



**MEMORANDUM DATE:** November 2, 2022

**AGENDA DATE:** November 9, 2022

**TO:** Chair and Members of the Historic Resources Preservation Board

**RE:** **504 3<sup>rd</sup> Avenue South**

**FROM:** Anne Greening, Senior Preservation Planner  
Yeneneh Terefe, Preservation Planner  
Department of Community Sustainability

**TITLE: HRPB Project Number 22-01500005:** A request for a variance to allow a generator in the front yard along South M Street for the property located at **504 3<sup>rd</sup> Avenue South**; PCN #38-43-44-21-15-091-0300. The subject property is a non-contributing resource within the Southeast Lucerne Local Historic District and is located in the Multi-Family Residential (MF-20) zoning district. The future land use designation is Medium Density Residential (MDR).

**OWNER/APPLICANT:** Sam Rengasawmy  
Mobat, Inc.  
3700 North Flagler Drive  
West Palm Beach, FL 33407

**PROPERTY DEVELOPMENT HISTORY:**

The property at 504 3<sup>rd</sup> Avenue South received approval by the Zoning Board of Appeals in 1958 to operate a nursing home. As a result of that approval, the existing two 2-story houses, a cottage, and garage were demolished in 1962-1963 and a new two-story building was built for the Cuyler Pavilion Nursing Home. The property was granted two waivers in 1965 to permit a building height of up to 41 feet and to permit lot coverage of 52.2%. In 1967, part of the two-story building was demolished and replaced with a new four-story addition. The property functioned as the Cuyler Pavilion Nursing Home until the mid-1970s, when it became the Golfview Nursing Home and then the Lake Worth Nursing Home. The property once again changed hands in 1981, when it became Crest Manor Assisted Living.

In 1983, the City Commission granted the property's request to construct an awning extending over the public right-of-way. A parking lot, laundry/service structure, and a dining room addition were constructed in 1985. That same year, the property was granted a variance to waive the required number of parking spots. The property has undergone multiple changes since 1985, including reroofing in 1990, 1993, and 2018; installation of a chain link fence in 1995; window replacement in 2021; and door replacement in 1977 and 2022.

**PROJECT DESCRIPTION:**

The applicant, Sam Rengasawmy, is requesting to install a generator in the front yard of Crest Manor Assisted Living, located at 504 3<sup>rd</sup> Avenue South. Although the building's main entrance is oriented

towards 3<sup>rd</sup> Avenue South, the front property line is located along South M Street. LDR Section 23.4-17 requires that generators to be located in the side or rear yards of a property. A permanent emergency generator is required by the Florida Department of Elderly Affairs for assisted living facilities (Rule 58A-5.036, F.A.C.). The subject property is located on the northwest corner of 3<sup>rd</sup> Avenue South and South M Street. The parcel is within the Multi-Family Residential (MF-20) Zoning District and has a Future Land Use (FLU) designation of Medium-Density Residential (MDR). The property owner's survey is included in **Attachment A**.

The application will require the following approval: **Variance** to allow the required standby generator to be installed in the front yard of the property, along South M Street.

**BACKGROUND:**

- On March 26, 2018, the Governor signed SB 7028 into law, which ratified Rule 58A-5.036, Florida Administrative Code, entitled "Emergency Environmental Control for Assisted Living Facilities," as filed for adoption with the Department of State pursuant to the certification package dated February 13, 2018. This rule established the permanent emergency generator requirement for Assisted Living Facilities.
- On April 26, 2019 building permit #19-1674 was submitted to install a standby generator at 504 3<sup>rd</sup> Avenue South, pursuant to the requirements in Rule 58A-5.036, F.A.C.
- On May 7, 2019, zoning staff failed the permit because the generator location did not comply with required setbacks as established in LDR Section 23.4-17. The permit was also failed for electric and plumbing reviews.
- On January 21, 2022, Staff received a letter requesting that permit #19-1674 be cancelled at the customer's request. As the generator was never installed, the permit was voided on January 26, 2022.
- **On May 16, 2022, the property owner was given notice that the property at 504 3<sup>rd</sup> Avenue South had multiple violations of the fire code, including lack of a standby generator that meets the requirements established in Rule 58A-5.036, F.A.C.**
- On August 24, 2022, Staff received a Universal Development Application requesting a variance to install a new standby generator in the front yard of the property along South M Street. Staff sent the property owner a completeness review on September 12, 2022.
- Staff received a complete variance application by October 4, 2022, and the item was scheduled for the November 9<sup>th</sup> HRPB meeting.

**STAFF RECOMMENDATION:**

The proposed variance request is consistent with the variance requirements as established in LDR Section 23.2-26(b). Therefore, Staff is recommending approval of the proposed variance.

**PROPERTY DESCRIPTION:**

Owner	Sam Rengasawmy
General Location	Northwest corner of 3 <sup>rd</sup> Avenue South and South M Street
PCN	38-43-44-21-15-091-0300
Zoning	Multi-Family Residential (MF-20)

Existing Land Use	Assisted Living Facility
Future Land Use Designation	Medium Density Residential (MDR)

**LOCATION MAP:**



**ANALYSIS**

**Consistency with the Comprehensive Plan and Strategic Plan**

The subject site has a Future Land Use (FLU) designation of Medium Density Residential (MDR). Per Policy 1.1.1.3, the MDR category is intended primarily to permit the development of two-family and multi-family structures at a maximum of 20 dwelling units per acre. The assisted living facility use is a non-conforming use and may continue to exist, but cannot be expanded or enlarged (LDR Section 23.5-3 – Nonconformities). The variance being sought does not change or expand the current use of the property. The proposed variance would allow a standby generator to be installed in the front yard of the Crest

Manor Assisted Living Facility, bringing the property into compliance with state law and the Fire Code. A formal consistency review of the Strategic Plan and Comprehensive Plan is not applicable to an improvement of this scale.

**Consistency with Land Development Regulations**

The proposed generator in the front yard of 504 3<sup>rd</sup> Avenue South conflicts with the development requirements in the City's Zoning Code, specifically limitations on the location of generators. The property is located in the Multi-family Residential (MF-20) Zoning District. Based on the following sections of the Land Development Regulations:

<b><u>Required by Code</u></b>	<b><u>Proposed</u></b>
<p><b>LDR Section 23.4-17:</b> <i>Property owners will be allowed to have generators as an accessory use subject to the following requirements:</i></p> <ol style="list-style-type: none"> <li>1. <i>May be located in side setbacks with a maximum height of thirty (30) inches including the concrete pad. If located in a side yard, a landscape plan must be submitted indicating the landscape or screening used to prevent visibility from the right-of-way.</i></li> <li>2. <i>May be located in the rear setback if the property is not located on an alley.</i></li> <li>3. <i>A standby generator located in a side or rear setback requires a minimum three-foot separation from the property line.</i></li> </ol>	<p>Installation of a standby generator in the front yard is not permitted per Section 23.4-17, which identifies the only locations where generators are permitted.</p>

**Variance Request**

According to the City of Lake Worth Beach, Land Development Regulations, [Section 23.2-26 Variances](#), the power to grant any such variance shall be limited by and be contingent upon documentation that all required findings are made by the appropriate Board. As a property located in the Southeast Lucerne Local Historic District, the HRPB is tasked with making the required findings to grant a variance. The following addresses each of the required findings for the requested variance. In addition, the applicant's justification statement is included in **Attachment B**.

**Variance criteria per LDR Section 23.2-26(b):**

- A. Special circumstances or conditions exist which are peculiar to the land or building for which the variance is sought and do not apply generally to nearby lands and buildings and that this is not the result of an action of the applicant;

**Analysis:** An emergency generator is required by the State of Florida for all assisted living facilities per Florida Administrative Code Rule 58A-5.036. The side setback of the primary structure ranges from about 2 feet to about 14.5 feet, and the rear setback is about four feet. Based on the size and siting of the structure, there are limited locations for the placement of a commercially sized

generator. Further, the property owner contends that the back yard does not have enough room to accommodate the new generator and the side yard is an unfit location as it is currently used as outdoor space for the residents. The side yard is also adjacent to a single-family dwelling. Based on the existing siting of the structure and the generator requirement, staff concurs that there are special circumstances or conditions that are peculiar to the land and building that do not apply generally to the nearby lands and buildings. **Meets criterion.**

- B. The strict application of the provision of these LDRs would deprive the applicant of any reasonable use of the land or building for which the variance is sought;

**Analysis:** Strict application of the LDRs and failure to grant the proposed variance would deny the applicant reasonable use of the property as an Assisted Living Facility (ALF), which has been the property's use for over 60 years. ALFs are required to have a standby generator that meets the standards established in Rule 58A-5.036, F.A.C. The proposed front yard locations appear to be appropriate locations for the new generator, as they are adjacent to the building and away from existing outdoor recreation areas for residents and the adjacent single-family home. Denial of the variance would mean that the generator would need to be installed in the side yard, which would limit the functionality of the residents' outdoor space. Additionally, installation of a commercial generator in the side yard would impact adjacent residential uses, particularly the single-family home at 223 South M Street. The applicant's preferred generator location would also allow for the reconstruction of a deteriorated walking path from the door facing South M Street to the residents' outdoor space. Staff has proposed a condition of approval requiring the installation of a walking path from the side door to the outdoor use area. **Meets criterion.**

- C. That the variance proposed is the minimum variance which makes possible the reasonable use of the land or building;

**Analysis:** The proposed variance from the generator development standard is the minimum necessary to accommodate the required standby generator on the property, as this is the most suitable location for the generator based on the property's historic development. **Meets criterion.**

- D. That the granting of the variance will be in accordance with the spirit and purpose of this chapter, and will not be unduly injurious to contiguous property or the surrounding neighborhood nor otherwise detrimental to the public welfare. In deciding appeals from decisions of the development review official or in granting variances, the decision-making board is authorized and required to impose any reasonable conditions and safeguards it deems to be necessary or desirable, and violation of such conditions or safeguards when made a part of the terms under which a variance is granted, shall be deemed to be a violation of these LDRs.

**Analysis:** The proposed request is in accordance with the spirit and purpose of the LDRs. Staff has drafted conditions requiring that the proposed generator be screened from the public right-of-way and that the generator's noise shall not exceed sixty-five (65) decibels as measured from the property line. As conditioned, the granting of the variance shall not be unduly injurious to contiguous property, nor shall it be detrimental to the public welfare. **Meets criterion.**

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### **Historic Preservation Analysis**

Generators within the historic districts are only reviewed for compliance with zoning requirements.

### **PUBLIC COMMENT:**

At the time of publication, Staff has not received public comments regarding the proposed variance.

### **CONCLUSION:**

Based on staff analysis, the variance request generally complies with all the variance criteria outline above as conditioned. Staff recommends that the HRPB discuss the appropriateness of the proposed generator location and determine if the proposed variance is consistent with the required variance criteria. Staff has drafted conditions of approval included conditions requiring screening and noise limitations for the generator, as well as requiring that the property resolve existing violations of the Landscape Code.

### **Conditions of Approval:**

1. The variance from the generator development standards shall be project and use specific, and shall only apply to the scope of work approved under this application for this use. Should the property be redeveloped or destroyed, or the use changed, the variance would no longer be valid.
2. The generator's noise shall not exceed sixty-five (65) decibels as measured from the property line.
3. The applicant shall install battery operated carbon monoxide detectors in the sleeping units directly adjacent to and above the proposed generator location.
4. A Landscape Plan shall be submitted for review and approval and shall depict:
  - a. The required landscape screening to prevent visibility of the generator from the public right-of-way.
  - b. Missing or dead plant material shall be identified for replacement along all rights-of-way.
  - c. All existing and new plants as required by the Landscape Code on the entire site. Contact the City Horticulturalist, David McGrew for more information: (561) 586-7433.
5. All landscaping identified on the approved landscape permit shall be installed within six (6) months from date of this development order.
6. The applicant shall repave or install pavers to reestablish the walking path from the door on South M Street to the residents' outdoor patio area.

### **POTENTIAL MOTION:**

I MOVE TO **APPROVE** HRPB Project Number 22-01500005, a variance to allow a generator in the front yard along South M Street for the property located at **504 3<sup>rd</sup> Avenue South**. The application meets the variance criteria based on the data and analysis in the staff report.

I MOVE TO **DENY** HRPB Project Number 22-01500005, a variance to allow a generator in the front yard along South M Street for the property located at **504 3<sup>rd</sup> Avenue South**. The project does not meet the variance criteria for the following reasons [Board member please state reasons.]

### **ATTACHMENTS:**

- A. Attachment A – Survey
- B. Attachment B – Application and Justification Statement