

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Board of Adjustment

TO: Chairperson and Members  
Board of Adjustment

DATE: January 7, 2022

FROM: Thomas R. Mooney, AICP  
Planning Director

*for TM*

SUBJECT: ZBA21-0135

**310 Meridian Avenue – Appeal of Administrative Determination Related to the Issuance of a Certificate of Appropriateness (COA) for the property located at 310 Meridian Avenue.**

So Boots LLC, as Trustee of 350 Meridian PH Land Trust and NJA Property Holdings, LLC (collectively, the “Appellants”) have appealed an Administrative Determination of the Planning Director, dated and published on September 14, 2021, regarding the issuance of a Certificate of Appropriateness (“COA”) for the property at 310 Meridian Avenue (the “Property”) (altogether, the “Appeal”).

#### **A. RECOMMENDATION**

The Planning Director recommends that the Board of Adjustment **DENY** the Appeal, **AFFIRM** the Planning Director’s determination that the previously issued Certificate of Appropriateness associated with Building Permit BC1704920 could be approved administratively, and **AFFIRM** the Certificate of Appropriateness.

#### **B. LEGAL DESCRIPTION**

Lot 7, Block 76, Ocean Beach Addition No. 3, according to the Plat thereof, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida.

#### **C. BACKGROUND**

On August 7, 2017, a previous owner of the subject property, 310 Meridian LLC, submitted a building permit application to the City of Miami Beach (the “City”) for the partial demolition, renovation and restoration of the building located at 310 Meridian Avenue, including a change of use from residential apartment to apartment hotel (Permit No. BC1704920). On July 13, 2018, the Planning Department approved the building permit and Certificate of Appropriateness (“COA”) for the project. The permit was subsequently issued by the City on December 16, 2019 and construction commenced at the site thereafter.

This Appeal arises from the Planning Department’s approval of the COA for the Property. The scope of work approved pursuant to the COA is further detailed in Section H, below.

On September 14, 2021, a Letter to the Commission (“LTC”) was published to address inquiries

received by the Mayor and City Commission, and City staff, in connection with active permits to renovate and/or remodel existing apartment hotels in the South of Fifth Street neighborhood for the following addresses:

- 310 Meridian Avenue;
- 226 Jefferson Avenue; and
- 333 Jefferson Avenue.

The Letter to Commission included the following findings, which are pertinent to the Planning Department's approval of the COA for the subject Property:

The process for obtaining (and revoking) a building permit begins and ends with the Building Department . . . . As part of that process, review and approval by the City's Planning Department is required, and that review and approval was performed here.

LTC 381-2021, at Page 4.

### **3. Questions Concerning Certificate of Appropriateness Review and Approval.**

As part of the Planning Department's review of building permit applications, the approval of a Certificate of Appropriateness is required in connection with any modification to a building or structure (the "Project") that is located in a designated historic district. Depending on the scope of work proposed, a Certificate of Appropriateness may be approved either by the Historic Preservation Board ("HPB") or by staff. The HPB's jurisdiction is limited to the exterior components of the building or structure and public interior spaces. Interior non-public spaces are not within the HPB's jurisdiction. If HPB review is required, then a full set of schematic design plans is presented to the HPB and the resulting approval serves as the Certificate of Appropriateness for the Project. If the Project involves work that, pursuant to the requirements in section 118-563(d) of the City Code, can be approved administratively, for a staff-level Certificate of Appropriateness, the approved building permit, which was reviewed and signed off by the Planning Department, serves as the Certificate of Appropriateness. The Planning Department's sign-off is the final confirmation that an application satisfies the Certificate of Appropriateness criteria in section 118-564 of the City Code, and all other requirements of the City's Land Development Regulations.

Members of the public have asked whether, for staff-level Certificates of Appropriateness, a separate application form is required. The City's longstanding practice has been to streamline applications for building permits and staff-level Certificates of Appropriateness by permitting applicants to:

- (i) submit one application that satisfies both the Building and Planning Departments' requirements, with that application including all of the information required for the certificate of appropriateness criteria to be reviewed by Planning Staff; and

(ii) obtain one approval—a building permit—which evidences approval by the Building Department, Planning Department (including, if applicable, a staff-level Certificate of Appropriateness), and any other department whose review of a particular application may be required.

Importantly, based on the application process the City has in place, a substantive certificate of appropriateness review is conducted with every application, and was in fact conducted with respect to the three subject properties, as the underlying information is contained in the applicant's plans.

*Id.* at Pages 9-10.

On October 12, 2021, Appellants filed the subject Appeal regarding the COA issued for 310 Meridian Avenue with the Planning Department. As owners of property within 375 of the Property that is the subject of this appeal, Appellants have filed this Appeal as "affected persons" within the meaning of City Code Section 118-9(b)(2)B.(iii).

#### **D. JURISDICTION OF THE BOARD OF ADJUSTMENT**

Pursuant to Article I, Section 2 of the City's Related Special Acts, the Board of Adjustment has the exclusive jurisdiction to "hear and decide appeals from, and review, any order, requirements, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance of the City of Miami Beach."

City Code Section 118-9(b)(2)(A) provides that "[a] petition for an administrative appeal, by an eligible party, as defined in this code, shall be submitted to the planning director on or before the 30<sup>th</sup> day after the date of the publication."

Section 118-563(d) identifies certain types of applications for a Certificate of Appropriateness that shall be approved at the administrative level and that do not require the approval of the Historic Preservation Board. Staff's authority to approve a Certificate of Appropriateness is discussed in greater detail in Section H of this Response.

City Code Section 118-563(e) provides that "[a]ny decision of the planning director regarding subsections 118-563(d)(1) and 118-563(d)(3)," which pertain to certain categories of staff-level Certificates of Appropriateness, "may be appealed to the board of adjustment pursuant to the requirements of section 118-9." **Only those determinations issued under Subsections (d)(1) and (d)(3) are subject to review by the Board of Adjustment.**

The administrative determination of the Planning Director that is the subject of the Appeal is set forth in LTC 381-2021, which was published on the City's website on September 14, 2021. This Appeal was therefore timely filed on October 12, 2021, pursuant to Sections 118-9 and 118-563(e).

#### **E. QUESTION PRESENTED**

Whether the Planning Director correctly concluded that (i) the scope of work proposed by the Applicant under Permit No. BC1704920 could be approved under a Certificate of Appropriateness

issued by the Planning Department, and (ii) Historic Preservation Board ("HPB") review was not required.

#### **F. STANDARD OF REVIEW**

Pursuant to City Code Section 118-9(b)(2)(E), the standard of review for administrative appeals to the Board of Adjustment is "de novo," and "the party appealing the administrative decision bears burden of going forward with evidence and of persuasion[.] . . . and to that end, the board shall have all the powers of the officer from whom the appeal is taken."

#### **G. CERTIFICATE OF APPROPRIATENESS REVIEW**

The City's Historic Preservation regulations are set forth in Chapter 118, Article X of the City Code. Chapter 118, Article X, Division 3 of the City Code, entitled "Issuance of Certificate of Appropriateness/Certificate to Dig/Certificate of Appropriateness for Demolition," establishes regulations governing physical modifications to any property that is historically designated in accordance with sections 118-591, 118-592, and 118-593 or located within an historic district. Pursuant to Section 118-561(a) of the City Code, a Certificate of Appropriateness is required prior to the issuance of any permit for new construction, demolition, alteration, rehabilitation, renovation, restoration, signage or any other physical modification affecting any building, structure, improvement, landscape feature, public interior or site individually designated unless the permit applied for is exempted.

As part of the Planning Department's review of building permit applications, the approval of a COA is required in connection with any modification to a building or structure that is located in a designated historic district. Depending on the scope of work proposed, a COA may be approved either by the Historic Preservation Board ("HPB") or by Planning Department staff.

The HPB's jurisdiction is limited to the exterior components of the building or structure and public interior spaces. Interior, non-public spaces are not within the HPB's jurisdiction. If HPB review is required, then a full set of schematic design plans is presented to the HPB and the resulting approval serves as the COA for the project. If the project involves work that, pursuant to the requirements in Section 118-563(d) of the City Code, can be approved administratively, pursuant to a staff-level COA, the approved building permit, which was reviewed and signed off by the Planning Department, serves as the COA. The Planning Department's sign-off is the final confirmation that an application satisfies the COA criteria in section 118-564 of the City Code, and all other requirements of the City's Land Development Regulations.

#### **H. STAFF ANALYSIS AND RESPONSE TO PETITION**

Appellants contend that staff exceeded its authority in granting the COA for the Property. However, Appellants' argument regarding the authority of staff to grant a COA for the scope of work included in the permit is inconsistent with the City Code. The black letter of the Code is clear that all applications for a COA involving minor repairs, demolition, alterations, and improvements—as defined in Section 118-563(d)—shall be reviewed by the staff to the HPB.

Specifically, Section 118-563(d) of the Land Development Regulations of the City Code expressly authorizes the staff of the Historic Preservation Board to review COA requests for the following types of work:

**Sec. 118-563. - Review procedure.**

[ . . . ]

(d) Notwithstanding subsections 118-563(a) through (c) above, all applications for certificates of appropriateness involving minor repairs, demolition, alterations and improvements (as defined below and by additional design guidelines to be adopted by the board in consultation with the planning director or designee) shall be reviewed by the staff of the board. The staff shall approve, approve with conditions, or deny a certificate of appropriateness or a certificate to dig after the date of receipt of a completed application. Such minor repairs, alterations and improvements include the following:

- (1) Ground level additions to existing structures, not to exceed two stories in height, which are not substantially visible from the public right-of-way (excluding rear alleys), any waterfront or public parks, provided such ground level additions do not require the demolition or alteration of architecturally significant portions of a building or structure. For those lots under 5,000 square feet, the floor area of the proposed addition may not exceed 30 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 1,500 square feet. For those lots between 5,000 square feet and 10,000 square feet, the floor area of the proposed addition may not exceed 20 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 2,000 square feet. For those lots greater than 10,000 square feet, the floor area of the proposed addition may not exceed 10 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 5,000 square feet.
- (2) Replacement of windows, doors, storefront frames and windows, or the approval of awnings, canopies, exterior surface colors, storm shutters and signs.
- (3) Facade and building restorations, recommended by staff, which are consistent with historic documentation, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
- (4) Minor demolition and alterations to address accessibility, life safety, mechanical and other applicable code requirements, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.

- (5) Minor demolition and alterations to rear and secondary facades to accommodate utilities, refuse disposal and storage, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.

City Code Section 118-563(d).

The following is a summary of the scope of work approved for the improvements at 310 Meridian Avenue, pursuant to the staff-level COA issued as part of Permit No. BC1704920:

- **Window and door replacement**  
All existing non-original and inappropriate jalousie windows and doors were proposed to be removed and replaced with new windows and doors matching historical documentation. Staff reviewed and approved the COA for these improvements as expressly authorized in Section 118-563(d)(2) of the City Code.
- **Restoration of the original door opening along the front (east) façade**  
The front façade along Meridian Avenue was proposed to be restored to its original design in accordance with historical documentation, including the removal of a portion of solid, blank wall, in order to recreate the original entry feature design. Staff reviewed and approved the COA for these restorative modifications and improvements as expressly authorized in Section 118-563(d)(3) of the City Code.
- **Minor modifications of north interior side façade**  
Minor modification of the north interior side façade, including the consolidation of the non-Americans with Disabilities Act (ADA) compliant door with an adjacent window. A new window was proposed for this opening matching the historical configuration proposed for the front (primary) façade. Additionally, seven of the eleven single door openings along this secondary, interior side elevation were proposed to be filled-in with concrete block in order facilitate access to the apartment hotel units through a common lobby as required by the Land Development Regulations. The previously existing, non-original jalousie doors did not contain any significant architectural features. Staff reviewed and approved the COA for these improvements and modifications as expressly authorized in Section 118-563(d)(2) and (4) of the City Code.
- **Minor modification of the south interior side façade**  
Minor demolition of a small portion of exterior wall along the south side façade in order to convert an existing window opening into an ADA-compliant entrance. The portion of wall proposed for demolition had no significant architectural features. Staff reviewed and approved the COA for these improvements and modifications as expressly authorized in Section 118-563(d)(2) and (4) of the City Code.
- **Change of use from apartment to apartment hotel**  
A change of use is not within the jurisdiction of the Historic Preservation Board. The review of a change of use is an entirely separate process from the review and approval of a COA.
- **Interior renovation of units**

Non-public interiors are exempt from review under Chapter 118, Article X of the LDR's, and are not within the jurisdiction of the Historic Preservation Board. As such, these areas of the building do not require a COA.

Each of the above elements are either expressly exempt from Certificate of Appropriateness review, or within the scope of work that, pursuant to Section 118-563(d), shall be approved by staff. As such, none of the above elements require review by the Historic Preservation Board. **To reiterate, only those determinations issued under Subsections (d)(1) and (d)(3) are subject to review by the Board of Adjustment.**

In full accordance with Chapter 118, Article X of the LDRs, entitled "Historic Preservation," and pursuant to the longstanding application process the City has in place, a substantive COA review was conducted as part of the review of Building Permit BC1704920. The approved building permit, which was reviewed and signed off by the Planning Department, serves as the COA. The Planning Department's sign-off was the final confirmation that the application satisfied the COA criteria in section 118-564 of the City Code, and all other requirements of the City's Land Development Regulations.

It is important to note that most of the work approved for the site, and effectuated to date, consists of interior remodeling, updating and upgrades. This interior work includes but is not limited to the removal and replacement of interior floors and floor joists, interior non-load bearing partition walls, as well as all previous interior fixtures and finishes. None of the aforementioned approved work requires a COA, nor is such work subject to the COA requirements set forth in Chapter 118, Article X of the LDRs. As is the case with any active construction site, the staging of equipment, removal of debris and general work activity associated with a permit is within the scope of work approved.

In summary, the record clearly establishes that the Planning Department's review and issuance of an administrative COA as part of permit BC1704920 fully complied with the requirements set forth in Chapter 118, Article X of the LDRs. Accordingly, the COA for the Property was properly issued and the Appeal should be denied.

## **I. CONCLUSION**

In view of the foregoing analysis, staff recommends that the Board of Adjustment **DENY** the Appeal, **AFFIRM** the Planning Director's determination that the previously issued Certificate of Appropriateness associated with Building Permit BC1704920 could be approved administratively, and **AFFIRM** the Certificate of Appropriateness.