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December 15, 2021

SENT VIA EMAIL

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DESIGN REVIEW BOARD

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida, 33139

RE: DRB21-0694; 5333 Collins Avenue Miami Beach Residential Tower.

Dear Mr. Chair and members of the Board:

Our firm represents the owners of three units at the "15-Story multi-family building," known as the Carriage House Condominium (Carriage House), 5401 Collins Avenue, which is located directly north of the above referenced new development. (City Staff Report, Page 1). Their units, PH6, PH2, and #1535, are situated very close to the proposed 5333 tower and have balconies and outdoor areas facing the proposed tower, at some areas less than 100 feet away.

City staff have failed to consider how much of an impact the proposed building will have on the Carriage House. Please note that on page 1, city staff writes that the existing building is 14 stories, and the proposed building will be 17 stories, but then state it will be 19-stories with the highest projection of 225 feet. But page 2 states that the proposed building only will be 17 stories. This reference to 17 stories is repeated on page 6. My clients own units at the top of the Carriage House and changing from a 14-story structure to a 17 or 19-story structure has a monumental impact on them. Kindly ask staff to clarify these conflicting statements pertaining to height and impact on the Carriage House. Reducing the unit number from the existing 120 to 100 has no bearing on the impact to my clients' quality of life and property diminution. In fact, the larger balconies facing directly to their units will probably worsen the situation.

Standing.

My clients are "affected persons" who are impacted to a greater degree than members of the general public. *Renard v. Dade County*, 261 So.2d 832 (Fla., 1972). As such, I respectfully request that I be allowed 3 minutes to make comments and that my clients be allowed 3 minutes each to express their concerns, in their own words, to the Board at the quasi-judicial hearing next week. We were unfairly restricted to 2 minutes at the October 5th public hearing. If your agenda is overloaded to the point you restrict comments from affected persons to 2 minutes (on complicated matters), then they city must make adjustments to allow for the public's right to participate. See 286.0114, Fla. Stat.: Public meetings; reasonable opportunity to be heard; attorney fees.

The attached exhibits illustrate the exact location of their units in the Carriage House Condominium in proximity to the proposed residential tower. Once again, my clients are affected persons and are directly and negatively impacted by the proposed development.

The City of Miami Beach's has very talented lawyers and can confirm for you that layperson testimony (non-expert testimony) can be considered valid evidence given by neighboring landowners (assuming they are not restricted to unreasonably limited time or cut off) when their testimony is based on facts and are not general statements in opposition of a project. *Miami-Dade County v. Walberg*, 739 So. 2d 115, 117 (Fla. 3rd DCA 1999). Supporting documentation should be presented along with the layperson testimony, which may include report, maps, or other information. *Metropolitan Dade County v. Sportacres Dev. Group, Inc.*, 698 So. 2d 281 (Fla. 3rd DCA 1997). We will have a court reporter transcribing the quasi-judicial hearing. Once again, please allow me and my client 3 minutes each to provide you with important legal arguments, testimony, and evidence.

Powers and duties.

As you know, Sec. 118-71(1) and (2) entrusts the City's Design Review Board (DRB) to "review all applications requiring design review approval for all properties not located within a designated historic district or not designated as a historic site" and within those areas of the City to "promote excellence in urban design." (Emphasis supplied). Because the subject project and my clients' residences are not in a historic district and are not a designated site, the City and DRB must pay respect to the urban design of the area and not simply the design of the project. Urban design, by definition, requires considering how the project fits into the existing uses, including the Carriage House and how its residents are impacted not only in their units but also on the property fronting Collins and, in the rear, where the pool and cabanas are located. If the City did not care about "excellence in urban design" then the code would simply allow an administrative approval of a project that meets the zoning performance standards. By establishing the DRB, the City has made it clear that a greater scrutiny is required at a public hearing, following formal direct mail notice to the hundreds of property owners within 375 of the subject property. In other words, your solemn duty is not only to examine the project, but to consider how it will affect the hundreds of property owners in the neighborhood, especially those, like my clients, who are directly affected.

The above responsibility of the DRB in Sec. 118-71 is required, not optional: "[t]he design review board shall have the following powers and duties ...[t]o promote excellence in urban design." This is different from architectural design of the proposed tower without consideration to the surrounding neighborhood. "Staff find that the revised building design is elegant with heightened architectural movement and warmth that compliments the seaside site." Staff Report, page 7. This finding proves that there is no interest in the proposed building's impact within the neighborhood.

Due Process/Unlawful Delegation of Powers to Administrative Staff.

On page 2 of the Staff Report, several zoning code noncompliance are documented for your consideration. Yet city staff is dictating to you that these matters will be handled administratively, out of the sunshine where the public has no access: "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."

Height.

My clients are aware of the situation with the 15-story La Costa - the location for the proposed residential tower. The La Costa's height is significantly lower than the Carriage House and was built at a time when maximum height was measured differently, as was the Carriage House, if not the entire neighborhood. However, even though the maximum height in the RM-3 zoning district for ocean front projects is 200 feet, the new proposed residential tower reaps the benefit of a new base flood elevation (BFE) and freeboard. Now the 200 feet starts at BFE+5. In other words, since BFE is 8 feet, this development has 13 additional

feet before the maximum zoning height starts. So now the roof line is 213 feet, according to the plans submitted. But there's more. The proposed 213-foot tower, however, is much taller. The staff report states the maximum "projection" is 225 feet from BFE+5, which equates to 238 feet. That number is not listed in the staff report and it is not shown on the submitted plans, sheets A-201, A-202, A-301, and A-302. Those elevations conveniently show measurements to the roof line. All the extra construction is labeled "Roof/Mech." I don't know how the staff report can determine the full impact to the adjacent buildings without all new construction being accurately disclosed. Remember, these plans are for the public to be informed, not just the City. Interestingly, the method of illustrating the Carriage House fails to accurately compare the impact of height because there are different heights of deferent parts of the entire structure. You are being shown a one-dimensional comparison. Nevertheless, one can surmise that my clients will be at least three residential floors below the proposed tower, plus the additional height for "Roof/Mech." This becomes a financial windfall for the developer, since higher residences sell at a higher price, at the expense of my clients. You should also consider the impact to all the other residents who have units lower than my clients, as well as the Carriage House garden, pool and cabana areas.

If you approve the 5333 residential tower, as currently designed, you will be subjecting everyone on the south side of the Carriage House, including my clients, to loss of views, fresh air circulation, shadows not sunshine, noise and glare from the new extensive balconies, and devaluation of their homes. Require the developer to submit better plans showing you and the neighbors the actual height, impact, and shadow regulations studies. Sec. 118-253 of your land development code requires all applications for design review to be complete. Please consider the exhibits my clients have submitted with this letter and their references to them at the public hearing.

Sec. 118-254(c) authorizes the DRB to "... require such changes in the plans and specifications, and conditions, as in its judgment may be requisite and appropriate to the maintenance of a high standard of architecture ...", which includes how the proposed architecture affects adjacent existing structures.

Sec. 118-264 goes on to power the DRB with requiring safeguards and conditions: "In granting design review approval, the design review board may prescribe appropriate conditions and safeguards either as part of a written order or on approved plans. Violation of such conditions and safeguards, when made a part of the terms under which the design review approval is granted, shall be deemed a violation of these land development regulations." Considering the affect on adjacent residents with safeguards and conditions is within your power.

Zoning violations.

On page 2 of the staff report prepared by the City's professional planners explain 4 instances where this proposed tower is not consistent with the City's zoning code (violates the zoning code): 1) the project is designed and using materials creating a heat island, 2) the metal fence in the rear yard is illegal under the code, 3) the rear yard setback, as designed, creates a closed and encumbered view corridor, and 4) there is an uncovered walkway adjacent to the loading area. It is your responsibility to require resubmittal or correction of these violations, rather than delegate it to the administration to correct, outside a public hearing with no notice to the neighborhood. If the developer really wants these violations, he can try to legalize them with variances. Either way, the public is entitled to due process (notice and opportunity to be heard).

Design review.

Sec. 118-251 expressly establishes the design review criteria the DRB must follow when analyzing the testimony and evidence at a duly noticed quasi-judicial public hearing. Subparagraph (a) is clear that "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 any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community." (Emphasis supplied).

This list of criteria in the City's zoning code must be followed. Zoning laws are in derogation of the common law and therefore are to be strictly construed, and the City has an affirmative duty to strictly follow all the code provisions. *City of Miami Beach v. 100 Lincoln Road, Inc.*, 214 So. 2d 39 (Fla 3rd DCA 1968); *Mandelstam v. City of South Miami*, 539 So. 2d 1139 (Fla. 3rd DCA 1988). "Significance and effect must be given to every word...and words in a statute should not be construed as mere surplusage" *Hechtman v. Nationals Title Ins. of New York*, 840 So.2d 993, 996 (Fla. 2003).

Of the 19 listed criteria in Sec. 118-251(a), the following clearly apply to the 5333 residential tower and its affect/relationship with the adjacent Carriage House, including our clients:

- (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.
- (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.
- (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.
- (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.
- (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).
- (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).

(Emphasis supplied).

The above criteria, which carry the weight of zoning laws, clearly require the City and DRB to consider the proposed project's size, scale, massing, and height, and other impacts to the Carriage House, not just the proposed design in isolation. This project, as currently designed, does not meet the requirements of the above referenced criteria.

Analysis.

I have enormous respect for the City's planning department. However, in reading the staff report for this project, what is clear is that it lacks analysis of the zoning requirements. The staff report resuscitates the criteria and then concludes "Satisfied." Mere conclusions are not what the City's professional planners are required to do. They must explain in writing, for the DRB and the public, how the criteria is satisfied. They cannot put it off for the applicant to explain. The applicant is a separate party from the City in a quasi-judicial hearing. Absent the analysis, your professional planners are not offering competent substantial evidence. I would go so far as to say this is a violation of due process. The public reads the staff report published on the DRB's agenda expecting to be informed, to have an opportunity to be heard at the public hearing, and to support or oppose the staff report. The three paragraphs on page 6 of 6 in the staff report is not an analysis. This analysis is simply a description of what the applicant is requesting. So really the 6-

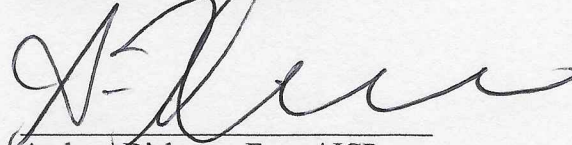
page staff report is at best conclusory and recommends approval of the proposed tower. The design review criteria, as well as the entire Article in the zoning code applying to the process for design review approval, requires more than written conclusions from the staff report. And waiting for the public hearing denies my clients the opportunity to understand why the City's professional planners believe the design review criteria is "Satisfied."

I reserve the right to supply additional information before or at the public hearing.

Thank you for your time and attention.

Sincerely,

DICKMAN LAW FIRM


Andrew Dickman, Esq., AICP

cc: Thomas Mooney, Planning Director
Michael Belush, Chief of Planning & Zoning
Nick Kallergis, Assistant City Attorney
Neisen Kasdin, Esq.