

MIAMI BEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: August 04, 2020

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB20-0550
8701 Collins Avenue

An application has been filed requesting Design Review Approval for the installation of an existing art sculpture including one or more after the fact setback variances.

RECOMMENDATION:

Denial of the variance

LEGAL DESCRIPTION:

See attached Exhibit 'A'

BACKGROUND:

On March 03, 2015, the Design Review Board reviewed and approved the design of a new multi-story residential building. The structure was subsequently permitted and construction is nearing completion.

SITE DATA:

Zoning:	RM-2 Residential Multifamily, Medium Intensity
Future Land Use:	RM
Lot Size:	101,163 SF (2.32 acres)
Permitted FAR:	2.0 / 202, 358 SF
Approved FAR:	1.99 / 202,173 SF as represented by the applicant
Approved Height:	200' / 16-stories
Residential Units:	67 units
Sculpture Height:	8'-8" from 5' high plinth 13'-8" from CMB Grade 8.0' NGVD

SURROUNDING PROPERTIES:

East:	16-story tower DRB File No. 23129 Atlantic Ocean
North:	City of Surfside
South:	North Beach Open Space Park
West:	Surface Parking lot

THE PROJECT:

The applicant has submitted plans entitled "Quinn Sculpture – Variance Package" as prepared by **Stantec** signed, sealed and dated June 04, 2020.

The applicant is proposing to retain an artistic sculpture in the front yard of a recently constructed residential tower, setback closer to the front of the property, along Collins Avenue, than permitted.

The applicant is requesting the following variance(s):

1. An after-the-fact variance to reduce by 12'-8" the minimum required front pedestal setback of 20'-0" in order to retain a sculpture in the required front yard at 7'-4" from the front (west) property line facing Collins Avenue.

- Variance requested from:

Sec. 142-156 Setback requirements.

(a) The setback requirements for the RM-1 residential multifamily, low density districts are as follows: Pedestal, front —20'-0".

Required: 20'-0" | Proposed: 7'-4"

The applicant is proposing an after-the-fact variance for the installation of an artistic sculpture located in the front yard of a recently constructed residential tower, setback closer to the front of the property, along Collins Avenue, than permitted. The new sculpture is one of the three large artworks proposed on the oceanfront residential lot by artist Marc Quinn. The sculpture that is subject to the application is a bronze giant orchid flower. The sculpture's concrete plinth measures 6'-0" wide by 9'-0" deep and is finished with smooth white stucco. The oversized orchid sculpture sits atop the base and projects 8'-8" to the top of the highest petal for an overall height of 13'-8" from CMB Grade of 8' NGVD. The lot contains approximately 225'-0" of frontage along Collins Avenue and contains a total of nearly 2.5 acres of oceanfront land, that includes the vacation of the portion of 87th Terrace and 87th Street (on the east side of Collins Avenue), which was part of the development.

The subject sculpture is minimal in size considering the extent of the existing open area of the site, particularly in the front of the property. Additionally, artwork is highly noteworthy from an aesthetic standpoint. Notwithstanding, staff has concluded that there are no practical difficulties associated with the placement of the art piece in the required yard, nor have applicable hardship criteria been satisfied. In particular, a justification as to why the sculpture must be located in the front yard so proximate to the public sidewalk, has not been provided, nor has an explanation as to why the open area outside of the front yard of the property could not accommodate the stand-alone piece of artwork. As such, staff recommends **denial** of the variance.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that **DO NOT** 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 also **DO NOT** 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.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the following sections of the City Code, aside from the requested variances. The above noted comments 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 DESIGN REVIEW CRITERIA:

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria be found satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Satisfied
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
Not Satisfied; the applicant is requesting one variance from the Board.

3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
Not Satisfied; the applicant is requesting one variance from the Board.
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Satisfied
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Not Satisfied; the applicant is requesting one variance from the Board.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Satisfied
7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.
Satisfied
8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.
Satisfied
9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.
Not Satisfied; a lighting plan has not been submitted.
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.
Satisfied

11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.
Satisfied
12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).
Not Satisfied; the applicant is requesting one variance from the Board.
13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.
Satisfied
14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
Satisfied
15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).
Not Applicable
16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.
Satisfied
17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.
Not Applicable
18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the City Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.
Not Applicable
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.
Not Satisfied

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

ANALYSIS:

DESIGN REVIEW

The applicant is seeking an after-the-fact variance for the installation of an artistic sculpture in the front yard of a recently constructed residential tower on Collins Avenue. The project site contains nearly 2.5 acres of land and located along the northernmost boundary of Miami Beach, with approximately 225'-0" of frontage along Collins Avenue. The artistic sculpture is located within the 20' required front yard fronting Collins Avenue.

The new sculpture is one of the three large artworks on the oceanfront residential lot by artist Marc Quinn. The artwork that is part of this application is a giant bronze orchid flower. Sited 7'-7" from the front property line, the concrete plinth measures 6'-0" wide by 9'-0" deep and is finished with smooth white stucco. The oversized orchid sculpture sits atop the base and projects 8'-8" to the top of the highest petal for an overall height of 13'-8" from CMB Grade of 8' NGVD. Although aesthetically noteworthy, no justification has been provided as to why the sculpture needs to be located in close proximity to the front property line.

VARIANCE REVIEW

As noted in the 'Project' section of the report, the sculpture was installed within the required setback without appropriate building permits. Due to the size and location it requires a variance from the required front setback of 20'-0". As the property has significant open spaces throughout its nearly 2.5 acres of land, inclusive of available area in the front without encroaching into the front 20'-0", staff recommends that the sculpture be relocated to comply with the required setbacks. In summary, staff has concluded that there is no practical difficulties associated with the installation of the sculpture in areas that comply with the setback requirements. Therefore, staff recommends that the variance be **denied**.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the subject variance be denied. If, however, the board concludes that the practical difficulty and/or hardship criteria has been satisfied, and approves the variance, a draft approval order is attached.

**DESIGN REVIEW BOARD
City of Miami Beach, Florida**

MEETING DATE: August 04, 2020

PROPERTY/FOLIO: **8701 Collins Avenue** **02-3202-165-0001**

FILE NO: DRB20-0550

IN RE: An application has been filed requesting Design Review Approval for the installation of an existing art sculpture including one or more after the fact setback variances.

LEGAL: See attached Exhibit 'A'

ORDER

The City of Miami Beach Design Review 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. Design Review

- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not an individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Design Review Criteria 1, 2, 3, 4, 5, 6, 9, 12, and 19 in Section 118-251 of the Miami Beach Code.
- C. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is not applicable with Sea Level Rise Criteria in Section 133-50(a) of the Miami Beach Code.
- D. The project would be consistent with the criteria and requirements of Section 118-251 and/ or Section 133-50(a) if the following conditions are met:
 1. Revised elevation, site plan, and floor plan drawings for the proposed new home at 8701 Collins Avenue shall be submitted, at a minimum, such drawings shall incorporate the following:
 - a. 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.
 - b. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.

In accordance with Section 118-262, the applicant, or the city manager on behalf of the City Administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for rehearing shall not be reviewed by the Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):
1. A variance to reduce by 12'-8" the minimum required front pedestal setback of 20'-0" in order to construct a sculpture in the required front yard column at 7'-4" from the front (west) property line.
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts as noted above 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 also 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.

- C. The Board hereby **Approves** the variance request #1 and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:
1. 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.

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. Design Review Approval and 'II. Variances' noted above.

- A. 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.
- B. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- C. 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.
- D. 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.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- F. 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.

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 Finding of Fact, to which the applicant has agreed.

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He 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 Design Review Board on _____ (_____)

EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

All of Block One (1); All of Block Ten (10); and that portion of what was known as AIROSO WAY lying and including between the West line of said Block One (1) and the East line of said Block Ten (10); and the South 1/2 of Block Eleven (11); all of ALTOS DEL MAR NO. 2, according to the Plat thereof, recorded in Plat Book 4, Page 162, of the Public Records of Miami-Dade County, Florida, together with all right, title and interest in that land lying between the Easterly boundary of the Block 1, of ALTOS DEL MAR NO. 2, according to the Plat thereof recorded in Plat Book 4, Page 162, of the Public Records of Miami-Dade County, Florida, and the erosion control line, according to the Plat thereof recorded in Plat Book 105, Page 62, of the Public Records of Miami-Dade County, Florida.

PARCEL 2:

That portion of 87th Terrace (Nasturtium Street per Plat) as shown on the Plat of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said 87th Terrace, said Southeast corner also being the Southwest corner of Tract "A" as shown on said Plat Book 4 at Page 162; thence South 86°54'22" West along the South Right-of-Way line of said 87th Terrace (Nasturtium Street) for 360.48 feet to the Northwest corner of Lot 1, Block 10 of said Plat Book 4 at Page 162; thence North 04°31'52" West along the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the Northerly extension of the West line of said Block 10 for 25.76 feet to a point of curvature; thence Northerly along a 328.27 foot radius curve, leading to the right, through a central angle of 04°14'00" for an arc distance of 24.25 feet; thence North 86°54'22" East along the North Right-of-Way line of said 87th Terrace (Nasturtium Street) also being the South line and Westerly extension thereof of Block 4 of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof, as recorded in Plat Book 16 at Page 44 of said Public Records of Miami-Dade County, Florida, for 360.84 feet to the Northwest corner of said Tract "A"; thence South 03°05'38" East along the West line of said Tract "A" for 50.00 feet to the Point of Beginning.