

May 9, 2024

Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

Re: LOI for 126 South Ocean Boulevard
Zoning Case #: ZON-24-0004 / Certificate of Appropriateness #: COA-24-0001

We are pleased to submit the accompanying documents and drawings in connection with our combination application for Certificate of Appropriateness and Variance approval (the "Application") for the replacement of mechanical equipment within the property at 126 South Ocean Boulevard, Palm Beach, FL (the "Property"). The mechanical equipment is located in an existing walled mechanical yard on the north side of the property, adjacent to an existing nine (9)-foot masonry wall on the neighbor's property. Because of this "shared wall" situation, we have submitted a wall maintenance agreement application that includes a signed consent form from the neighbor at 115 Flagler Drive (AGMT-24-00002).

We are requesting to replace an existing 80 kW generator with a 100 kW generator, and also replace the existing cooling tower. As part of the mechanical equipment replacement, we are also requesting approval for a variance to increase the wall height of the existing north/south wall section from 7 feet, 8 inches to 8 feet, 6 inches, which exceeds the 6-foot maximum height permitted by Code. The reason for this variance request is that the new cooling tower height is slightly higher than the existing cooling tower, which is no longer manufactured, and the Code requires that the cooling tower be fully screened by a wall that is at least the same height as the cooling tower. We are also requesting an increase in the size of the generator (still within the acceptable level permitted by Code), because the 100 kW is more efficient and actually quieter than the 80 kW. The location of the new generator remains generally the same, though it has been moved further from the rear property line to provide a greater setback. The generator will have a 33-foot, 3-inch street side yard setback in lieu of the 35 feet required by code; however, a variance (Variance #1-2002) for the generator location was granted in 2002 that included the 33-foot, 3-inch street side yard setback. A copy of this approval with the associated plans and details are included in the submittal documents. The locations of the generator and cooling tower were identified in the approved plans for Variance #1-2002, and included the nonconforming location of the generator in terms of its rear yard setback, and the nonconforming location of the cooling tower in terms of its street side yard setback; however, these variances were mistakenly left out of the written development order for Variance #1-2002. Town staff is now requiring these two variances be more clearly

identified and officially approved with this application. The three (3) total variances required as part of this application are detailed later in this document.

1. Criteria for Development Order Approval

A. Landmarks Preservation in accordance with Section 54-122 (New Construction).

- (a) The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related:
 - (1) The height, the gross volume, and the proportion between width and height of the façade;
 - (2) The proportions and relationships between doors and windows;
 - (3) The rhythm of solids to voids created by openings in the façade;
 - (4) The material used in the façade;
 - (5) The texture inherent in the façade;
 - (6) The colors, pattern and trim used in the façade; and
 - (7) The design of the roof.
- (b) Existing rhythm created by existing building masses and space between them should be preserved.
- (c) The landscape plan should be sensitive to the individual building and its occupants and needs and should be visually compatible with the buildings and environment with which it is visually related.
- (d) A new street façade should blend directionally with other buildings with which it is visually related; which is to say, when adjacent buildings have a dominant horizontal or vertical expression, that expression should be carried over in the new façade.
- (e) Architectural details should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent architectural characteristics of the area.

B. Landmarks Preservation in accordance with Section 54-123 (Exterior Alterations).

- (a) The criteria set forth in section 54-122, if applicable, shall be considered in passing upon an application for exterior alterations; provided that the commission may consider the original design of the building and the buildings visually related to it and disregard alterations subsequently made thereto.

- (b) Exterior alterations shall not affect the architectural quality or historical character of the building.

The Project will be visually compatible with the rest of the property, and the surrounding existing residential neighborhood. The proposed modifications only physically alter the height of the cooling tower and a portion of a screen wall by 10 inches, which will be hidden by the screen walls. The replacement generator has the same exact dimensions as the existing generator, but because of the increase in kW size, the new generator will be more efficient and quieter, thereby reducing the impact to any neighbors. Furthermore, the modifications proposed are consistent with the gross volume, width & height of the façades of the existing home on site. Finally, the requested modifications will not adversely affect the architectural quality or historic character of the historic home.

C. Variances in accordance with Section 134-201(a):

I. Variance Criteria:

- (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 properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
- (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 the 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.

II. Variances Requested:

- 1. A request for variance for a wall height of 8 feet, 6 inches in lieu of the 7-foot, 8-inch existing wall, and the 6-foot maximum permitted in Section 134-1667(a) of the Town of Palm Beach Code of Ordinances.
- 2. A request for a variance for the replacement cooling tower to have a side street yard setback of 33 feet, 3 inches, which currently exists and was previously shown on the approved plans for VAR 1-2002, in lieu of the 35-foot minimum required in Section 134-1728(b)(1) of the Town of Palm Beach Code of Ordinances.
- 3. A request for a variance for the replacement generator to have a 5-foot rear yard setback, which currently has a 2-foot, 2.25-inch rear setback that was previously shown on the approved plans for VAR 1-2002, in lieu of the 15-foot minimum required setback in Section 134-1729(2)(a) of the Town of Palm Beach Code of Ordinances.

III. Justification for Variances Requested:

The variance for the height of the mechanical screen wall is necessitated by a different Code requirement that the cooling tower be screened by a wall that is at least the same height as the cooling tower (Section 134-1728(b)(2)). The existing cooling tower has reached its useful life, and must be replaced. Unfortunately, the existing cooling tower is no longer manufactured, and the smallest cooling tower available that is the correct size to provide the same service as the existing is 10 inches taller than the existing unit. Therefore, we are in a position of either requesting a variance to not fully screen the cooling tower, or request a variance to extend a section of the screen wall another 10 inches to fully screen the cooling tower; we feel that the later is the less impacting, and the preferable option.

The existing generator has also reached its useful life, and must be replaced. As mentioned previously, the variance for the rear yard setback for the generator, as well as the variance for the street yard setback for the cooling tower, were mistakenly left out of the written development order that was granted in 2002 for the street yard setback variance for the generator, though the locations for both pieces of equipment were shown on the approved plans, and these setback requirements were in place at that time. Therefore, these "variances" are truly needed to clarify that the locations of this equipment have been approved by the Town.

As further justification, the rear setback for the replacement generator has been increased by 2 feet, 9.75 inches, which is decreasing the nonconformity of this setback to the greatest extent possible within the existing walled mechanical area. Essentially, these two setback variances will allow for the replacement of existing mechanical equipment in an existing and approved mechanical area, which will be less impacting (less noise, greater rear setback) than the old equipment being replaced.

We thank you for your consideration of our Submittal Package.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JMC', is positioned above the printed name.

James M. Crowley

JMC/jl