



MINUTES

TOWN OF HILLSBORO BEACH
BOARD OF ZONING APPEALS

TUESDAY

JUNE 3, 2025

9:00 AM

CALL TO ORDER AND ROLL CALL

Mayor Dawn Miller called the meeting to order at 9:00 A.M. Roll was called with the Commission members and staff present as listed below.

Town Commission:

Mayor Dawn Miller	Vice Mayor David Ravanesi
Commissioner Vinnie Andreano	Commissioner Heather Berman
Commissioner Jane Reiser	

Town Staff:

Town Manager William "Mac" Serda, ICMA-CM
 Town Attorney Donald J. Doody, Esq.
 Town Clerk Sherry D. Henderson, CMC

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

I. QUASI-JUDICIAL PUBLIC HEARINGS

A. Variance Request for property located at 987 Hillsboro Mile, Hillsboro Beach, FL 33062

Property Owner: Mark and Tiffany Berch
 Address: 987 Hillsboro Mile, Hillsboro Beach, FL 33062
 Request: The Authorized Agent, Nectaria M. Chakas, Esq. (Lochrie & Chakas, P.A.) is seeking a variance from the Town's Land Development Code (Chapter 12)
 Staff: Graham Long, Development Planner, CG&A Solutions

The Applicant is seeking a variance to be permitted to allow a generator to be placed in the side yard setback. The Variance is to Section 12-124 of the Town's Code of Ordinances as stated below:

Section 12-124(B)(3):

"Generators and athletic play areas shall not be permitted in the minimum required side yard, and their location or future proposed location shall be provided on a site plan."

At this time any individuals wishing to speak on the Item were sworn in by Town Attorney D.J. Doody, and any ex parte communications were disclosed at this time - there were none.

Planning Consultant Graham Long, CG&A, stated that the Application is submitted in conjunction with a Site Plan Amendment Application which will be heard at the regular Town Commission meeting upon adjournment of the Board of Zoning Appeals Meeting. The Site Plan Amendment is contingent upon approval of the requested variance.

The request is for a variance to place a generator in a side yard. The Applicant proposes placement of the generator along the north property line, adjacent to the neighboring property at 989 Hillsboro Mile. The generator would lie within the 15 ft. required side setback.

Mr. Long explained that the property's Site Plan was originally approved in November 2022. On May 7, 2024, the Commission approved a Site Plan Amendment. Neither the original nor the amended Site Plan included the generator.

In order to place the generator within the side yard setback, a variance from the RS-2 single-family zoning district's yard requirements is required. Placement of the generator would also require amendment of the Site Plan.

Mr. Long advised that Code prohibits all items from the side yard area, but lists exceptions which are allowed there, such as an air conditioner, pool equipment, or mechanical equipment. In December 2022, the Town Commission passed an Ordinance which explicitly banned generators from being placed in the side yard area. While this Ordinance took effect after the original Site Plan was approved for the subject site, generators have never been included in the list of exceptions allowed in the side yard setback.

Mr. Long further clarified that the Ordinance passed in December 2022 specified the prohibition of generators due to noise and other effects unique to that equipment. Neither the original nor the previously amended Site Plan included the generator.

It was asked if other residents have been denied similar requests for variances addressing

generators. Mr. Long replied that he has not seen an application of this nature before, although there have been other Site Plans for which generators were approved within front or rear yard areas. Properties that include generators in the side yards are considered to have been preexisting and nonconforming to Code.

Mr. Long explained that the originally approved Site Plan did not show a generator. The Code change which explicitly banned generators from the side yard also amended Code to require that applicants must come before the Board of Zoning and Appeals (BZA) to show where a proposed generator would be located. When the Applicant applied for unrelated building permits, their plans showed a generator in the side yard. This was noted when the Applicant attended a pre-application meeting with Staff prior to their request for a Site Plan Amendment.

Vice Mayor Ravanese expressed concern with the variance request, as well as with the original Site Plan which did not show the proposed location of the generator. He emphasized the importance of consistency with Code, and asked if there is any other location on the property where the generator could be placed. Mr. Long replied that there are multiple locations where a generator could be placed, including the front yard, rear yard, and rooftop.

Commissioner Reiser recalled that generators were originally prohibited from side yard setbacks not only due to their noise, but also because they posed an inconvenience for neighbors. She advised that while the subject property's neighbors have a generator in their side yard, that generator lies within the correct distance.

Commissioner Reiser expressed concern that there has not been full disclosure regarding the Application. She also noted that a utility line is located in the side yard, which she felt indicated intent to place the generator there. She advised that the Town's Ordinances are enacted for the betterment of all residents.

Attorney Nectaria Chakas, representing the Applicant, stated that work done on the site with respect to gas lines was done in conjunction with comments from the Town's Building Department; the gas line and generator pad, although not shown on the approved Site Plan, were included on all building permit plans since June 2022.

Ms. Chakas advised that at the time of submission, Code did not require generators to be identified on Site Plans. This was corrected by a Code Amendment which followed approval of the Applicant's original Site Plan. She pointed out that this may be a reason why the generator was not shown on the original Site Plan, although it was included on the building permit plans.

Ms. Chakas explained that while Code included a list of items that could be placed in the

side yard setback, it did not specifically prohibit generators. She noted that the other items include mechanical equipment which can also create noise.

Vice Mayor Ravanese asked why the generator was not shown on the Site Plan. Ms. Chakas replied that it was not required to be shown on the Site Plan, but reiterated that it appeared on the documents submitted to request permits.

Ms. Chakas explained that the site's gas lines are already in place for placement of the generator in the side yard setback. There are no gas lines leading to other locations, such as the rooftop or rear yard, where the generator could be placed. Additional mechanical equipment is placed on the building's roof.

The generator itself would be set back 2 ft. 8 in. from the wall that screens it. Ms. Chakas advised that the neighboring property owners to the north have provided a letter of no objection to the variance Application. The Applicant has also received a letter of support from their southern neighbor.

Ms. Chakas stated again that the Ordinance prohibiting generators in side yard setbacks was adopted after the Applicant had received Site Plan approval from the Town Commission. The Site Plan did not show the location of the generator, as that was not required. While the generator could have been placed in front of the property, its size and screening requirements made the side yard setback the preferred area. The permits and work already done also prevented the generator from front yard placement.

Ms. Chakas showed slides depicting changes to the subject property, which include front yard stairs and other equipment. There is a front yard utility easement in which a generator could not be placed, as well as an above-ground transformer box belonging to Florida Power & Light (FPL).

Ms. Chakas noted that the Applicant's neighbor to the north has a generator within their side yard on the same side of the property as the Applicant's proposed generator. The neighbor to the south also has a generator that lies within their side yard setback, approximately 13 ft. from the property line.

Ms. Chakas also showed original building plans for the subject property which were approved by multiple Town Departments. She asserted that the plans show the original intent of the site was to place the generator in the side yard setback. The plans included plumbing, isometric, and gas permit plans. A third revision was made to the plans in December 2023, also including the proposed location of the generator.

Vice Mayor Ravanese reiterated that his concern with the Application was due to the denial of other applications in the past. Granting the variance request would be inconsistent with

previous Commission action. Ms. Chakas characterized the request as a hardship case, pointing out once more that lines were installed pursuant to permits issued by the Town. She also observed previous Code was ambiguous regarding when generator locations must be shown, which ultimately led to a Code amendment.

Vice Mayor Ravanesi stated that the Applicant's team was aware a year ago that generators were prohibited from side yard setbacks. Ms. Chakas replied that this timeline would not have affected the Applicant's need to request a variance. She added that when the Applicant was asked in May 2024 to remove the generator from the Site Plan, this was done in order to allow the Site Plan to proceed to the Commission without further delay.

Ms. Chakas continued that between May 2024 and the present, there were meetings between the Applicant's team and Town Staff to determine if another plausible location could be identified for the generator. She felt the Application would not set an unwanted precedent.

Town Attorney Doody advised that variance applications are addressed on a case-by-case basis and are legally required to demonstrate a hardship. He recommended that the Board focus on whether or not a hardship exists rather than the possibility of precedent.

It was asked when the gas lines were installed. It was clarified that these lines were placed according to permits after the Ordinance prohibiting generators in side yards was adopted.

Commissioner Reiser asserted that even before November 2022, generators were not permitted in the side yard setback, as they were not included in the list of permitted items.

Town Attorney Doody noted that the original Site Plan was approved in November 2022, prior to the adoption of the Ordinance. The Applicant subsequently submitted amendments to that Site Plan, which were granted in 2024, after the Ordinance was in place. Ms. Chakas explained that the generator was shown on the Site Plan and Town Staff requested that it be removed from that document, as it could not be installed without a variance. The Applicant had removed the generator from the Site Plan in the interest of not delaying construction.

Nick Toreseo, builder for the Applicant, stated that when he began work on the project, there was significant work that went on between the original architect and the Town's Planning and Zoning Staff. The Applicant was granted an opportunity to begin interior demolition on the site. During that permitting process, the previous architect was asked to produce a Site Plan so work could continue. He characterized the issue with the inclusion of the generator on the Site Plan as a result of haste in attempting to move the project forward rather than a lack of transparency on the Applicant's part.

Mr. Toreseo added that only certain aspects of the Site Plan were required at that time, and

the architect's work was consistent with those requirements. He stated that other plans had already been submitted to the Building Department in advance of the Site Plan's submittal. The Applicant's team began work on the plans approved by the Building Department; however, upon inspection, they were directed to stop work and obtain current Site Plan approval.

Andrew Dunlap, architect for the Applicant, advised that he took over work on the project in 2023. When the project sought Site Plan approval, it was brought to the team's attention that the generator needed to be removed from the Site Plan because it was noncompliant. It was removed so the Applicant could obtain Site Plan approval and keep moving forward with the project, with the understanding that the Applicant would look for alternate areas where the generator could be placed and come back to seek a variance.

Mr. Dunlap continued that the team spent several months in discussion with Town Staff and the property owner to consider other locations where the generator could be placed. When they were unable to identify any areas, it was determined that the best location was the north side yard, which would require a variance request. He emphasized that the site constraints, including easements, approved permits, and work already done by contractors, made the proposed location the best option for the generator.

Mayor Miller asked who had directed the Applicant's team to remove the generator from the Site Plan. It was clarified that Mr. Long had advised them to remove it, as the Site Plan could not be approved with the generator shown in a location not compliant with 2024 Code. Mr. Dunlap stated that the Applicant's team had discussed the strategy of removing the generator from the Site Plan and then seeking a variance with members of the Town's Building Department.

Mayor Miller noted that the Applicant's team had proceeded with construction although they knew it would be necessary to seek a variance, and had understood that they may or may not receive that variance. Mr. Dunlap asserted that no construction related to the generator was done after it was removed from the Site Plan. The infrastructure related to the generator was previously put into place.

Mayor Miller asked who was responsible for drawing the plans that situated the generator. Mr. Dunlap replied that the generator was already shown in the proposed location when he joined the team in 2023. He was not aware of any issues related to the generator's location until the team was told to remove it from the Site Plan.

Commissioner Reiser requested clarification of when the lines were installed on the property. Mr. Dunlap replied that these were placed in 2023. Mayor Miller pointed out that she had been informed that the lines were installed in 2024 in response to an earlier question. Mr. Toreseo reviewed the timeline involving the installation of infrastructure

according to permitted plans, the meeting between the Applicant's team and Town Staff, and the removal of the generator from the Site Plan.

Mr. Long further explained that the original Site Plan, which was approved in November 2022, was still in effect until its amendment in May 2024. During that time, some of the Applicant's building permit sheets had been seen by the Planning and Zoning Department, while other permit sheets were reviewed by other disciplines. Some of the sheets included a notation for a proposed generator in slightly different locations on different documents. He emphasized that none of those building permits were generator permits.

Mr. Long continued that the Applicant did not request a generator permit until August 2024. He advised that the prior submittal of permit sheets that referred to a generator was confusing, and triggered Staff's meeting with the Applicant's team regarding the need for an amended Site Plan. The Applicant's team was informed that a variance request would be necessary if they wished to place a generator in the subject location. The Applicant's team chose to remove the generator from the Site Plan at that time.

Town Attorney Doody asked if a generator required a separate permit. Mr. Long confirmed this, clarifying that the Applicant may not obtain this permit unless the variance is granted.

Mr. Long explained that a Site Plan is the overall plan for the entire lot and what will be done on that lot. All subsequent permit requests to the Building Department must conform to that Site Plan. The building permit sheets do not always show the full lot, as they may be for specific items such as gas lines, the driveway, and other aspects of the site.

Vice Chair Ravanese requested clarification of when Mr. Long began working with the Town. Mr. Long replied that he began working with Hillsboro Beach in 2022, although CG&A has worked with the Town since early 2021 for planning consultant purposes.

Vice Chair Ravanese asked if the Applicant's submitted plans had indicated to Staff that they intended to place a generator on the site. Mr. Long replied that when Staff noticed the inclusion of a generator on the building permit sheets, they had initiated discussions with the Applicant regarding the need for a Site Plan Amendment.

It was observed that while the list of items permitted within side yard setbacks has never included generators, there was no specific prohibition of generators prior to the adoption of the Ordinance. Mayor Miller referred to Code Section 12-124(B), which stated that no items other than those listed would be allowed in the side yard setback. The same Section also includes Subsection 3, which refers to the Ordinance adopted December 1, 2022.

Vice Mayor Ravanese asked why Code would need to be amended to clarify the prohibition of generators when they are already not included in the list of the permitted items. He felt

this was sufficient information to prevent moving forward with a Site Plan that included a generator.

Ms. Chakas stated that when building permit drawings are submitted, they are returned to the Applicant with written comments from the various disciplines. The Applicant's team then responds to those comments in writing by correcting the plans or adding greater detail. She recalled that one comment provided by Staff requested that the Applicant show clearances related to generator exhaust and referenced the sheets that included the generator. The team revised their plans to show this additional detail as requested. The comment is included in the Applicant's backup materials.

Ms. Chakas continued that the Applicant had purchased a generator because they believed it was permitted. She noted that a master permit and several sub-permits were issued, including an underground gas line permit issued pursuant to Permit #22350744-1. The gas lines are intended to serve both outdoor and indoor kitchens on the subject property as well as the generator.

Tiffany Berch, Applicant, stated that she had not been privy to some of the technical information discussed at today's hearing. She emphasized that she had no intent of breaking any of the Town's rules, suggesting that the change in Town Ordinances may have contributed to misunderstandings related to plans for the property.

Ms. Chakas addressed Code Section 12-124, stating that some of the language referring to exceptions was added after permits had already been issued. Mayor Miller pointed out that the language was added to Code before the Applicant's amended Site Plan was submitted in 2024.

Town Attorney Doody requested clarification of the Applicant's legal position. Ms. Chakas replied that the Applicant feels there is a hardship; they also believe that the team relied on permits that were issued by the Town. She added that the Applicant's team was informed that Code had always been interpreted as not allowing generators; however, Code was then amended for greater clarity, which she felt acknowledged some type of prior ambiguity within Code.

Town Attorney Doody asked if the Applicant felt the amended Site Plan triggered compliance with the recently enacted Ordinance. Ms. Chakas stated that she did not believe this was the case.

Commissioner Reiser asked what would be involved in moving the generator pad and gas lines. Mr. Dunlap replied that the Applicant was unable to identify a suitable alternative location that complied with Code and met setback requirements. The house has already been constructed according to permits.

Commissioner Reiser requested clarification of the distance between the generator pad and the front yard. Mr. Dunlap replied that the house is set back 75 ft. from the center line of the roadway; there is a 30 ft. utility easement in the front of the site, which would not allow the pad to be moved closer than 30 ft. to the road. There is also an FPL transformer in the front yard and an existing sub-grade garage.

Mayor Miller asked if there is any other location on the property for the generator. Mr. Dunlap stated that neither the back nor the front of the house is suitable due to existing conditions involving the garage, driveways, and easement.

Mayor Miller asked why the generator could not be placed elsewhere on the site. Mr. Dunlap replied that the site has already been laid out due to existing conditions as well as the design submitted in 2022. Had there been plans in 2022 to locate the generator elsewhere, other aspects of the site could have been planned around it.

Mr. Dunlap addressed previous discussion of the generator permit, explaining that this permit is specific to the installation of a generator. Sub-permits associated with this item include the gas and electrical infrastructure which serve the generator. These sub-permits were approved and that infrastructure was installed.

It was noted that the gas lines are multi-functional and were not specifically approved for a generator alone. Mr. Dunlap stated that the diagram for the gas sub-permit showed a line from the gas line to a labeled generator as well as to other components of the property served by those lines.

Mayor Miller pointed out that the gas and electrical line permits are issued as long as the requests for them are compliant with Code. When a gas line permit is issued, it does not give permission to connect that line to any specific component. Mr. Dunlap stated that the permits allow the connection of the gas line to a point that is labeled on the plans, such as a kitchen or generator. Mayor Miller advised that securing this permit does not grant the authority to connect that line to an item in a location where it is prohibited by Code, nor does it allow the Applicant to place a generator without a permit.

Mayor Miller stated that when the gas lines were installed, the Applicant's team was aware that the generator was not allowed at the proposed location. Mr. Dunlap replied that this was incorrect, reiterating that this work was done in 2023 with documentation approved by Planning and Zoning. Mayor Miller pointed out that the Code Amendment prohibiting generators in side yard setbacks took effect in December 2022.

Mayor Miller requested clarification of the date on which the initial Site Plan was approved by the Town Commission. Ms. Chakas replied that this was November 2022, followed by

the Code Amendment in December 2022. The Applicant requested approval of the amended Site Plan, which removed the generator from the document, in May 2024.

Vice Mayor Ravanesi commented that the Applicant chose not to seek a variance in 2024 until after the amended Site Plan was approved. Ms. Chakas confirmed this was correct, adding that it was the Applicant's team's opinion that they had permits to do the work. She reiterated that there was no requirement to show the generator's location on the original Site Plan.

Ms. Chakas characterized the issue as a unique situation, as permits were approved prior to the Town's Code Amendment specifically prohibiting generators in side yard setbacks. She suggested that there may have been confusion regarding what was allowed in the setback at the time plans for the project were reviewed.

Commissioner Reiser emphasized that prior to the December 2022 Ordinance, generators were not allowed in side yard setbacks, as they were not among the items listed as being allowed there. She felt the issue is one of transparency. Ms. Chakas asserted that the generator's placement was shown on their building permit drawings, which she characterized as a request.

Mayor Miller reviewed the timeline once again, reiterating that the December 2022 Ordinance further clarified the existing prohibition against generators in side yard setbacks. She pointed out that in May 2024, the Applicant was aware that they would have to request a variance in order to place the generator in the side yard. Ms. Chakas again stated that the variance is requested due to the hardship that re-installation of gas lines and relocating the generator would require.

At this time Mayor Miller opened public comment on the Item. As there were no individuals wishing to speak at this time, Mayor Miller closed public comment.

Commissioner Reiser asked if Town Staff had any additional comments regarding the Application. Mr. Long replied that variance applications are reviewed against the three required criteria in Code, which include yard requirements as well as hardships related to the specific property. Staff did not find that the Application met these criteria, as there were no unique circumstances related to the lot or the condition of the side yard.

Mr. Long added that when Planning and Zoning Staff reviews building permits, they do not necessarily know when construction on permitted items, such as the gas lines, will begin. This was one reason why Staff had contacted the Applicant and recommended a Site Plan Amendment, as the Site Plan is the governing document for the lot and all elements on it. These details cannot always be discerned from various building permit documents; however, they must be shown on the Site Plan.

Mayor Miller requested that the Town Attorney clarify the standard for granting a variance. Town Attorney Doody advised that variance criteria include both references to hardship as well as Code and yard requirements. He referred to the hardship criterion, which requires a property owner to show that their use of the land is affected by an unusual practical difficulty or hardship. The Board must be satisfied that granting the variance would not serve only as a convenience to the Applicant, but would alleviate some demonstrated and unusual hardship or difficulty that is unique to the property.

Motion made by Vice Chair Ravanese, seconded by Commissioner Reiser, to deny the variance request based on lack of hardship. In a roll call vote, the **motion** passed 4-1 (Commissioner Andreano dissenting).

II. ADJOURNMENT

Motion made by Vice Mayor Ravanese, seconded by Commissioner Reiser, to adjourn. In a roll call vote, the **motion** passed unanimously (5-0).

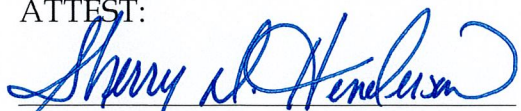
There being no further business before the Board of Zoning and Appeals, the meeting was adjourned at 10:44 a.m.

ADOPTED THIS 1st DAY OF July, 2025.

By:


Dawn Miller, Mayor

ATTEST:


Sherry D. Henderson, CMC Town Clerk
7/1/2025

**TOWN OF HILLSBORO BEACH
1210 HILLSBORO MILE
HILLSBORO BEACH, FL 33062**