



# BERCOW RADELL FERNANDEZ LARKIN & TAPANES

ZONING, LAND USE AND ENVIRONMENTAL LAW

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## VIA ELECTRONIC SUBMITTAL & HAND DELIVERY

September 11, 2020

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

Re: Letter of Intent for Certificate of Appropriateness and related variances for the Property located at 3120 Collins Avenue, Miami Beach, Florida

Dear Tom:

This law firm represents G3120 Collins LLC (the "Applicant"), in connection with the property located at 3120 Collins Avenue (the "Property") within the City of Miami Beach ("City"). Please allow the following serve as the required letter of intent for a Certificate of Appropriateness and related variances for the redevelopment of the Property, including the addition of new units.

Description of the Property. The Property which is identified by Miami-Dade County Property Appraiser Folio No. 02-3226-001-1370, is situated on the south side of 32 Street, located between Collins Avenue and Indian Creek Drive. The Property is located within the RM-2, Residential Multifamily, Medium Intensity District. The Property is also located within the Collins Historic District and the Collins Waterfront Architectural District. The Property includes 4 existing buildings.

The western portion of the Property was developed first with a single-family residence, Schmidheiser Residence, at the northwest corner of the Property ("Historic Residence Structure"). The Historic Residence Structure was designed in 1926 by Edwin L. Robertson and Lawrence R. Patterson and is an example of the Mediterranean architectural style with Moorish elements. In the late 1940s, the Historic Residence Structure was modified to accommodate a rooming house use.

The eastern portion of the Property was developed with an eight (8) story hotel initially constructed as the Rendale, and later known as the Atlantic Princess Condominium ("Historic Hotel Structure"). The Historic Hotel Structure was developed approximately fourteen years after the Historic Residence Structure, in 1940, and designed by architect Edwin L. Robertson, on his own. The Historic Hotel Structure is an example of Art Deco architecture.

Over time, both the Historic Residence Structure and the Historic Hotel Structure were converted to condominium use and ownership.

The remaining structures on the Property are the 2-story building in the center of the property, originally the accessory garage for the Historic Home Structure, and the 1-story utility building.

In 2016, the HPB approved an application for COA for the partial demolition, restoration, and renovation of the existing 8-story and two-story structures. As part of the approval, the existing structures were converted to hotel units with the accessory garage structure being converted to an accessory restaurant /bar use.

*FPL Pad.* The existing FPL pad located at an eight (8) foot setback was approved under HPB Filo No. 7602. At the time, the setback requirements were "5 feet or 5% lot width, whichever is greater." In 2017, pursuant to Ordinance 2017-4121, the RM-2 setbacks were increased to the current size. As such, the FPL Pad is legally non-conforming. Moreover, permit plans dated September 2, 2016, and stamped approved by the City of Miami Beach Fire Department, show FPL pad located and approved at the existing eight (8) foot setback. See Exhibit A, FPL Pad Approvals.

Description of the Development Program. The Applicant proposes to construct a 4-story structure designed tastefully to bridge the gap, in both height and architectural styles, between the existing historical structures. In addition, the proposal includes picking up on the preservation work started in 2016, by restoring key features of the historic design, including the pole sign, and flag poles.

Requests. To accomplish the Applicant's goals for the Property requires a, a Certificate of Appropriateness for design of the Project with four (4) variances for a side-yard setback, interior setback, smaller unit sizes, and signage facing a street.

*Design.* The design concept for the Project pulls inspiration from the existing historic structures and historic architecture throughout the Collins Waterfront Historic District. It is the perfect architectural bridge between the two historic structures. As noted in the Collins Waterfront Historic District Designation Report, the district is identified by six (6) distinct Miami Beach architectural styles, including the Art Deco/Streamline Modern style that serves as inspiration for the project. The Property is unique as it will contain 3 different periods architectural periods within Miami Beach - Medieval Revival, Art Deco and Contemporary. All three styles are compatible and seamlessly fit together to incorporate to true character of the Collins Waterfront Historic District.

The Project satisfies many of the criteria of Section 118-564(a) of the City Code. Specifically, the Project directly enhances the appearance of the surrounding properties with a lushly landscaped public space that provides room for an outdoor café, and setbacks the five-story structure from the street to provide pedestrians with a view of the Historic Hotel Structure and the Historic Residence Structure. The façade design of the new structure ensures that the orientation and massing is sensitive to and compatible with the uses to the north and the existing historic structures. The Applicant proposed the setback of the new building to match that of the existing mechanical equipment structure, thereby minimizing the potential impact on the house structure. It is the most efficient arrangement possible on the site, with active uses internal to the Property, and passive uses on 32 Street.

Variance requests. The Project substantially complies with the City Code. The requested Variances are necessary to preserve the existing historical character of the Property, provide a public space, and provide an urbanistic design.

- 1) A variance of City Code Section 142-217, to waive the minimum required hotel unit size for new construction in the RM-2 District.
- 2) A variance of City Code Section 142-218, to permit a 5' interior side setback for new Building E where 10' required
- 3) A variance from City Code Section 142-1133, to permit a reduction in the 15' required setback for the swimming pool (and pool deck) on the north side of the property (side yard facing a street) to allow a 5' setback
- 4) A variance from City Code Section 138-13(2), to permit a sign not facing a street on the north facing façade of the new building. As such, it would be facing a street although not on a building that is on the street side of the property. It was not clear if it counts as a sign facing a street or not, so we included the variance to ensure full disclosure.

Practical Difficulty. Pursuant to Article 1, Section 2 of the Related Special Acts, where there are practical difficulties, the HPB has the power to vary or modify regulations or provisions relating to the use so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done. The Applicant adjusting to the regulations while preserving the historic nature of the Property represents a practical difficulty.

Unit Size Variance - Practical Difficulty. The Applicant requests a variance of Section 142-217, to waive the minimum required hotel unit size for new construction in the RM-2 district. A practical difficulty exists as it pertains to the Project and complying with the room size requirements. The existing historic structures, pool and mechanical equipment layout within the Property is not a result of the action of the Applicant, but rather something that the Applicant is seeking to preserve in the construction of the building. As part of that, the Applicant is seeking to maintain the historical character and similar architecture present throughout the site. In doing so, the resulting units mimic the existing units, and are smaller than required for new construction within the district.

Preserving the characteristics of the existing buildings and Property is essential to the Applicant. The proposed addition is designed with preserving the existing historical characteristics of the entire site in mind. The proposed addition utilizes the same historical architecture and style designed to maintain the same historical character as the existing structures. It is important to note that in the Washington Avenue, Lincoln Road and Collins Park districts, the City Commission has recognized the issue presented while merging new construction and preserving the historical nature of a site and acted to reduce the minimum unit sizes to 175 square feet or 200 square feet.

By focusing on maintaining the character of the existing structures throughout the Property and minimizing the potential impact of the new construction, the Applicant faces practical difficulties in trying to meet the unit sizes required by the code. The current unit sizes in the existing structures are substandard, and the proposed structure would maintain the same unit size. Constructing a building to fit in the developable space without substandard unit sizes creates a great burden on the Applicant. The existing conditions of the site are not designed to accommodate changes without great effort. As such, the Applicant requests a variance from the minimum required hotel unit sizes.

Sign Variances - Practical Difficulty. The above-described development program may require a signage variance.

The layout and character of the existing historic structures and providing a design that removes active uses from 32 Street presents a practical difficulty for the Applicant. If it weren't for the design of the existing historic structures the Applicant would be able to properly provide for a wall sign on the Property that would be facing a street. This would allow the Applicant to provide signage consistent with the international corporations standardized signage program. However, due to the unique design of the building, historical character and layout of the Property, in seeking to implement Generator's standardized signage, the Applicant cannot provide a wall sign under the strict definition of the Code. The interior courtyard façade of the proposed structure is the logical signage location and the unique conditions of the Property presents an opportunity for the Applicant to provide a sign that will be within the envelope of the building.

The existing historical structures feature minimal signage, and the Applicant seeks to maintain the historical value by keeping the signage on the historical structures to the current amount. By incorporating signage on the proposed building, the Applicant is providing signage in the same manner as a sign that would be provided on the existing structures but without impacting the historic structure itself. As such, the Applicant's proposal satisfied the intent and purpose of the Code to provide wall signage of a reasonable location and size.

Setback Variances – Hardship Standard. Pursuant to Section 142-1133(3), the setback for a pool in the side yard facing a street must be 15 feet. The Applicant seeks a variance of this section of the City Code to permit a pool deck area with public outdoor seating to extend into the side yard setback. In addition, the Applicant requests a variance of City Code Section 142-218, to permit a 5' interior side setback for new Building E where 10' required. The Applicant was before the HPB in June, and we have listened to the Board and have reconfigured our plans. In order to preserve the garage and not seek to demolish it as requested by the HPB, we will need the two setback variances to be compatible with the historic buildings.

As indicated in *Union Unions, Inc. vs District of Columbia, Board of Zoning Adjustment*, the court held that the historic landmark status of a building was an exceptional situation justifying variances. The Applicant would face significant practical difficulty incorporating new construction around the existing and historic structures. Moreover, in order to have a smooth operation of the establishment, it is vitally important to have an area that allows for public seating and pool area. Encroaching into the side setback will allow for the Applicant to provide public spaces and areas for guests including extensive landscape buffering while providing for outdoor seating for patrons.

The two variances for the location of the pool deck and the interior side yard to allow the new buildings are requested due to the historic structures on the Property, the unique property line characteristics, and the location of the mechanical equipment on the Property. Due to the Property's historic nature, the requested variance is necessary in order for the Applicant to restore the historic characteristics of the Property while allowing for the development the new structure in a manner that does not interrupt the three historic buildings and allows for an outdoor café and public space for its guests to ensure the project's viability. The Applicant seeks to improve the condition using permeable pavers, landscaping, and outdoor seating.

Satisfaction of Hardship Criteria. Section 118-353(d) of the City's Code sets forth the hardship criteria for a variance request. The Applicant's request satisfies all hardship criteria as follows:

- (1) **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;**

The variances for the location of the pool deck within the side yard setback and the building within the interior side yard is requested due to the historic location of the garage, hotel and historic home on the Property, the unique property line characteristics, and the location of the mechanical equipment on the Property. Due to the Property's historic nature, the requested variance is necessary in order for the Applicant to restore the historic characteristics of the Property while allowing for the development the new structure in a manner that does not interrupt the existing layout and allows for an outdoor café and public space for its guests to ensure the project's viability.

- (2) **The special conditions and circumstances do not result from the action of the applicant;**

The historic nature of the Property, including the Historic Residence Structure, accessory garage and the Historic Hotel Structure, and mechanical equipment are not special conditions which result from any action taken by the Applicant. Rather, the conditions on the Property are existing and the Applicant is making every effort to preserve each of the structures and improve the site with minimum impact to the Property. Further, the HPB has requested the Applicant preserve all the historic structures on the Property and the Applicant is seeking to act as directed.

- (3) **Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;**

The Code allows other similarly situated property owners to seek similar variances to accommodate forward-thinking and sensitive development. There are numerous contributing structures in the area, many of which are being renovated and preserved in a similar fashion. The Code allows other similarly situated property owners to seek similar variances to accommodate the preservation of historic structures and updating of their facilities. Therefore, granting the variance will not confer any special privilege on the Applicant.

- (4) **Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;**

A literal interpretation of the provisions of these land development regulations would work an unnecessary and undue hardship on the Applicant. The variances are being requested in order to maintain and preserve the historic structures and effectuate the restoration of the Property in a way that maintains the historic character of the Property. The variances enable the Applicant to accommodate and improve the site while not impacting the historical structures or the mechanical equipment and FPL structures within the side yard that cannot be accommodated within the structures. The applicant seeks to update the Property while disrupting the historic fabric of the Property as little as possible. Without the variances, updating the Property would require significant modifications to the existing and historic structures and present an unnecessary and undue hardship on the Applicant.

- (5) **The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;**

The side yard setbacks are the minimum amount that will allow the new structure and pool deck for public use while ensuring there is no impact on the historical structures. Additional setbacks would require significant modification of the existing historic structures, utilities, pool area and proposed public outdoor space, which the Applicant is seeking to maintain.

- (6) **The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and**

These variances will not be injurious to the area or otherwise detrimental to the public welfare. In fact, these variances will facilitate preservation and utilization of a historic structure and the historic character of the Property while responsibly updating the Property.

- (7) **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 planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board of adjustment voting on the applicant's request.**

These variances requests are consistent with the City's comprehensive plan and do not reduce the levels of service as set forth in the plan.

Sea Level Rise and Resiliency Criteria. The Project advances the sea level rise and resiliency criteria in Section 133-50(a) of the City Code as follows:

- 1. A recycling or salvage plan for partial or total demolition shall be provided.**

A recycling and salvage plan for the demolition of the one-story building will be provided at permitting.

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

Hurricane proof impact windows will be provided.

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

The Applicant will provide, where feasible, passive cooling systems.

- 4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.**



Resilient landscaping will be provided.

**5. Whether 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, including a study of land elevation and elevation of surrounding properties were considered.**

Yes.

**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.**

The ground floor areas will be adaptable to potential future raising of public rights-of-way and adjacent properties.

**7. Where feasible and appropriate. All critical mechanical and electrical systems are located above base flood elevation.**

All mechanical and electrical systems will be located above base flood elevation.

**8. Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.**

The Applicant is preserving the historic windows on building. It is not feasible to elevate them.

**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.**

Proper precautions will be taken to protect the Property from potential floods.

**10. Where feasible and appropriate, water retention systems shall be provided.**

Water retention systems will be provided as part of the resiliency goals of the Project.

**11. Cool pavement materials or porous pavement materials shall be utilized.**

Yes.

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

The Applicant proposes rainwater retention on site, and specific materials and landscaping to minimize any potential for heat island effects on-site.

Conclusion. The Applicant seeks to revive a prime example Art Deco architecture in Miami Beach and tastefully rehabilitate the entire Property by constructing a new 4-story structure. The proposed development will not have any adverse impact on the surrounding area. We respectfully request your recommendation of approval of the Applicant's request. If you have any questions or comments about the application, please give me a call at (305) 377-6231.

Sincerely,



Michael W. Larkin

cc: Robert Behar