



**TOWN OF PALM BEACH**  
Planning, Zoning & Building Department  
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**PLANNING, ZONING, & BUILDING DEPARTMENT**  
**PZ&B Staff Memorandum: Town Council Development Review**

**TO:** Mayor and Town Council

**FROM:** Wayne Bergman, MCP, LEED-AP  
Director PZ&B

**SUBJECT:** ZON-22-024 (ARC-22-028) 1540 S OCEAN BLVD (COMBO)

**MEETING:** April 13, 2022

**ZON-22-024 (ARC-22-028) 1540 S OCEAN BLVD (COMBO)—SPECIAL EXCEPTION W/ SITE PLAN REVIEW & VARIANCES.** The applicant, 1540SOcean LLC (Steven Kirsch, Managing Director), has filed an application requesting Town Council review and approval for Special Exception to modify an existing beach cabana structure and Special Exception with Site Plan Review and including variances for (1) and (2) to reduce required side setbacks for a new beach access tunnel, (3) to reduce the required ocean bulkhead line setback for a new beach access tunnel and (4) to exceed the maximum allowed lot coverage in relation to the construction of a new beach access tunnel. ARCOM will perform design review of the application.

**ARCOM NOTICE:**

**ARC-22-028 (ZON-22-024) 1540 S OCEAN BLVD (COMBO).** The applicant, 1540SOcean LLC (Steven Kirsch, Managing Director), has filed an application requesting Architectural Commission review and approval for changes to an existing beach cabana and for construction of beach tunnel with related site modifications. The variance portion of the application will be reviewed by Town Council.

Applicant: 1540SOcean LLC (Steven Kirsch, Managing Director),  
Professional: DJA Dailey Janssen Architects PA  
Representative: Steven Kirsch

**HISTORY:**

On May 26, 2021, an application for demolition of the existing residence was reviewed and approved by ARCOM, pursuant to B-046-2021; the design of the new two-story residence was approved the following month.

At the February 23, 2022 ARCOM meeting, an application was approved (7-0) for changes to an existing beach cabana and for construction of beach tunnel with related site modifications, pursuant to ARC-22-028. The Commission additionally recommended favorably on the variance associated with project (7-0).

At the March 09, 2022 Town Council Development Review meeting, the item was deferred for one month at the request of the applicant.

**THE PROJECT:**

The applicant has submitted revised plans, entitled "Proposed Tunnel and Cabana Restoration for 1540 S Ocean Boulevard", as prepared by **DJA Dailey Janssen Architects PA**, dated March 31, 2022.

The following is the scope of work for the Project:

- Modifications to an existing beach cabana.
- Construction of beach tunnel with related site modifications.

The following Special Exceptions, Site Plan review and/or Variances required to complete the project, and shall be reviewed by Town Council:

- **SPECIAL EXCEPTION W/ SITE PLAN REVIEW:** Sec. 134-840(11): Special Exception w/ Site Plan Review for tunnel under roadway, to connect main parcel to beach parcel.
- **SPECIAL EXCEPTION:** Sec. 134-1473(a)(1): Special Exception modification for architectural changes to existing Beach Cabana structure in Beach Area zoning district.
- ~~**VARIANCE 1:** Sec. 134-843(a)(8): Variance for a South side yard setback of 5.1' in lieu of 15' required, for a new beach access tunnel. Variance withdrawn by the applicant, the south side setback has been increased to 15'-3".~~
- **VARIANCE 2:** Sec. 134-1476(b): Variance for a North side-yard setback of 1.5' in lieu of 10' required, for a new beach access tunnel.
- **VARIANCE 3:** Sec. 134-1702: Variance for an ocean bulkhead line setback of 100.41' in lieu of 150' required, for a new beach access tunnel.
- ~~**VARIANCE 4:** Sec. 134-843(a)(11): Variance for a lot coverage of 25.2% in lieu of 25% maximum allowed, in relation to the construction of a new beach access tunnel. Variance withdrawn by the applicant, the lot coverage has been reduced to 24.9%.~~

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Site Data			
<b>Zoning District</b>	R-A Estate Res. B-A Beach Area	<b>Lot Size (sq ft)</b>	16,151 SF 4,804 SF (B-A)
<b>Future Land Use</b>	SINGLE-FAMILY	<b>Total Building Size (sq ft)</b>	136 sf (Cabana)
<b>C-O-R</b>	18.56'	<b>Flood Zone</b>	ZONE X and ZONE VE
<b>Finished Floor Elevation</b>	18.87' NAVD	<b>Max Fill</b>	N/A
<b>Tunnel Elevation</b>	5.9' NAVD		
Project			
	Required/Allowed	Existing	Proposed
Lot Coverage	25% max	24.4% (3948 SF)	24.9% (4,033 SF)
Building Height	N/C	N/C	N/C
Overall Building Height	N/C	N/C	N/C
Point of Measure	18.87' NAVD		
Landscape Open Space (LOS)	50% (8075 SF)	52% (8438 SF)	61.5 (8317 SF)
Native Plant Species %	25%	64%	N/C



Cubic Content Ratio (CCR)	N/A	N/A	N/A
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\*If value is not applicable, N/A

\*If value is not changing, N/C

Surrounding Properties / Zoning	
North	Two-story 1995 single-family residence
South	Three-story 1928 single-family residence
East	Atlantic Ocean
West	Two-story 1956 single-family residence

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**SITE PLAN REVIEW CRITERIA SEC. 134-329**

Before any site plan shall be approved, approved with changes, or denied, the town council shall make a finding that the approval of the site plan will or will not adversely affect the public interest and certify that the specific zoning requirements governing the individual use have or have not been met and that, further, satisfactory provision and an arrangement has or has not been made concerning the following matters, where applicable:

- (1) Sufficiency of statements on ownership and control of the subject property and sufficiency of conditions of ownership or control, use and permanent maintenance of common open space, common facilities or common lands to ensure preservation of such lands and facilities for their intended purpose and to ensure that such common facilities will not become a future liability for the town.
- (2) Intensity of use and/or purpose of the proposed development in relation to adjacent and nearby properties and the effect thereon; provided, however, that nothing in this subsection shall be construed as granting the town council the authority to reduce residential densities below that permitted by the use regulations in article VI of this chapter.
- (3) Ingress and egress to the property and the proposed structure thereof, with particular reference to automotive and pedestrian safety; separation of automotive traffic; traffic flow and control; provision of services and servicing of utilities and refuse collection; and access in case of fire, catastrophe or emergency.
- (4) Location and relationship of off-street parking and off-street loading facilities to thoroughfares and internal traffic patterns within the property, with particular reference to automotive and pedestrian safety, traffic flow and control, access in case of fire or catastrophe, and screening and landscaping.
- (5) Proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property boundaries.
- (6) Manner of drainage on the property, with particular reference to the effect of provisions for drainage on adjacent and nearby properties and the consequences of such drainage on overall town capacities.
- (7) Utilities, with reference to hook-in locations and availability and capacity for the uses projected.
- (8) Recreation facilities and open spaces, with attention to the size, location and development of the areas as to adequacy, effect on privacy of adjacent and nearby properties and uses within the property, and relationship to communitywide open spaces and recreation facilities.



- (9) Such other standards as may be imposed by this chapter for the particular use or activity involved.
- (10) Height of commercial structures with reference to adjoining buildings, the effect on uniformity in height, and the general principle of retaining the low profile scale of commercial architecture.
- (11) Visible size and bulk. The proposed development should be so arranged that it minimizes the visible bulk of the structures to drivers and pedestrians on abutting roadways, the point of reference being the centerline of the abutting roadways, with the intent being to maintain visual impact of multistory buildings at the same relative level of intensity as a single-story building at the minimum required setback.

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**SPECIAL EXCEPTION CRITERIA SEC. 134-229**

The requirements for granting a special exception use under this chapter are as follows:

- (1) The use is a permitted special exception use as set forth in article VI of this chapter.
- (2) The use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected.
- (3) The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
- (4) The use will be compatible with adjoining development and the intended purpose of the district in which it is to be located.
- (5) The use will comply with yard, other open space, and any special requirements set out in article VI for the particular use involved.
- (6) The use will comply with all elements of the comprehensive plan.
- (7) The use not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district.
- (8) Adequate ingress and egress to property and proposed structures thereon and off-street parking and loading areas will be provided where required, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- (9) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, and economic impact shall be compatible and in harmony with properties in the district.
- (10) Location, availability and compatibility of utility service for the use shall be satisfactory to ensure health and safety.
- (11) Refuse and service areas for the use shall not adversely affect automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.
- (12) In all districts except the C-OPI district, and also with the exception of hotel, motel and timeshare uses, the proposed special exception use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be town persons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine the credibility and the appropriateness of the applicant's conclusion. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant. The town may in the future require the applicant to demonstrate to the satisfaction of the town council that the special exception use is continuing to be town-serving.



- (13) If historic/specimen trees are located on the subject property, the location of said historic/specimen trees shall be identified on a signed and sealed survey. In addition, adequate landscaping, screening and barricade protection of historic/specimen trees shall be demonstrated to be provided as required in this chapter.
- (14) The proposed use will not place a greater burden than would be caused by a permitted use on municipal police services due to increased traffic or on fire protection services due to the existence of or increased potential for fire/safety code violations.

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**VARIANCES CRITERIA SEC. 134-201**

The town council may authorize upon appeal such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this chapter will result in unnecessary and undue hardship. In order to authorize any variance from the terms of this chapter, the town council must and shall find the following:

- (1) 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.
- (2) The special conditions and circumstances do not result from the actions of the applicant.
- (3) 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 this same zoning district.
- (4) Literal interpretation of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
- (5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
- (6) For granting of a variance to sections 134-387 or 134-390 through 134-392, pertaining to the regulation of nonconforming uses, the following additional findings shall be made pertaining to the nonconforming use for which the variance is requested:
  - a. It is the continuance of a unique hotel or residential use that has, for at least 15 years proven compatible with the surrounding uses; and
  - b. Neither rezoning to a district which would allow the use, nor inclusion of the subject use as a permitted or special exception use in the district would act to achieve the preservation of the subject use without opening the possibility of the incursion of uses incompatible with the immediately surrounding area and, further, such variance shall:
    1. Be granted only for the continuation of the same hotel or residential use; and
    2. Require the applicant to submit a declaration of use limiting the utilization of the property for which the variance was granted to the same use as that existing at the time the variance was granted.
- (7) The grant of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. In granting any variance, the town council may prescribe appropriate conditions and safeguards in conformity with this chapter. Upon granting a variance the town council may require the landowner to provide a declaration of use agreement which shall be recorded in the public records to ensure continuing compliance with town council imposed conditions of such grants. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

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**CONSISTENCY WITH THE COMPREHENSIVE PLAN:**

A preliminary review of the project indicates that the proposed **cabana use is consistent** with the **Single-Family** designation of the Future Land Use Map of the Comprehensive Plan.

**COMPLIANCE WITH ZONING CODE:**

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the Town code:

The applicant is requesting the following variance(s):

- **SPECIAL EXCEPTION W/ SITE PLAN REVIEW:** Sec. 134-840(11): Special Exception w/ Site Plan Review for tunnel under roadway, to connect main parcel to beach parcel.
- **SPECIAL EXCEPTION:** Sec. 134-1473(a)(1): Special Exception modification for architectural changes to existing Beach Cabana structure in Beach Area zoning district.
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**STAFF ANALYSIS:**

This application is presented to the Council to consider whether all of the criteria in Sec. 134-201 and Sec. 134-329 have been met. The applicant is proposing to modify the exterior of the existing beach cabana; additionally, the applicant is proposing to construct a new tunnel (under S Ocean Blvd) and deck to connect the main parcel to beach parcel in order to have residents cross the roadway more safely. The applicant is aware that in addition to ARCOM and TC approvals, additional approvals shall be obtained from D.E.P. AND F.D.O.T. The proposed location of the beach tunnel requires relief from two setback requirements.