

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: December 9, 2019

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: HPB19-0343, **3101 Indian Creek Drive.**

An application has been filed requesting an after-the-fact variance to reduce the required street side setback for the retention of an FPL vault located on the side of the property facing 31<sup>st</sup> Street.

#### **STAFF RECOMMENDATION**

Approval of the variance

#### **EXISTING STRUCTURE**

Local Historic District:	Collins Waterfront
Status:	Contributing
Construction Date:	1940
Architect:	L. Murray Dixon

#### **ZONING / SITE DATA**

Legal Description:	Lots 7, 8, 10, 13 & 14, Block 16 & out lots opposite Lots 13 & 14, Block 16, According to the Plat Thereof, as Recorded in Plat Book 5, Pages 7-8, of the Public Records of Miami-Dade County, Florida.
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Zoning:	RM-2, Residential Multifamily, medium intensity
Future Land Use Designation:	RM-2, Residential Multifamily, medium intensity
Existing Use/Condition:	Multifamily residential
Proposed Use:	Hotel

#### **THE PROJECT**

The applicant has submitted plans entitled "Greenbrier Hotel", as prepared by Studio MCG Architecture, dated October 4, 2019.

The applicant is requesting the following variance:

1. An after-the-fact variance to reduce by 3'-2" the minimum required street side setback of 10'-0" to retain an FPL vault at 6'-10" from the street side property line at a maximum height of 7'-11" as measured from adjacent sidewalk elevation of 3'-1" NGVD.

- Variance requested from:

**Sec. 142-218. - Setback requirements.**

*(a) The setback requirements for the RM-2 residential multifamily, medium intensity district are as follows:*

*Subterranean and Pedestal, Side Facing a Street: Lots equal or greater than 65 feet in width: Minimum 10 feet or 8% of lot width, whichever is greater.*

Since 2016, the property has undergone significant renovations to convert the prior apartment building to a hotel use. In 2017 a variance from the required hotel unit size and a waiver from the off-street loading requirements was approved by the Board. As part of the final order for the previous approval (HPB17-0121), condition III.D. states that "All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street".

For reasons stated in the applicant's LOI, an FPL vault was constructed within the open parking area at the back of the building facing 30<sup>th</sup> Street, contrary to the minimum setback requirement of the code, as the aforementioned condition of the HPB Order. In the RM-2 district, mechanical equipment is required to comply with the main building setbacks when facing a street. In this case, a setback of 10'-0" is required, based on the lot width of the property. The FPL vault was constructed at 6'-10" from the street side property line and the applicant is seeking an after-the-fact approval to retain the FPL vault in its current location.

The FPL vault is 4'-2" x 6'-8" and is approximately 7'-11" in height as measured from the adjacent sidewalk elevation of 3'-1" NGVD. As noted on sheet A0.03B of the submitted plans, the top of the vault is at an elevation of 11 feet NGVD. The top of the vault is also about 2'-0" higher than the existing concrete block perimeter wall located along the property line. Landscape is proposed along the street side, but this alone may not be enough to fully screen this element from view. A 5'-0" high sliding gate is also proposed, but this will not fully screen visibility from the street.

Staff has reviewed other projects for the installation of FPL vaults, including those originally proposed within required yards, and with timely review and discussions with FPL, new locations have been found which meet the code requirements. The most recent application was for the Standard Hotel at 40 Island Avenue (DRB19-0369), which was approved in June 2019. Staff has concerns with this variance, as it is not intrinsically related to the retention of the contributing building on site. Given the available area within the property, a less prominent location was available within the expansive area of the parking lot.

In their LOI, the applicant has noted that a building permit is not required for the installation of an FPL vault and the size and technical requirements are determined by the FPL. However, FPL equipment cannot be installed on private property without the owner's consent. The location of this equipment, as well as backflow preventors, and generators are typically indicated on building permit plans for approval of the corresponding disciplines. The Planning Department has consistently included conditions in Final Orders regarding FPL vaults, PIV's and backflow preventers, in order to clearly regulate the location of this equipment, which can substantially detract from the character and quality of the urban fabric and the surrounding neighborhoods.

As indicated by the applicant in the documents submitted, another similar FPL vault was recently installed in another property located at 32nd Street and Indian Creek Drive. However, staff was

unable to determine the setback of the equipment or find evidence of planning and zoning approval for the installation of this equipment with no screening from the street.

Staff is very concerned with this variance request and the precedent that could be set for other projects that also may have FPL vaults of any size and height installed in any required yard without Planning review. In this case, Planning staff was informed of the 'proposed' location when the vault was already in place on the property. After reviewing the circumstances surrounding the installation, as detailed in the submitted LOI, and reviewing the built condition, staff does not object to the proposed variance. However, the applicant will need to substantiate the hardship criteria and practical difficulties. Additionally, any approval should be conditioned on a permanent screening in addition to landscaping, subject to the review and approval of staff.

### **PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

Plans and documents have been submitted with the application that the applicant contends satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant contends that the plans and documents submitted with the application indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code, as noted above:

- That 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;
- That the special conditions and circumstances do not result from the action of the applicant;
- That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;
- That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;
- That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and
- That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.
- The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

### **COMPLIANCE WITH ZONING CODE**

The application, as submitted, with the exception of the variance requested herein, appears to be consistent with the applicable requirements of the City Code.

This shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.  
**Not Applicable**
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.  
**Not Applicable**
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**Not Applicable**
- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 126 of the City Code.  
**Not Applicable**
- (5) The project applicant shall consider the adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.  
**Not Applicable**
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.  
**Not Applicable**
- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.  
**Not Applicable**
- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.  
**Not Applicable**

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.  
**Not Applicable**
- (10) In all new projects, water retention systems shall be provided.  
**Not Applicable**
- (11) Cool pavement materials or porous pavement materials shall be utilized.  
**Not Applicable**
- (12) The project design shall minimize the potential for a project causing a heat island effect on site.  
**Not Applicable**

### **VARIANCE ANALYSIS**

The 4-story Greenbrier Hotel was constructed in 1940 and designed by L. Murray Dixon in the Streamline Moderne style of architecture. In 1992 the structure was converted to multifamily residential use. In 2017, a Certificate of Appropriateness was granted for significant improvements that included the installation of new impact windows, replacement of the through-wall air conditioning units with a central HVAC system, removal of all kitchens and restoration of the original lobby in order to convert the building to hotel use. Pursuant to file HPB17-0121, a variance from the minimum size for hotel units was granted along with a waiver from the loading requirements. As part of the final order, Condition III.D. states that "All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street".

However, as part of the renovations, an FPL vault was installed which does not comply with the required setbacks and without Planning approval. Based on the analysis in the project portion of this report, staff does not object to the granting of the variance, provided the FPL vault is permanently screened from view, in a manner to be reviewed approved by staff.

### **RECOMMENDATION**

In view of the foregoing analysis, upon further substantiating that the hardship and practical difficulties criteria have been met, staff recommends that the variance request be **approved**, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the Practical Difficulty and Hardship criteria, as applicable.

**HISTORIC PRESERVATION BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: December 9, 2019

FILE NO: HPB19-0343

PROPERTY: 3101 Indian Creek Drive

APPLICANT: Greenbrier Partners, LLC.

LEGAL: Lots 7, 8, 10, 13 & 14, Block 16 & out lots opposite Lots 13 & 14, Block 16, According to the Plat Thereof, as Recorded in Plat Book 5, Pages 7-8, of the Public Records of Miami-Dade County, Florida.

IN RE: The application for an after-the-fact variance to reduce the required street side setback for the retention of an FPL vault located on the side of the property facing 31<sup>st</sup> Street.

**ORDER**

The City of Miami Beach Historic Preservation Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

**I. Certificate of Appropriateness**

A. No request for a Certificate of Appropriateness has been filed as a part of this application.

**In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.**

**II. Variance(s)**

A. The applicant filed an application with the Planning Department for the following variance(s):

1. An after-the-fact variance to reduce by 3'-2" the minimum required street side setback of 10'-0" to retain an FPL vault at 6'-10" from the street side property line at a maximum height of 7.91' as measured from adjacent sidewalk elevation of 3.11' NGVD'.

B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City

Code:

That 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;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

C. The Board hereby **Approves** the variance request and imposes the following condition based on its authority in Section 118-354 of the Miami Beach City Code:

1. Only to the extent that this Order approves the requested street side setback variance for the after-the-fact construction of an FPL vault, this order shall supersede Condition III.D. from file HPB17-0121, approved by the Board on July 11, 2017.
2. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
3. Revision to building permit plans shall be obtained to indicate location of the FPL transformer on the property.
4. A permanent screening around the FPL vault shall be provided, subject to the review and approval of staff.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

**III. General Terms and Conditions applying to both 'I. *Certificate of Appropriateness*' and 'II. *Variances*' noted above.**

- A. The applicant agrees and shall be required to provide access to areas subject to this approval (not including private residences or hotel rooms) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the plans approved by the Board and conditions of this order.
- B. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- C. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
- D. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- E. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
- F. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
- G. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- H. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.
- I. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board, and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.



IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the application is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled **"Greenbrier Hotel", as prepared by Studio MCG Architecture, dated October 4 2019**, as approved by the Historic Preservation Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

HISTORIC PRESERVATION BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
DEBORAH TACKETT  
CHIEF OF HISTORIC PRESERVATION  
FOR THE CHAIR

STATE OF FLORIDA               )  
COUNTY OF MIAMI-DADE      )SS  
  )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Deborah Tackett, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.

NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: \_\_\_\_\_

Approved As To Form: \_\_\_\_\_  
City Attorney's Office: \_\_\_\_\_ ( )

Filed with the Clerk of the Historic Preservation Board on \_\_\_\_\_ ( )