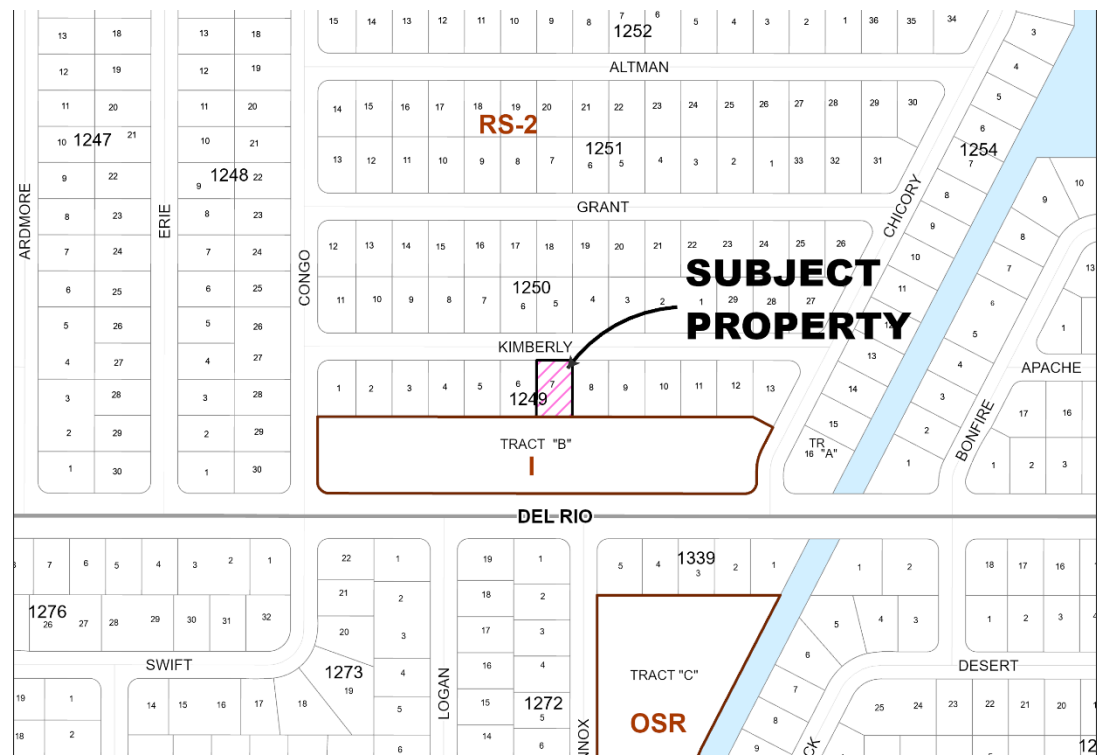


Figure 3. Zoning Map

IMPACTS AND FINDINGS

Section 158.295 (B) of the Zoning Code establishes the duties of the Planning and Zoning Board in authorizing a variance. The Planning and Zoning Board may authorize the variance from the provisions of the Zoning Code as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary and undue hardship. Pursuant to Section 158.296, a variance is authorized only for height, area, and size of the structure, yard size, building setback, lot size requirements, and other applicable development regulations, excluding use. To authorize a variance, the Planning and Zoning Board should consider the criteria listed under Section 158.295 (B) (1) through (7). The applicant's response to this criterion is attached to the application. Staff's review is provided below.

See the applicant's responses that are included in the Variance application.

Compatibility with variance criteria Section 158:295 (B).

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
 - *Applicant's Response: Special conditions and circumstances peculiar to my property are primarily a result of conflicting information provided by the city building department at different points in time. The initial inquiry about the outdoor kitchen and grill, the building department informed us that no permit was required provided we maintained a 6-foot distance from the side property line and a 10-foot distance from the rear. However, upon a subsequent in-person visit to the building department, we were informed that a permit was indeed required, the side distance needs to be 10 feet instead of the initial 6 feet. As a result, an undue and unnecessary hardship has been imposed, as we've already incurred expenses and labor to construct the kitchen barbecue based on the initial information provided. The structure is not visible to the public or neighboring properties due to an existing 6-foot-high vinyl fence surrounding the property. These special conditions do not generally apply to other lands, structures, or buildings in the same zoning district making this case unique. Thus, the hardship is not self-inflicted but arises from inconsistent guidance provided by the city department, leading to confusion, unnecessary expense, and construction delays.*
 - *Staff Findings: No, special conditions and circumstances do not exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.*
2. That the special conditions and circumstances do not result from any action of the applicant.
 - *Applicant's Response: The condition and circumstances leading to this variance request did not result from the actions taken by me or my family. We undertook this outdoor kitchen barbecue project in strict compliance with the guidelines and information provided by the city building department. Prior to starting construction, we made diligent efforts to obtain accurate information by contacting the building department both by phone and in person. On both occasions, we were informed that no permit would be required for the structure, given that it adhered to specified distance regulations of 6 feet from the side yard line and 10 feet from the rear. Relying on the information provided by multiple departments within the building department, we proceeded with construction. It was only after a friend raised concerns about the permit that we revisited the department, only to be informed of a different set of*

regulations, contradicting their earlier guidelines. Thus, the conditions and circumstances are a direct result of inconsistent and conflicting information from the city building department, and not from any action or oversight on our part.

- *Staff Findings: Special conditions and circumstances which are peculiar to the land, structure, or building involved do not exist. However, the owner asserts that he was given erroneous information from the building department which resulted in the installation of the structure in the side yard, and thus necessitates the variance.*
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures, in the same zoning district.
- *Applicant's Response: Granting the Variance will not confer any special privilege upon me that is denied to other lands, buildings, or structures in the same zoning district. The variance is being sought to address an issue stemming from conflicting guidance provided by the city building department, not to gain advantage or circumvent the rules that apply to everyone else in the zoning district.*
 - *Staff Findings: The granting of this variance request will confer special privilege that is denied by this chapter to other lands, however, per the applicants responses to comments #1 and #2, this variance is requested to correct the work that was done after the owner reports being provided incorrect information regarding side yard setbacks for the RS-2 zoning district.*
4. That literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter and would work unnecessary and undue hardship on the applicant.
- *Applicant's Response: A literal interpretation of the chapter's provisions, in this case, would impose an unnecessary and undue hardship on me and my family, a hardship not commonly faced by other properties in the same zoning district. We started the construction of the outdoor kitchen-barbecue based on the explicit guidelines and assurances provided by the city building department. We were informed that no permit would be required if we adhered to a distance of 6 feet from the side and 10 feet from the front of the backyard. Acting in good faith, we followed these directions meticulously.
However, inconsistent and conflicting information was later provided by the same department, stating that a permit was indeed needed and that the side distance had to be 10 feet instead of the previously specified 6 feet. Due to this, we had to incur additional unexpected expenses for hiring a licensed engineer in Florida to produce the required drawings and documentation, a cost and process not commonly necessitated for similar projects in the zoning district when adhering to initial guidelines.
We've already invested money, time, and labor into building the structure based on the initial guidance provided. Requiring us to disassemble or relocate the nearly completed structure would not only be financially burdensome but would also be emotionally taxing, all due to an error that was not our own.
Therefore, a literal interpretation of the chapter's provisions in light of the conflicting guidance we received would unjustly deprive us of rights commonly enjoyed by others in the zoning district, namely the right to rely on accurate information from city departments for property improvements. The variance request serves to rectify this specific hardship without undermining the overall intent and purpose of the zoning*

laws..

- Staff Findings: *The literal interpretation of the provisions would not deprive the applicant of any commonly enjoyed rights by other property owners. However, per comments #1 and #2, this is a variance to correct the owner being provided incorrect information regarding side yard setbacks for the RS-2 zoning district.*

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.

- Applicant's Response: *The variance requested is indeed the minimum variance that will allow for the reasonable use of the land and the already partially constructed outdoor kitchen-barbecue structure. We are not requesting any additional or excessive leniencies outside of what was initially conveyed to us by the city building department. The structure has been built 6.6 feet from the side and 10.5 feet from the front of the backyard, strictly adhering to the original guidelines provided.*

It's important to note that we undertook this project based on multiple assurances from different departments within the city building department. We did our due diligence, acting in good faith to comply with the city's instructions.

Dismantling or relocating the existing structure would impose significant financial and emotional hardship, while serving no obvious public or administrative interest. Additionally, the structure poses no detriment to public welfare or to neighboring properties. It is fully concealed by a permitted 6-foot vinyl fence and does not obstruct water drainage.

In light of these factors, the variance requested is minimal and serves solely to rectify the undue hardship imposed on us by the conflicting and inconsistent instructions from the city's building department. It enables reasonable use of our property while remaining consistent with the spirit and intent of zoning laws.

- Staff Findings: *The variance granted is not the minimum variance, however, per the owner comments #1 and #2, this is a variance to allow the structure to stay where it is because the owner states that he installed the structure (outside kitchen) after he says he was provided incorrect information regarding side yard setbacks for the RS-2 zoning district. The rear yard is fenced in, and the structure will not be visible to the neighbors or from the street.*

6. That the granting of the variance will be in harmony with the general intent and purpose of the chapter and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

- Applicant's Response: *Granting the requested variance will be in harmony with the general intent and purpose of the zoning chapter, which aims to facilitate the reasonable use of land while ensuring that such use is not detrimental to the public welfare or injurious to the surrounding area. In this specific case, the variance would serve to rectify a unique and unfortunate situation that arose due to inconsistent guidance provided by the city building department. The outdoor kitchen-barbecue structure we've built is designed to be both functional and aesthetically pleasing, in line with the character of the neighborhood. It is not visible from the street or to neighboring properties, thanks to a 6-foot vinyl fence that*

has been permitted by the city. Furthermore, the structure does not interfere with any utilities or drainage systems; it's built in an area that does not require clearance for water drainage.

As such, granting this variance would not be injurious to the area involved or otherwise detrimental to the public welfare. It would allow us to make reasonable use of our property without violating the overall spirit and intent of the zoning laws.

By resolving this issue in a manner that imposes no harm on the community or the environment, the variance would uphold the general intent of providing a balanced and reasonable approach to land use, thus aligning with the chapter's overall goals.

- Staff Findings: *The variance will not detrimentally impact the public welfare or the neighbors. The owner has installed a 6' opaque fence and as such this structure will not likely create a problem for the public.*

7. Please indicate that there will be full compliance with any additional conditions and safeguards which the Planning and Zoning Board or Zoning Administrator may prescribe, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both.

- Applicant's Response: *I fully understand and acknowledge the importance of adhering to conditions and safeguards laid out by the Planning and Zoning Board or Zoning Administrator. I am committed to full compliance with any additional conditions, safeguards, or reasonable time limits that may be prescribed to ensure the project aligns with the general intent and purpose of the zoning chapter.*

This commitment extends to starting or completing the actions for which the variance is required within any time frames that may be established. I understand that these conditions are in place to ensure that the variance, if granted, would not be injurious to the area involved or detrimental to public welfare.

In sum, I am prepared to adhere strictly to any additional conditions and safeguards that may be deemed necessary, as it is my intention to resolve this matter in a way that is in full accord with the regulations and expectations of the Planning and Zoning Board or Zoning Administrator.

- Staff Findings: *Acknowledged.*

PLANNING AND ZONING BOARD ACTION OPTIONS

The Board may choose to approve, deny or table the proposed variance. If the Board finds that the variance application is consistent with the criteria as listed in Section 158.295 (B) (1) through (7) of the City code (listed above), then the Board may:

- Motion to approve
- Motion to approve with conditions

If the Board finds that the variance application is inconsistent with the criteria as listed in Section 158.295 (B) (1) through (7) of the City code, then the Board may:

- Motion to deny

Should the Board need further clarification or information from either the applicant and/or staff, the Board may:

- Motion to table or continue the hearing or review to a future meeting

(NOTE TO APPLICANTS: Any request for a variance that is denied by the Planning and Zoning Board may be appealed to the Board of Zoning Appeals. Appeal applications are made through the City Clerk's office and must be submitted within 15 days after the Planning and Zoning Board hearing).