



**TOWN OF PALM BEACH**  
Planning, Zoning & Building Department  
360 South County Road  
Palm Beach, FL 33480  
(561) 838-5430 • [www.townofpalmbeach.com](http://www.townofpalmbeach.com)

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-21-003 (ARC-21-039) 380 SOUTH COUNTY ROAD (COMBO)

MEETING: March 09, 2022

**ZON-21-003 (ARC-21-039) 380 SOUTH COUNTY ROAD (COMBO)-SPECIAL EXCEPTION W/ SITE PLAN REVIEW & VARIANCES.** The applicant, 380 S County LLC (Phillip Norcross, Manager) has filed an application requesting Town Council review and approval for a Special Exception Request with Site Plan Review and including variances (1) to reduce the street side (south) setback for the proposed ground floor terrace addition, (2) to reduce required parking (by 36 number of spaces), (3) to exceed the maximum height of rooftop mechanical equipment, and (4) to forgo required off-street loading; in order to expand a lounge into a restaurant and increase second floor office use in an existing two-story building. The Architectural Commission will perform design review of the application.

**ARCOM NOTICE:**

**ARC-21-039 (ZON-21-003) 380 SOUTH COUNTY ROAD (COMBO).** The applicant, 380 S County LLC (Phillip Norcross, Manager) has filed an application requesting Architectural Commission review and approval for the construction of new one- and two-story additions to an existing two-story building including variances from setbacks, rooftop mechanical equipment height, and to reduce the existing parking in order to expand an existing food and beverage serving lounge and office use. The variance portion of the application shall be reviewed by Town Council. The application will require special exception and site plan reviewed by Town Council.

Applicant: 380 S County LLC (Phillip Norcross, Manager)  
Professional: Spina Orourke + Partners  
Representative: Maura Ziska

**HISTORY:**

- 9/11/19 Architect Dan Kahan approached the Town with a “pop up” Wine Bar at 380 S. County Rd.
- 9/18/19 Former Director of PZB Josh Martin approved the use of the Wine Bar, as it was permitted by right under the code.
- 12/18/19 Permit application B-19-82652 was made for interior and exterior renovations to the building.
- 1/6/20 ARCOM staff approval, A-20-00824, granted by Josh Martin for first floor to be converted to a Wine Bar. Staff approval in conjunction with the conversion of the first floor

of the existing building to a wine bar. They requested that the existing covered entry vestibule on the east side be enclosed. A new pair of doors with sidelites (to match) would be re-installed. Also, at the north side of the building, the center window would be replaced with a new pair of aluminum and glass french doors.

- 1/22/20 Permit B-19-82652 was issued. Seven revisions followed the issuance of this permit, all of which are approved.
- 1/23/20 ARCOM staff approval, A-20-00859, granted by Josh Martin for a patio on the north side of the building.
- 2/5/20 Request made for Administrative Outdoor Seating and Administrative Site Plan Review.
- 2/7/20 ARCOM staff approval, A-20-00889, granted by Josh Martin for outdoor seating on the new patio. Staff approval in conjunction with the conversion of the first floor of the existing building to a wine bar, they requested that the small landscaped area at the northeast corner of the building be converted to hardscape with 6 outdoor seats. The seats would be deducted from the proposed interior seating count. Additional landscaped open space would be added in other areas of the property to offset the loss.
- 10/1/20 Business Tax Receipt was issued for the Wine Bar.
- 11/19/20 Kimley Horn approached Paul Castro – the use will become a restaurant.

Since then, the Town has made considerable zoning modifications pertaining to “all restaurant uses” in the Town. No longer outright permitted uses, as of June 9, 2021, all restaurants, outdoor seating, and bars are permitted only through the Special Exception review and approval process by Town Council.

The item is scheduled to be heard at the February 23, 2022 ARCOM meeting for the construction of new one- and two-story additions to an existing two-story building including variances.

**THE PROJECT:**

The applicant has submitted plans, entitled "Building Renovations for 380 S County Road", as prepared by **Spina Orouke + Partners**, dated 12/27/21.

The following is the scope of work for the Project:

- The construction of a new 530 SF covered porch addition, a new 1,364 SF kitchen/support space to the ground floor and 2,308 SF of future office space to the second floor, 100kw backup generator and associated hardscape and landscape.

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

- SPECIAL EXCEPTION (1): Section 134-1113(8): modify special exception use above the first floor (expansion of 2<sup>nd</sup> floor).
- SPECIAL EXCEPTION (2): Section 134-1109(22): for restaurant use (expansion).
- SPECIAL EXCEPTION (3): Section 134-1109(14): outdoor café seating.
- SITE PLAN REVIEW: Section 134-1112: Site plan approval for new building additions and site modifications.
- VARIANCE 1: Section 134-2176: to reduce the required parking. Variance to provide 10 spaces in lieu of the required 37. This number is obtained from adding the 27 new required spaces plus the 19 existing required spaces minus 9 of these existing spaces proposed to be eliminated.



- 22.6 spaces (5650 sf of second floor office)
- 4.5 spaces (1500 sf back of house restaurant)

NOTE: Project cannot utilize existing (108) seat count or principle of equivalency for required parking determination).

- VARIANCE 2: Section 134-1113(6): Street side yard setback (Peruvian Avenue) variance is required. Variance request for a street side yard setback of 5 feet in lieu of the 10 foot minimum required on Peruvian Avenue.
- VARIANCE 3: Section 134-1607(1): Variance to exceed maximum height of mechanical equipment (AC and SCRUBBER) to permit 84" where 36" is permitted.
- VARIANCE 4: Section 134-2211(a): Variance to forgo required off-street loading berth.

\*\*\*

Site Data			
Zoning District	C-TS Zoning District	Lot Size (SF)	13,125 SF
Future Land Use	COMMERCIAL	Total Building Size (SF)	Exist: 6,226 SF   Prop: 9,898 SF
C-O-R	6.29'	Flood Zone	AE 6
Finished Floor Elevation	6.68' NAVD	Max Fill	N/A
Project			
	Required/Allowed	Existing	Proposed
Lot Coverage	70%	31% (4103 SF)	51% (6,757 SF)
Building Height	25'	24'-7"	24'-7"
Overall Building Height	30'	30'	30'
Parking Space	37 required	19 existing	10
Seats	108	108	108
Point of Measure	6.68' NAVD	6.68' NAVD	6.68' NAVD
Landscape Open Space	25%	12.4% (1,673 SF)	12.8% (1,681 SF)
Native Plant Species %	25%	N/A	36.2%
Cubic Content Ratio (CCR)	N/A	N/A	N/A

\*If value is not applicable, N/A

\*If value is not changing, N/C

Surrounding Properties / Zoning	
North	One-story commercial (Church Mouse)
South	Mayor Lesly S. Smith Park
East	One-story commercial (Bricktops)
West	Two-story 1953 private club (Club Colette)

\*\*\*

### 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.

\*\*\*

#### **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.

\*\*\*

**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.

\*\*\*

**CONSISTENCY WITH THE COMPREHENSIVE PLAN:**

A preliminary review of the project indicates that the proposed **application** is **consistent** with the **COMMERCIAL** designation of the Future Land Use Map of the Comprehensive Plan, but the proposal is an intensification of use and contrary to many aspects of the comprehensive plan. Basically, any new or expanded commercial use could be considered a conflict with the direction of the Comp Plan:

- Land Use Element Page I-5. The Town recognizes that future development and attendant population growth would aggravate traffic problems, perhaps bringing the Town to a critical level of overuse. The Town has therefore adopted the following policy regarding growth: To prevent critical and dangerous overuse of its streets, parking resources, public services and facilities, and damage to its historic character and to overall property values of the community, the Town will take all technical and administrative measures legally



available, including the use of this Comprehensive Plan, to minimize the change or transition of existing low-density areas or structures to more intensive use patterns, and thereby lower the pattern of density, where possible, and to minimize tourism inflow.

- Land Use Element Page I-6. It continues to be a major objective of the Town to inhibit further commercialization, contain commercial uses to limited geographic locations, and to promote commercial uses which are primarily oriented to serving the needs of residents, employees and visitors staying in accommodations in the Town, while discouraging those businesses that attract customers and clients from off the Island.
- Land Use Element Page I-30. POLICY 2.3 Development orders shall be issued by the Town only for new non-residential development or redevelopment that is consistent with the Future Land Use Map and descriptions and intensities of land use as set forth in the following policies. 2.3.1 The following definitions shall pertain to the application of the non-residential land use designations and associated policies: a. "Town-serving" shall mean establishments principally oriented to serving the needs of Town persons and not substantially relying on the patronage of persons not defined as Town persons. Commercial establishments (other than those in the "Commercial – Office, Professional & Institutional" (C-OPI) zoning district, which are not required to meet town-serving requirements) of 3,000 square-feet or less of gross leasable area in the C-PC, C-TS and C-B zoning districts, and 4,000 square-feet or less of gross leasable area in the C-WA zoning district are assumed to meet the intent of the first part of this definition. b. "Town persons" shall mean all full-time and seasonal residents of the Town as well as visitors staying at accommodations in, or employees working in establishments located within, the Town.
- Land Use Element Page I-32. POLICY 2.4 To prevent critical and dangerous overuse of its streets, parking resources, public services and facilities, and damage to its historic character, and to overall property values of the community, the Town will take all technical and administrative measures legally available, to minimize the change or transition of existing low-density areas or structures to more intensive use patterns, and thereby lower the pattern of density, where possible, and to minimize tourism inflow.
- Land Use Element Page I-32. POLICY 2.5 Continue to enforce the provisions of the Town's Zoning Ordinance which are directed toward the encouragement of Town-serving commercial uses and the discouragement of those uses which are likely to attract patronage on a regional level.

**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:

- Property falls within flood zone AE-6. If value of improvements exceeds 50% of the value of the building value, the building must be brought up to applicable codes including finished floor elevation requiring flood panels.
- VARIANCE 1: Section 134-2176: Variance to provide 10 parking spaces in lieu of the required 36 (27 new + 9 existing).
- VARIANCE 2: Section 134-1113(6): Variance request for a street side yard setback of 5 feet in lieu of the 10 foot minimum required on Peruvian Avenue.



- VARIANCE 3: Section 134-1607(1): Variance to exceed maximum height of mechanical equipment (AC and SCRUBBER) to permit 84" where 36" is permitted.
- VARIANCE 4: Section 134-2211(a): Variance to forgo required off-street loading berth.

### **STAFF ANALYSIS**

The applicant is proposing first and second floor additions, and other site improvements, to an existing two-story 6,226 SF building located on a corner lot just south of the Town Hall Square Historic District. Specifically, the ground floor addition of a 530 SF covered porch to the south side of the building, a 1,364 SF addition to the first floor to accommodate a new kitchen expansion to the west side of the building, and a 2,308 SF expansion for future office space to the second floor, also on the west side of the building. The covered terrace dining area will replace a small green space with outdoor seating on the south side of the building in a more permanent and refined architectural treatment; the proposed ground floor expansion westward will eliminate 10 existing covered surface parking spaces from the site plan. The site is currently operating and licensed as a 108 seat wine bar restaurant, 'Le Bar a Vin', on the ground floor with a separate office space on the second level currently vacant.

As it pertains to the proposed use, while permitted, the proposal includes three separate Special Exception Requests.

- The first Special Exception Request is to modify the use above the first floor (expansion of 2<sup>nd</sup> floor), pursuant to Section 134-1113(8).
- The second Special Exception Request is to expand the existing restaurant use on the first floor (expansion of 2<sup>nd</sup> floor), pursuant to Section 134-1109(22).
- The second Special Exception Request is to allow outdoor café seating, pursuant to Section 134-1109(14).

And of course, the project is subject to site plan review, pursuant to Section 134-1112.

As it pertains to Variance #1 to reduce the required parking, currently the building contains 19 existing surface parking spaces on site towards the western portion of the site—9 of which are covered by the existing cantilevered second floor. The applicant is proposing to extend the ground floor westerly to occupy the footprint of the existing 9 spaces. The expanded first floor (restaurant) and second floor (office) require 27 parking spaces (5650 SF of total second floor office plus the new 1500 SF back of house). Additionally, the applicant is proposing to eliminate the 9 surface spaces, resulting in a variance request to provide 10 spaces in lieu of the required 36. The existing bar/restaurant already utilized the principle of equivalency for required parking determination for the change of use from bank/office to bar/restaurant in order to permit 108 seats. Due to the strain on existing parking resources in Town and the fact that the applicant has not demonstrated a hardship for the request, staff is not supportive of the request. Staff would be amenable to the elimination of a few (but not all 9) of the existing covered surface spaces in order to accommodate a modest expansion for back of house use for the restaurant and provide a working kitchen, enclosed air-conditioned trash area, and improved valet operations.

As it pertains to Variance #2 to reduce the required side setback of 10 feet in or order to construct a new covered outdoor dining arear at 5 feet to the south side property line on Peruvian Avenue. In the C-TS town-serving commercial district there is no minimum side yard required for one-story structures, but a side yard shall be five feet if provided. However, when the property is abutting any R district, a ten-foot side yard is required on that side. The neighboring property to the west is zoned R-D(2), although operating as a commercial private club. Staff has no objections to the



proposed reduction of the side street setback in order to further activate the street and create urban a more defined urban building edge in the town center.

As it pertains to Variance #3 to exceed maximum height of mechanical equipment (AC and SCRUBBER) on the existing roof. Staff has no objections to the request as it is the logical placement of such equipment, provided that the existing sloped barrel tile roof or other screening methods adequately mitigate any negative visual impact when viewing the building from within the r-o-w or across the street.

As it pertains to Variance #4, to forgo the required off-street loading, the Code requires within any zoning district, any new construction of new floor area to provide loading based on the SF thresholds, which in this case, would be slightly over 4,000 SF and need to provide 1 new loading berth on sit. Due to the fact that the existing restaurant is not expanding in occupancy or seats, and the current facility makes due with utilizing the existing on street loading areas or allowing the delivery trucks to load on site, staff has no objections to the request.

Staff is generally supportive of a portion of the application as it allows for the ground floor improvements to the existing restaurant in the form of an expanded kitchen and BOH areas, a new valet operations stand located internally to the site, the incorporation of a backup generator, and an enclosed air conditioned trash area; yet this architectural realization comes at a price—the loss of 9 existing on-site parking spaces. Staff is not supportive of the second floor expansion and the proposed intensification of the office and bar uses and the depletion of required parking and variances sought therein.