

# TOWN OF PALM BEACH

Information for Town Council Meeting on: March 15, 2023

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To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building

Re: 125 Worth Avenue

Date: March 6, 2023

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## **STAFF RECOMMENDATION**

Staff would like to put into context our interpretations and decisions made regarding the proposed project at 125 Worth Avenue over the last several years. This is a complex project that has been in the development queue for at least four years with three different applications. This memo will not include specific opposition and concerns expressed by the neighboring property owners and residents. This memo will also not provide a full history on this project, but will focus on the recent land use applications.

## **2019 PROJECT SUMMARY**

The applicant (Rob Frisbie) met with former PZB Director Josh Martin regarding 125 Worth Avenue. Mr. Frisbie's plan was to add to the existing fourth-floor of the building and to create four fourth-floor condominiums. The condominiums would be located within the existing building footprint and each condominium would have a balcony that would extend near the edge of the existing building roofline, basically expanding the existing fourth-floor footprint on all four sides. On the ground level, a one-story building would be added in the location of the existing east surface parking lot. At first, a restaurant was proposed in this new addition, then later was removed due to concerns from the neighboring condo owners. The very visible first three floors would have cosmetic alterations made to the façade of the building. Final versions of this project proposed the ground-level east building addition to be in the northwest section of the existing parking lot and to be used to house mechanical equipment. All surface parking would be removed as part of the 2019 proposal.

## **2019 APPLICATION**

After several meetings with the applicant, architect Rafael Portuondo, attorney Jamie Crowley, Director Josh Martin, and PZB staff, the first application was made. It was a Comprehensive Plan Amendment, a zoning text amendment, and changes to the Worth Avenue Design Guidelines. Director Martin tentatively agreed to prepare some of the zoning text amendments for

the applicant. The Comp Plan amendments were to change the Future Land Use Element to allow, in some cases, a fourth-floor (although a small fourth-floor exists today). This would have resulted in changes to both the zoning code relative to the C-WA district and to the Worth Avenue Design Guidelines. This initial project was to demolish the existing 3,000 sf fourth floor, then add a new larger fourth-floor, which would be just over 12,000 sf. This is why the applicant needed the Comp Plan amendment, as the grandfathered nonconforming fourth-floor would be completely removed (abandoned), then rebuilt larger.

## **2019 REVISIONS TO THE APPLICATION**

The applicant decided to withdraw the original application, and in turn to simply request a site plan, special exceptions and variances. The applicant said this decision was made after receiving feedback from one or more Town Council member(s). The feedback was basically described to staff as that the Town Council may not support a Comprehensive Plan amendment, but that requesting multiple variances was the better way to proceed. At this point Zoning Manager Paul Castro was asked by Director Martin to help delineate the various zoning matters and possible variances needed to approve the project. The applicant described the project as an expansion of the nonconforming fourth-floor, along with a shared parking concept to eliminate the surface parking, and other variances for the ground level building additions and façade changes, building height, lot coverage, site plan review and special exceptions. Mr. Castro indicated that requesting an expansion of the grandfathered, nonconforming fourth-floor was already established by past precedent, as a few other tall, nonconforming buildings in the past have requested and received variances to expand by adding additions, awnings, pergolas, etc. to the nonconforming floor. I remember Mr. Castro pointing out the window of the Director's office at the nonconforming six-story building behind Bricktops, which he said required variances to expand the nonconforming penthouse. Mr. Castro said that this precedent was vetted through Town Attorney Skip Randolph in the past, and therefore could be used again. He also indicated several other midrise buildings, primarily condo buildings, have requested and received the same zoning relief. Staff requested that the applicant provided plans that showed the fourth-floor to remain (if the fourth-floor was demolished it would be a violation of the Comprehensive Plan). Although submitted as a combo project (both Arcom and Town Council approvals needed), staff asked that the project be re-noticed to neighbors and that the matter come to the Town Council first to deal with the variances, special exceptions and site plan review, as there is no need for Arcom to spend possibly several months on this project if the zoning variances are not granted by the Town Council.

Ultimately the applications were withdrawn by the applicant.

## **2023 PROJECT SUMMARY**

ARCOM - The applicant, 125 Worth Partners LLC, has filed an application requesting Architectural Commission review and approval for the substantial demolition, renovation and expansion of the existing four-story nonconforming commercial building with underground parking, including multi-story additions and façade alterations in accordance with the Worth Avenue Design Guidelines, involving multiple variances including from the parking requirements, setback, lot coverage, height and open space regulations and other nonconforming aspects of the existing building.

TOWN COUNCIL - The applicant, 125 Worth Partners LLC, has filed an application requesting Town Council review and approval for a Special Exception with Site Plan Review for the substantial demolition exceeding 50% exterior building elevations for the renovation and expansion of the existing four story nonconforming commercial building (with underground parking) including multi-story additions and façade alterations proposing in accordance with the Worth Avenue Design Guidelines and a Special Exception to permit retail and office uses greater than 4,000 SF gross leasable area in the C-WA district. Additionally, the applicant is seeking review and approval for Variances (1) to reduce the required parking; (2) to modify and expand nonconforming four-story building; (3) to exceed the maximum overall building height in order to construct a new rooftop and rooftop projections; (4) to exceed the maximum allowable lot coverage for the fourth level; (5) to reduce the required front yard setback, (6) to eliminate the requirement for an on-site loading space, (7) to retain and increase the existing nonconforming lot coverage for the first, second and third levels; (8) to retain the existing nonconforming building length; (9) to retain the existing nonconforming landscape open space; and (10) to further increase the existing nonconforming floor area due in association with the voluntary demolition of portions of the nonconforming building exceeding 50% of exterior wall square footage, in conjunction with the renovation of an existing four-story office and retail building.

### **STAFF'S VIEW OF THE PROJECT**

The current PZB staff acknowledges that 125 Worth Avenue is a four-story building. While this fact may be debated and contradicted by past records, real estate advertisements and other documents, PZB staff has, on at least two different occasions, visited the building as a field visit and walked up to the fourth-floor penthouse. It is easily accessible from any floor. The fourth-floor is just over 3,000 sf in size, has a concrete roof, which is about 13 feet high, is air conditioned, and has large glass windows on two sides. The fourth-floor footprint further expands over the third floor with a covered arcade on three sides. The interior enclosed space currently houses mechanical equipment, but this space could be converted to office or condominium use by relocating the mechanical equipment and renovating the interior space to the desired configuration. Two separate PZB Directors have established their interpretation of this fourth-floor designation.

Variances are needed to expand the nonconforming fourth-floor, as this precedence is already established in the Town, vetted by the Town Attorney and has been used by applicants in the past. Further, the former Zoning Manager reviewed the 1972 plans from the original building construction and maintains that the building was designed and constructed as a four-story building with underground parking. Staff acknowledges that two-story buildings, and sometimes three-story buildings, are allowed by the Comprehensive Plan in the commercial land use areas, but staff further acknowledges that there many buildings in Town that exceed the Comprehensive Plan height limitations, several of them along Worth Avenue. These buildings were constructed prior to the adoption of the current Comprehensive Plan. These nonconforming, but grandfathered, buildings can be enlarged / expanded with zoning variances, as has been done in the past, but cannot be expanded beyond the footprint of the building.