



# BERCOW RADELL FERNANDEZ LARKIN & TAPANES

ZONING, LAND USE AND ENVIRONMENTAL LAW

DIRECT LINE: (305) 377-6229

E-Mail: gpenn@BRZoningLaw.com

## VIA ELECTRONIC FILING

June 8, 2020

Thomas Mooney, Director  
Planning Department  
City of Miami Beach  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139

Re: Sculpture Setback Variance for "87 Park" Development at 8701 Collins Avenue.

Dear Tom:

Our law firm represents the 8701 Collins Avenue Condominium Association, Inc. (the "Association"), the owner of the common areas of the 87 Park development at the above address. Please consider this letter the Association's letter of intent for an after the fact minor setback variance for a sculpture located in the front yard of the site (the "Property").

Property Description. The Property is approximately 83,130 square feet in size and is identified by Miami-Dade County reference folio number 02-3202-165-0001.

87 Park Development Approval. On March 3, 2015, the City's Design Review Board approved (through File 23129) the design of the 87 Park project. As depicted on the approved plans, prepared by designer Renzo Piano Building Workshop and architect Kobi Karp Architecture and Interior Design, the project consists of sixty-seven (67) condominium units and related amenities as well as a partially subterranean parking structure. The plans also incorporate a significant amount of open space at the ground level, featuring decorative plantings and three large sculptures, as well as public beach access points on the north and south of the site.

Sculpture. One of the three large sculptures within the Property's garden area is entitled "The Etymology of the Baroque" by the artist Marc Quinn. The Quinn sculpture is located on the western edge of the Property, adjacent to the newly improved and expanded Collins Avenue sidewalk. The sculpture is painted bronze

Thomas Mooney, Director

June 8, 2020

Page 2

and depicts an orchid flower. As measured from its base, the sculpture is eight (8) feet, 8 inches high and is mounted on a concrete base that is five (5) feet high, as measured from the adjacent sidewalk (the total height of the sculpture and base is 13'8" from grade). At its widest point, the sculpture is just under seven (7) feet in depth. As viewed from Collins Avenue, the sculpture and base are six (6) feet in width, reflecting less than three (3) percent of the Collins Avenue frontage of the Property.

The face of the sculpture's base is located 7'4" from the edge of the Collins Avenue right of way. The sculpture's location makes it readily visible from the sidewalk and it therefore functions as part of the public amenities associated with the 87 Park project, which also includes the new 87 Street and 87 Terrace beach access points. The sculpture is not proposed to be illuminated.

Variance. Because of the height of the sculpture and base, the Association will need a front setback variance. The City's Land Development Regulations have no mechanism to specially accommodate a decorative sculpture of this kind, instead treating the sculpture as it was the pedestal of a building. The Association is hereby requesting the approval of the following variance:

A variance to reduce the front pedestal setback of 20' in order to locate a decorative sculpture at 7'4" from the Collins Avenue right of way.

Code Standards. The relevant listed standards in Section 118-353(d) are below and will be followed by a brief analysis.

- 1) special conditions exist that are peculiar to the applicant's land;

*The City's regulations are not designed to properly address a sculpture within the front setback and treat the structure as if it was a building. There is no other reasonable location for the sculpture that would allow it to be enjoyed by both the residents of the 87 Park development and the general public.*

- 2) the special conditions were not created by the applicant;

*The Association did not create the special conditions inflicted on the Property and proposed sculpture.*

- 3) granting the requested variance would not confer upon the applicant special privileges;

*The approval of the requested variance would only allow the applicant to locate a decorative sculpture on its Property and would not increase the density or intensity of development.*

- 4) literal application of the City's standards would result in unnecessary and undue hardship;

*This Property is so uniquely impacted by the above-described issues, conditions and characteristics that it would cause unnecessary hardship on the Association if the variance was not approved.*

- 5) the variance would be the minimum necessary for a reasonable use of the land, building, or structure;

*The requested variance is the minimum needed to locate the sculpture in a manner that can be enjoyed by both the 87 Park residents and the public.*

- 6) the variance would be in harmony with the general intent of the City's regulations; and

*The City's regulations are intended to promote compatible development throughout the City. The instant application seeks approval of one decorative element of a project that is compatible with its surroundings and provides significant amenities open to the general public.*

- 7) the granting of the variance would be consistent with the City's comprehensive plan and does not reduce minimum levels of service established in the comprehensive plan.

*The requested variance will keep the development consistent with the Comprehensive Plan and will not intensify the development of the land in any way.*

Practical Difficulty. The most obvious practical difficulty created by the City's regulations as applied to the proposed sculpture is that the code makes no distinction between a small decorative element and the pedestal of a building. The strict language of the Land Development Regulations would make the creation of this amenity impossible.

Sea Level Rise and Resiliency. 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.

*This provision is not applicable to the instant application.*

- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

*This provision is not applicable to the instant application.*

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

*This provision is not applicable to the instant application.*

- (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.

*The Association has provided abundant landscaping on the property. The Association's proposed landscape plan is resilient as it is comprised of native and Florida-friendly plants appropriate for the area.*

- (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.

*The underlying project has been designed with sea level rise in mind, but this requirement is inapplicable to the instant application.*

- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-way 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 additional feet in height.

*The underlying project has been designed with sea level rise in mind, but this requirement is inapplicable to the instant application.*

(7) As applicable to all new construction, all critical mechanical and electrical systems shall be located above base flood elevation. All redevelopment projects shall, whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood elevation.

*The underlying project has been designed with sea level rise in mind, but this requirement is inapplicable to the instant application.*

(8) Existing buildings shall, wherever reasonably feasible and economically appropriate, be elevated up to base flood elevation, plus City of Miami Beach Freeboard.

*This provision is not applicable to the instant application.*

(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 54 of the city Code.

*This provision is not applicable to the instant application.*

(10) As applicable to all new construction, stormwater retention systems shall be provided.

*The underlying project has been designed with stormwater retention as required, but this requirement is inapplicable to the instant application.*

(11) Cool pavement materials or porous pavement materials shall be utilized.

*This provision is not applicable to the instant application.*

(12) The design of each project shall minimize the potential for heat island effects on-site.

Thomas Mooney, Director

June 8, 2020

Page 6

*The underlying project has been designed with to avoid the heat island effect, but this requirement is inapplicable to the instant application.*

Conclusion. The Association is proud of the 87 Park development, which has brought exciting new public benefits to the North Beach area. We believe that the proposed sculpture location adjacent to the Collins Avenue sidewalk is another important part of the overall public benefit package for the project. We look forward to your recommendation on our application. If you have any questions or comments, please call me at 305-377-6229.

Sincerely,

Graham Penn

cc: Michael Piazza, President  
Jeff Bercow, Esq.