

MIAMI BEACH CITY COMMISSION

APPEAL OF DESIGN REVIEW BOARD  
ORDER NO. DRB 19-0398

301-317 STREET, MIAMI BEACH,  
FLORIDA 33141

BEACH LEGAL PROPERTIES, INC.

Petitioner,

vs.

CITY OF MIAMI BEACH DESIGN  
REVIEW BOARD,

Respondent.

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**PETITIONER'S REPLY BRIEF**

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## INTRODUCTION

Petitioner Beach Legal Properties, Inc.'s ("Beach Legal") appeal challenges the City of Miami Beach ("City") Design Review Board ("DRB") order issued under DRB 19-0398 ("Order") denying Beach Legal's application ("Application") to remove a concrete pylon structure ("Pylon") which is partially attached to the building ("Building") located at 301-317 Street ("Property"). Beach Legal provides this Reply to the City's Response to the appeal.

The City alleges in its Response that City Staff's ("Staff") rationale for recommending denial of the Application (i.e. that Beach Legal failed to propose a replacement for the Pylon) was proper, and that the DRB correctly denied the application on that basis.<sup>1</sup> The City also appears to assert that a proposal for a replacement structure is required for *any* DRB application proposing partial demolition. Further, the City contests that the Pylon's status as a nonconforming sign structure is irrelevant. Finally, the City argues that Petitioner was afforded due process.

Each of the City's assertions is incorrect, and obscure the fact that the DRB, following deficient advice from Staff, impermissibly voted to prevent demolition of the Pylon essentially as an act of historic preservation, not design review.

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<sup>1</sup> The City's Response contains lengthy arguments by counsel as to why the Application is allegedly inconsistent with the City's Design Review Criteria, but provides no record citations demonstrating that Staff or the DRB actually conducted any such analysis. On the contrary, as set forth in detail in Beach Legal's Initial Petition, the record clearly indicates that Staff recommended denial of the Application under the rationale that Beach Legal did not propose a post-demolition replacement for the Pylon, and the DRB ultimately denied the Application on that same basis.

## THE CITY CODE REQUIRES REMOVAL OF THE PYLON

Neither the Pylon nor the Property is historically designated or part of any historic district, which is why the Application came before the DRB, not the Historic Preservation Board. *P-APP 008*.<sup>2</sup> The Pylon is *not* akin to a "signature tile," a "gargoyle on the corner of a building," or a "concrete balcony," as the City suggests – it is a sign structure.

There is no dispute that the Pylon was added to the Building approximately fourteen years after the Building was constructed in order to host signage high above the roofline of the Building and that, later, the Pylon was stripped of those advertising components. *Id.* The Pylon is a not a "design feature" of the Building, but rather a separate structure, constructed to serve a separate purpose and function. *Id.*

Section 138-55(a)(3) of the City Code states that "[e]xisting nonconforming roof signs and pole signs *shall* be removed if ownership or use of the advertised building or business changes . . . ." (emphasis added). The name of the advertised building and the business on the premises changed decades ago. The City Code therefore requires removal of the Pylon.<sup>3</sup> This is consistent with other sections of City Code encouraging or mandating removal of nonconformities. *See* Section 118-390 of the City Code.

The DRB does not operate in a legal vacuum, as the City suggests in its Response. Rather, actions by City boards must be consistent with, and informed by, the City Code, Charter, and other applicable law. Staff failed to provide the DRB with *any* analysis with respect to the nonconforming status of the Pylon, or even identify in its professional Staff Report that the Pylon

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<sup>2</sup> References to Petitioner's Appendix are styled as "P-APP 000," where the final three digits correspond to individually bates numbered pages contained within the Appendix. References to the Transcript for the underlying DRB hearing begin on Appendix page "P-APP 078," and may also include reference to a Transcript line as "P-APP 000, L. 00."

<sup>3</sup> On this basis alone, Staff should have processed Beach Leal's demolition application for the Pylon without requiring DRB review.

is a legal nonconforming sign structure. Rather, Staff merely stated that it is "ironic" that the Pylon is no longer permitted to host any advertising. *P-APP 008*. The Pylon's legal nonconforming nature as a sign structure is more than a historical curiosity; it is germane to the Application, and should have been analyzed by Staff and considered by the DRB.

**THE CITY CODE DOES NOT REQUIRE A REPLACEMENT FOR THE PYLON**

The City's apparent suggestion on appeal that *any* DRB application involving a partial demolition must include a proposal for a replacement structure is an invented standard. Certainly, not every partial demolition in the City requires a replacement structure be proposed. That interpretation of the DRB application requirements would lead to an absurd result. Indeed, in this case, Staff reviewed the Application for completeness, accepted it, and processed it for public hearing notwithstanding that it did not propose a replacement for the Pylon. If the lack of replacement proposal were a true legal threshold application issue, Staff would have rejected the application until such time that the Application was made complete for public hearing.

**STAFF'S ADVICE TO THE DRB WAS INCORRECT AND INCOMPLETE**

Staff recommended that the DRB deny the Application because Beach Legal did not propose a replacement for the Pylon. *P-APP 009*. As described above, Staff failed to explain to the DRB that the Pylon is a nonconforming sign structure under the City Code. It is logically incoherent for the City to, on one hand, require removal of a non-conforming sign structure, and on the other, prevent its demolition by requiring a replacement for that same structure.<sup>4</sup>

Moreover, Staff refused to review the actual proposal under the Application, which is to demolish the Pylon without replacement. Instead, Staff incorrectly advised the DRB that "the

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<sup>4</sup> It remains unclear how the City expects Beach Legal to lawfully "replace" a nonconforming structure. The City cannot require illegality.

role of the DRB in this application is to review the proposal to remove the pylon *and decide whether the replacement structure satisfies the Design Review criteria*" (emphasis added). *P-APP 008*. As previously described, the Application does not propose a replacement structure, and the City Code does not require a replacement structure.

Beach Legal's "no replacement" proposal was sufficient for DRB review, and that proposal should have been duly considered by Staff under the Design Review Criteria. Instead, in its professional Staff Report, for each Design Review Criteria where Staff found an inconsistency, Staff simply repeated that no replacement has been proposed. Specifically, the Staff Report finds the Application to be inconsistent with ten of nineteen of the City's Design Review Criteria, each time identically as follows:

*Not satisfied; See Staff Analysis; The applicant has not provided detailed information of a replacement for the removal of the existing pylon.*

(emphasis added) *P-APP 004 – 006*.

There was no meaningful Design Review Criteria analysis by Staff of the actual proposal under the Application, and the DRB thus lacked the competent substantial evidence required by law to make an informed decision.

**THE DRB REFUSED TO REVIEW THE APPLICATION  
(MUCH LESS, UNDER THE DESIGN REVIEW CRITERIA)**

The DRB was required to review the Application under the relevant Design Review Criteria. Instead, consistent with Staff's incorrect and incomplete advice, it denied the Application on the basis that no Pylon replacement was proposed by Applicant. *P-APP 105 - P-APP 119; P-APP 001*. In doing so, it essentially refused to review the Application (much less under the Design Review Criteria).

Had the DRB actually conducted a review of the Application under the Design Review Criteria, it may have found that the Application *is* consistent with those criteria. Indeed, demolition of the Pylon would eliminate a nonconforming, nonfunctional structure and use, and bring the property closer to its original intended design.

### **THE DRB WAS BIASED**

The DRB proceeding below evidences the Board members' extra-legal bias for historic preservation took precedent over their Code-mandated duty to assess the Application under the applicable criteria, which explains the DRB's refusal to hear the Application until a Pylon replacement is proposed. Indeed, contrary to the City's assertion, several DRB members made clear that their denial of the Application stemmed from their desire to protect the Pylon due to its asserted historical significance. *P-APP 108, L. 15-19; P-APP 116, L. 1-13; P-APP 108, L. 15-19;*

### **THE CITY HAS NO AUTHORITY TO PREVENT DEMOLITION OF THE PYLON**

It is undisputed that the DRB has no authority to prevent demolition of the Pylon. *P-APP 009.*

### **THE ORDER VIOLATES BEACH LEGAL'S PROPERTY RIGHTS**

By imposing an invented requirement that a DRB application for demolition necessarily requires a replacement proposal, the City has effectively imposed a de-facto prohibition on a legal demolition. This is only exacerbated by the fact that the Pylon is nonconforming to the City Code, and is without a viable use today. The City's prohibition on demolition of the Pylon greatly impedes future redevelopment of the Property and unfairly imposes exclusively upon Beach Legal a significant financial burden for a public benefit. *See Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994).*

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the individuals listed below by e-mail generated this 9<sup>th</sup> day of November, 2020.

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