

From: [Aly Serrano](#) on behalf of [Town Council](#)
To: [Town Council & Mayor](#)
Cc: [James Murphy](#); [Kelly Churney](#)
Subject: FW: 125 Worth Ave. - Code Issues
Date: Friday, June 04, 2021 1:16:28 PM

From: Carol LeCates <clecates@comcast.net>

Sent: Friday, June 04, 2021 12:54 PM

To: Danielle Hickox Moore <DMoore@TownofPalmBeach.com>; Town Council <TCouncil@TownofPalmBeach.com>; Wayne Bergman <wbergman@TownOfPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; James Murphy <jmurphy@TownOfPalmBeach.com>

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Dear Mayor and Council,

As you know, the 125 Worth application seeks a special exception for "a fourth story addition" and also 3 variances to expand 4th floor non-conformities. My reading of the code is that it precludes eligibility to apply for the special exception, as neither the general construction section nor the C-WA district regulations permit a fourth story in the first place. Even if the roof mechanical structure meets the definition of a story in the code, there is no actual provision for 4 stories on Worth Ave., so the special exceptions/allowances for the district would not permit enlargement of it because they prohibit structures of more than 3 stories. For the special exception, the application relies on Sec. 124-1163 (8)b, a part of the C-WA District lot, yard, and area requirements, which states:

"(8) Height and overall height.

a. For one-story buildings, the maximum building height is 15 feet.

b. For two-story buildings, the maximum building height is 25 feet, allowable as a special exception.

There is simply no logical way to conclude that this section permits a 4th story or a 4th story expansion as a special exception. The only logical conclusion would be the reverse.

Furthermore, the C-WA district section on special exceptions has a 3 story maximum subject to clear incentive criteria:

"Sec. 134-1165. - Special exception to height regulations; special exception structures.

(a) Criteria for granting. In order to encourage increased open space, landscaped open space, reduced density and lot coverage and architectural detail, the town council may at its discretion, upon review of an application and public hearing thereon, allow for the increase of the maximum building height in the C-WA Worth Avenue district, upon a finding being made by the town council that the proposed increase in height for a contemplated special exception structure is in the public

interest, that careful attention is given to architectural detail, and that it meets the standards of sections [134-227](#) through [134-233](#) and the goals and guidelines in this section.

(b) **Two-story and three-story construction.** The following shall be applicable to two-story and three-story construction in the C-WA district: (1) First story coverage not more than 35 percent and second story coverage not more than 35 percent. Additional coverage and other special allowances may be granted if the structure is built in accordance with the Worth Avenue Design Guidelines in conformance with [section 134-233](#). (2) A third story and other special allowances may be granted if the structure is built in accordance with the Worth Avenue Design Guidelines in conformance with [section 134-233](#)."

The transcript for the Council meeting on this subject in 1991 reinforces the 3 story maximum. (Attached to my previous e-mail, pages 3079-3080.)

And finally, even if a use exception was applicable (which it does not seem to be), Sec. 134-231, states clearly that special exceptions can be approved only when the use conforms to the lot, yard and bulk regulations of the R-C district. It does not permit them to be used where variances are necessary because it is meant to serve as an incentive to comply with district regulations. :

"Sec. 134-231. - Residential use in C-TS, C-WA or C-OPI district; one-family use above first floor in C-TS, C-WA or C-PC district.

(a) When any residential use is approved as a special exception use as provided for within the C-TS, C-WA, or C-OPI commercial district, **it shall conform to the lot, yard, and bulk regulations of the R-C residential district** and, if appropriate, division 9 of article VIII of this chapter and subdivision II of division 10 of article VIII of this chapter...."

It seems to me that the only conclusion that can be drawn is that the special exception for a 4th story addition is not permitted and is also duplicative of the variances being sought for the addition. It should be dropped from the application.

Respectfully,
Carol LeCates