125 WORTH AVE LLC ARCOM-23-022 ZON-23-032

APRIL 4, 2023 TOWN COUNCIL MEETING

IT'S NOT JUST ABOUT THE DEVELOPER

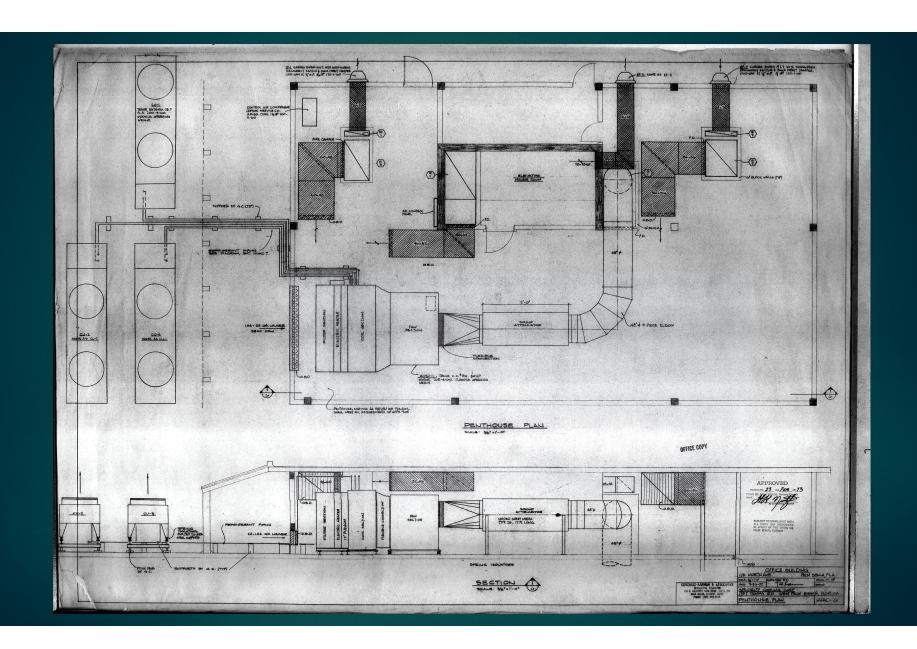
▶ Neighboring property owners have a right to rely on existing zoning conditions and a continuation of those conditions in the absence of a showing that a variance is necessary. *Herrera v. City of Miami*, 600 So.2d 561 (Fla. 3d DCA 1992).

"Moreover, as property owners situated immediately across the street from the owners, appellants have a right to rely on existing zoning conditions and they have a right to a continuation of these conditions in the absence of a showing that the variance is proper." *Thompson v. Planning Commission of the City of Jacksonville*, 464 So.2d 1231 (Fla. 1st DCA 1985)

HISTORICALLY WAS CONSIDERED A THREE-STORY BUILDING

- Palm Beach County Property Appraiser's website describes it as a one to three story office building
- > 1998 Worth Avenue Guidelines p. 33 describe it as a three-story office building
- ➤ July 6, 1972 Permit and all previous permits described a permit "To Build a Three-Story Office Building with Two Basement Levels"
- ➤ Certificate of Occupancy dated March 29, 1974 describes it as an "Office building three levels with two levels of parking with a mechanical penthouse

(Originally Issuel June 1, 1972) No. Re-Issue of # 51072 Palm Beach, Fla., Is Hereby Granted Builder Stan E, Hall & Associates, Inc. A Permit To Build ory Office Building with Block No. Size of Building Architect Robert Kolany Class of Zone" A" Engineer Frederick Wiesinger Subject to all of the Applicable Ordinances of the Town of Palm Beach, Floride in Regard to this Particular Matter. Four Hours Before Pouring Concrete or Lathing BUILDING OFFICIAL This Permit Must Be Posted On Premises During Progress of Building. Inspections to be made by Site Resident Inspector



Inter-Office Communication

TOWN OF PALM BEACH

TO Ed E. DATE 4-3-74
FROM Grace FILE \
RE Vacca Office Bldg.

Art Holly called and wanted you to have the following message:

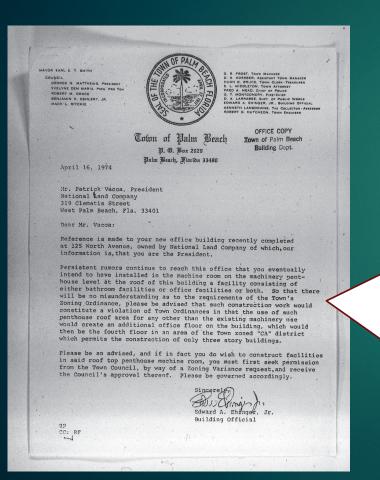
"They are planning to put a bathroom on the roof.

I have told them they cannot as there should be
no occupancy of the penthouse and they do not have
layout work."

I told Clyde and he asked Max to inform the Plumbing Supervisor, George Beech, that no such work shall go on.

yes open the

APRIL 16, 1974, LETTER FROM Edward A. Ehinger, Jr. Building Official To Patrick Vacca, Owner



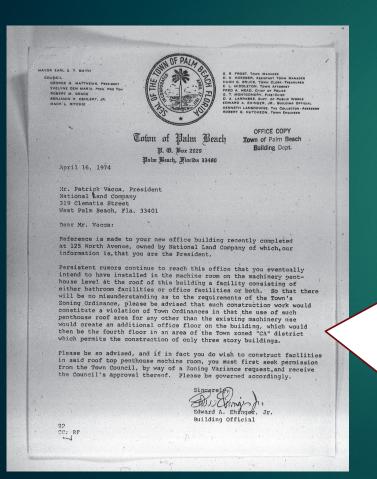
Persistent rumors continue to reach this office that you eventually intend to have installed in the machine room on the machinery penthouse level at the roof of this building a facility consisting of either bathroom facilities or office facilities or both.

APRIL 16, 1974, LETTER FROM Edward A. Ehinger, Jr. Building Official To Patrick Vacca, Owner

Town of Palm Beach Town of Palm Beach Building Dept. H. G. Box 2029 Halm Beach, Florida 33480 April 16, 1974 Mr. Patrick Vacca, President National Land Company 319 Clematis Street West Palm Beach, Fla. 33401 Reference is made to your new office building recently completed at 125 Worth Avenue, owned by National Land Company of which, our information is, that you are the President. Persistent rumors continue to reach this office that you eventually intend to have installed in the machine room on the machinery pent-house level at the roof of this building a facility consisting of either bathroom facilities or office facilities or both. So that there will be no misunderstanding as to the requirements of the Town's Zoning Ordinance, please be advised that such construction work would constitute a violation of Town Ordinances in that the use of such penthouse roof area for any other than the existing machinery use would create an additional office floor on the building, which would then be the fourth floor in an area of the Town zoned which permits the construction of only three story buildings. Please be so advised, and if in fact you do wish to construct facilities Please he so advised, and it is race you to wish to construct recritical nation of top penthouse machine room, you must first seek permission from the Town Council, by way of a Zoning Variance request, and receive the Council's approval thereof. Please be governed accordingly. Building Official

So that there will be no misunderstanding as to the requirements of the Town's Zoning Ordinance, please be advised that such construction work would constitute a violation of Town Ordinances . . .

APRIL 16, 1974, LETTER FROM Edward A. Ehinger, Jr. Building Official To Patrick Vacca, Owner



. . . In that the use of such penthouse roof area for any other than the existing machinery use would create an additional office floor in the building, which would then be the fourth floor in an area of the Town zoned "CA" district which permits the construction of only three-story building.

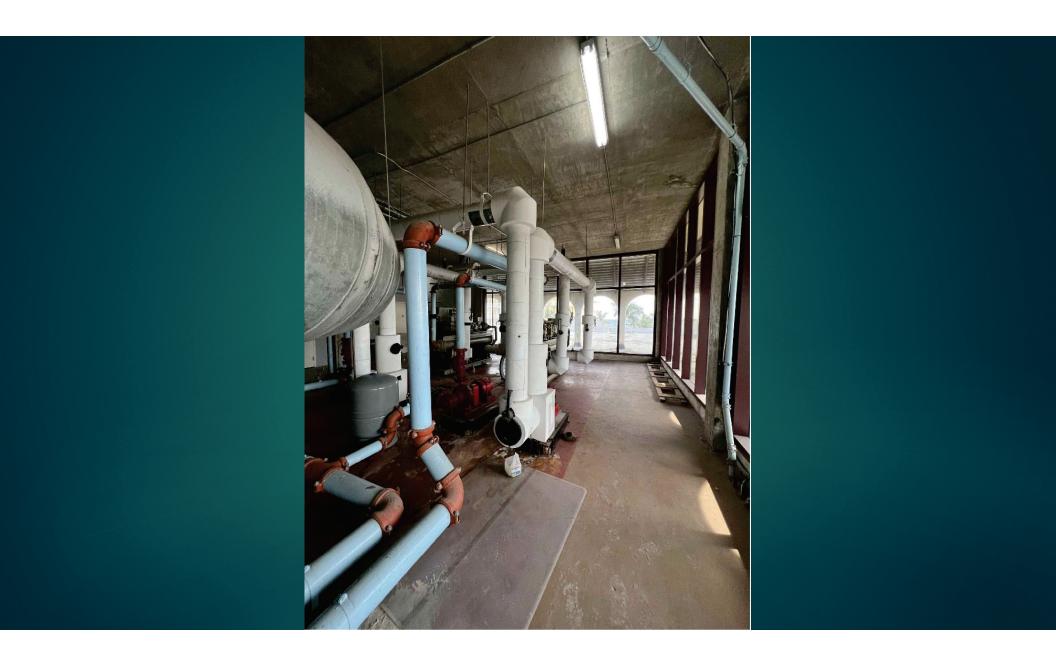
Note: This Certificate is for the Main Building Only, not Ind Frida Of Yeaseholds.

Fown of Palm Beach Building Dept.

Certificate of Approval and Occupancy

BUILDING INSPECTION DEPARTMENT TOWN OF PALM BEACH, FLORIDA

Date of Bldg. Permit	Final Date Approved
Bldg. Permit No. 510-72	Bldg. Insp. M. J. Huston
	Elec. Insp Arthur Abbott
Lot38-48 Block16	Plumb. InspClyde Darrall Elyde Darrall
Sub. Div. Boyal Park Addition	San. Insp
Permit Valuation: \$1,200,000.00	Resident InspW. A. Holly W. A. Holley
built by Lawrence J. Kucera. Gener	and owned by stional Land Company was inspected and found to conform to all Code and approved for all utility services and the occupancy Town fuilding Inspector
,	, n



DEFINITION OF "HABITABLE SPACE"

Habitable space means space in or on a structure used or intended to be used for occupancy, for living, sleeping, lounging, eating, cooking or recreation. Finished or unfinished floors above the maximum number of stories allowed containing an elevator, permanent or mechanically operated stairs and seven feet or more of head room shall be considered habitable space. Closets, hallways, storage rooms, attics, machinery rooms, mechanical equipment rooms, utility space and similar areas shall not be considered habitable space.

THE SPACE IS NOT HABITABLE

- ➤ By definition, the enclosed structure is a mechanical equipment room and not habitable space
- The Applicant's photographs reflect electrical conduit running across the floor
- The Applicant's photographs reflect pipes running across the floor
- The mechanical penthouse was never permitted to be used as habitable space
- The Letter of Intent does not request a change in the permitted use of the space

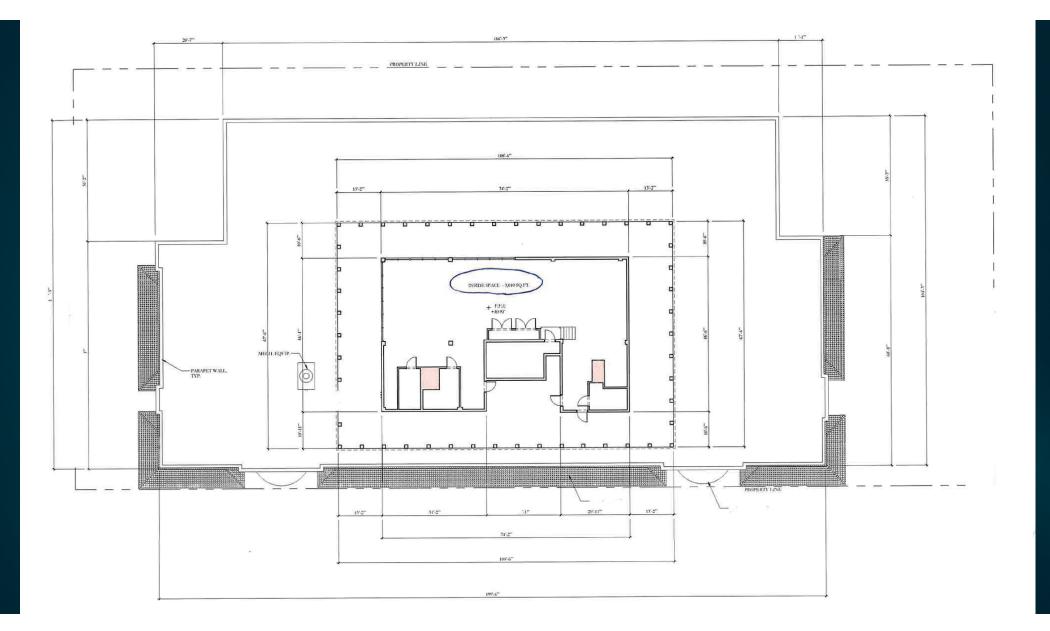


4th floor (rooftop) - Chiller shown



DEFINITION OF "STORY"

story means that portion of a building, other than an attic, included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, the space between such floor and the ceiling next above it. Habitable space, open patios, accessible roof decks not used exclusively for mechanical equipment, observation decks and/or similar areas located above the first or second story shall be considered a story for the purpose of this definition.





TOWN CODE SECTION 134-2

Sec. 134-2. - Definitions and rules of construction. (a) *Rules of construction.* For the purpose of this chapter,

the regulations are structured so as to be strictly permissive. As such, only those uses and structures which are specifically permitted in the Code of Ordinances are allowed. If there is no specific language in the Code which addresses a use or a structure, then said use or structure is not permitted.

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.

C. SPECIAL ALLOWANCES

- Commercial development, redevelopment, restoration or renovation providing an enhanced level of amenities and features in accordance with paragraph "D", following, shall be eligible for elimination of the building length limitation and the 15,000 square foot limit on gross floor area and an increase in maximum building coverage and height as follows:
- a. Existing buildings:
 - (1) one-story building, maximum coverage, 75%
 - (2) two-story building, 2nd story maximum coverage, 65%
- b. New 1 story building, maximum coverage, 75%
- New 2-story buildings: maximum first story building coverage, 75%; 2nd story maximum coverage, 65%.
- d. New 3-story buildings: maximum first story building coverage, 75%; 2nd story maximum coverage, 65%; 3rd story maximum coverage, 30%; and allowable building height up to forty (40) feet.

WORTH AVENUE GUIDELINES ARE ALL LIMITED TO THREE STORYS

- 2. Mixed-use commercial and residential development, redevelopment, restoration or renovation providing commercial uses on the ground floor and residential uses above, and providing an enhanced level of amenities and features in accordance with paragraph "D", following, shall be eligible for elimination of the building length limitation and the 15,000 square foot limit on gross floor area, increase in maximum building coverage and height, and allowable residential units as follows:
 - a. Existing buildings:
 - (1) One-story building maximum coverage, 75%;
 - (2) Second story coverage, 65% and a maximum of one (1) residence per each fifty (50) feet of frontage on Worth Avenue.
 - (3) Third story maximum coverage, 30%; allowable building height up to forty (40) feet and a maximum one (1) additional residence per each sixty (60) feet of frontage on Worth Avenue; provided, however, that all uses above the first floor shall be residential uses only and that the combined density of residential uses on the second and third floors does not exceed two (2) dwelling units per sixty (60) feet of frontage on Worth Avenue.
 - b. New one story building, maximum coverage, 75%
 - c. New 2-story buildings: maximum first story building coverage, 75% maximum second story coverage, 65%; and a maximum one (1) residence per each fifty (50) feet of frontage on Worth Avenue.
- d. New 3-story buildings:
 - (1) Maximum first floor building coverage, 75%;
 - (2) Maximum second story coverage, 65% and a maximum one (1) residence per each fifty (50) feet of Worth Avenue frontage;
 - (3) Maximum third story coverage, 30%; allowable building height up to forty (40) feet; and a maximum one (1) additional residence per each sixty (60) feet of Worth Avenue frontage; provided, however, that all uses above the first floor shall be residential uses only and that the combined density of residential uses on the second and third floors does not exceed two (2) dwelling units per sixty (60) feet of frontage on Worth Avenue.
- Arcades over the sidewalk shall not count towards building coverage. Where no arcades are provided landscaping shall be planted.

WORTH AVENUE GUIDELINES ARE ALL LIMITED TO THREE STORYS

DEFINITION OF UNDUE HARSHIP

An undue hardship exists when, "no reasonable use can be made of the property without the variance". See, *Bernard v. Town Council of the Town of Palm Beach*, 569 So.2d 853, 855 (Fla. 4th DCA 1990). Other iterations of the test require that the ". . . hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned." See, e.g. *Town of Indialantic v. Nance*, 485 So.2d 1318, 1320 (Fla. 5th DCA), *rev. denied*, 494 So.2d 1152 (Fla.1986). See also, *Thompson v. Planning Comm'n*, 464 So.2d 1231 (Fla. 1st DCA 1985) (hardship necessary to obtain zoning variance may not be found unless there is showing that under present zoning no reasonable use can be made of property.)

Sec. 134-201. - Findings prior to authorization.

- (a)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.

THERE IS NO UNDUE HARDSHIP

- The building has constantly appreciated since purchased in 2017
- The building was 95% occupied as of the date of the Applicant's appraisal
- The building is fit for its zoned use as an office building
- The building has been continuously used as an office building since the 1974 construction and has been sold at a profit each time it was sold