Docusign Envelope ID: F45C3E6C-1E91-4416-9EC0-215719E42D95

CFN: 20240528691 BOOK 34312 PAGE 2492
DATE:07/12/2024 01:54:54 PM
JUAN FERNANDEZ-BARQUIN
CLERK OF THE COURT & COMPTROLLER
MIAMI-DADE COUNTY, FL

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: May 7, 2024

PROPERTY: **1100 5th Street** **02-4203-009-8190**

FILE NO: DRB23-0982

IN RE: An application has been filed requesting Design Review Approval for the construction of a new 5-story commercial office building, including one or more waivers, and a variance from the open court requirements for lots greater than 100 feet in width, ~~and a variance to exceed the maximum allowed building height,~~ on a site containing two (2) existing 2-story buildings and a surface parking lot, to be demolished.

LEGAL: See Exhibit "A"

APPLICANT Gateway MB LLC

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 2.1.3.1 of the Land Development Regulations. 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 b, d, e, g, l, j, m, and s in Section 2.5.3.1 of the Land Development Regulations.

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 inconsistent with Sea Level Rise Criteria 1 and 4 in Section 7.1.2.4(a)(i) of the Land Development Regulations

D. The project would be consistent with the criteria and requirements 2.5.3.1 and/ or Section 7.1.2.4(a)(i) if the following conditions are met:

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1. Revised elevation, site plan and floor plan drawings for the proposed multi-use commercial building shall be submitted to and approved by staff, or the Board, as noted; at a minimum, such drawings shall incorporate the following:

    a. The plans shall be further detailed to show compliance with the Resilience and Adaptation Standards as outlined in Section 7.1.2.2, subject to the review and approval of staff.

    b. The Long Frontage Standards for new construction with non-residential uses on the ground floor on 5th Street and , per sec. 7.1.2.2.g.2, of the Resiliency Code are waived as proposed.

    c. The Short Frontage Standards for new construction with non-residential uses on the ground floor on Alton Road and, per sec. 7.1.2.2.g.1 of the Resiliency Code are waived as proposed.

    d. The parallel transition areas between the raised circulation zone and lower-level sidewalks, street crossings, intersections, and driveways shall be approved as proposed on Lenox Avenue.

    e. The final lighting design of the vehicular drop-off shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

    f. The final design and details of the garage screening shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

    g. The final design and details of all exterior and interior lighting shall be provided, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board. Interior lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding area. No florescent or intensive 'white' lighting (or similar intensive lighting) visible from the adjacent public rights or way or adjacent properties shall be permitted.

    h. The final details of all exterior surface finishes and materials, including samples, shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

    i. All internal garage lighting shall be shielded to buffer views of all direct light sources from outside of the structure, as well as on the roof deck, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

    j. Consistent with the plans presented, all rooftop lighting shall consist of a lighting fixture that is affixed to, and no higher than, the rooftop parapet wall. All roof-top lighting fixtures shall be designed to preclude light from

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spilling over to adjacent properties, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

k. The final design details and pattern of the hardscape and exterior walkways shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

l. Final details of all proposed storefront systems and associated details shall be provided for all ground floor elevations on the project site, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

m. 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.

2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding plans **shall be submitted to and approved by the Board**. The species, type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of the Board. At a minimum, such plans shall comply with Chapter 4-Landscape Requirements of the Resiliency Code and shall incorporate the following:

   a. The revised plans shall comply with the requirements of section 4.2.3 of the Resiliency Code.

   b. All existing overhead utility lines abutting the alley shall be relocated underground and all utility poles shall be removed.

   c. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.

   d. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.

   e. Any necessary root and tree branch pruning with a diameter at breast height (DBH) of 2" or greater shall be approved by the City Urban Forester prior to any tree work.

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f. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.

g. The proposed and existing trees located within the right of way shall be subject to the review and approval of Green Space and CIP.

h. Any proposed new street trees shall be of a planting species consistent or similar with existing street trees in the immediate area or consistent with any master street tree plan for the area, subject to the review and approval of the City Urban Forester.

i. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.

j. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.

k. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.

l. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures. The location of backflow preventors, Siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans, and shall be subject to the review and approval of staff.

m. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right of wall shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

n. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.

In accordance with section 2.2.4.8 of the Land Development Regulations, the applicant, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal a decision of the design review board for design review approval only to the city commission, except that orders granting or denying a request for rehearing shall not be reviewed by the commission.

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II. Variance(s)

A. The applicant filed an application with the Planning Department for the following variance(s):

1. A variance to not provide an open court on a lot with a width greater than 100 feet as required by section 7.2.15.3 of the Resiliency Code.

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.

Additionally, the Board has concluded that the plans and documents submitted with the application comply with the following hardship criteria, as they relate to the requirements of Section 2.8.3 of the Land Development Regulations:

i. 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;

ii. The special conditions and circumstances do not result from the action of the applicant;

iii. 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;

iv. 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;

v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

vi. 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;

vii. 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; and

viii. 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 7, article I, as applicable.

C. The Board hereby **Approves** the Variance request(s), and imposes the following conditions based on its authority in Section 2.8.4 of the Land Development Regulations:

1. Substantial modifications to the plans submitted and approved as part of the

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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 and Waivers'* noted above.

A. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.

B. All new construction over 7,000 square feet shall comply with the "Green Building" requirements in section 7.1.3.2 of the Resiliency Code.

C. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.

D. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.

E. All allowable construction signage shall be in accordance with Section 6.3.2 of the Land Development Regulations.

F. The building and parking departments shall approve a construction parking plan prior to the issuance of any building permit, including applicable demolition permits for the project.

G. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.

H. The contractor(s) shall ensure that the street and the alley directly abutting the construction site remains free of debris and refuse at all times; at a minimum, the contractor(s) shall inspect and clear the street and alley areas before leaving at the end of each day.

I. This order shall be enforced by the Building, Planning, Parking and Code Compliance Departments.

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J. A recycling/salvage plan shall be provided as part of the submittal for a demolition/building permit, in a manner to be reviewed and approved by staff.

K. 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.

L. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

M. 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.

N. 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

O. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

P. 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.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "1100 5th Street", prepared by **Souto Moura Arquitectos S.A. and Zyscovich**, dated March 10, 2024, and as approved by the Design Review Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board approved plans, this approval does not mean that such handicapped access is not required. When requesting Building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

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If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Section 2.2.4.6 of the Land Development Regulations; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project shall expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 2 of the Land Development Regulations, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 2 of the Land Development Regulations, for revocation or modification of the application.

Dated 7/9/2024 | 1:23 PM EDT.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
BY: Rogelio Madan
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Rogelio A. Madan, AICP
Development & Resiliency Officer
For the Chair

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 10 day of July 2024 by Rogelio A. Madan, Development & Resiliency Officer of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

MIRIAM HERRERA
Notary Public - State of Florida
Commission # HH 470768
My Comm. Expires Dec 16, 2027
Bonded through National Notary Assn.

{NOTARIAL SEAL}

Notary: Miriam Herrera
Print Name Miriam Herrera
Notary Public, State of Florida
My Commission Expires: 12-16-27
Commission Number: HH 470768

Approved As To Form:

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City Attorney's Office: DocuSigned by: Faroat Rudasheva (
AB42D727D155455
7/9/2024 | 10:41 AM EDT

Filed with the Clerk of the
Design Review Board on: DocuSigned by: Jessica Gonzalez (
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7/10/2024 | 9:06 AM EDT

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"Exhibit A"

PARCEL 1:
The East 100 feet of Lot 3, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 2:
Lot 3, less the East 100 feet thereof and less that portion thereof which lies within the external area formed by a 10-foot radius arc concave to the Southeast tangent to the North line of said Lot 3 and tangent to the Southwesterly line of said Lot 3, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 3:
Lot 4, less the East 145.6 feet thereof, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 4:
The East 145.6 feet of Lot 4, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 5:
Lots 5, 6, 7, 8, and 9 of Resubdivision Lots 5 and 6, Block 103, THE OCEAN BEACH REALTY CO.'S OCEAN BEACH ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 26, at Page 62, of the Public Records of Dade County, Florida. ALL OF ABOVE DESCRIBED PARCELS 1, 2, 3, 4, AND 5 BEING NOW KNOWN AS: All of Lots 3 and 4, in Block 103, of OCEAN BEACH FLA., ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida; LESS and EXCEPT that portion of Lot 3 which lies within the external area formed by a 10 foot radius arc concave to the Southeast and tangent to both the North and Southwesterly lines of said Lot 3;

TOGETHER WITH;
Lots 5, 6, 7, 8 and 9, of RESUBDIVISION OF LOTS 5 AND 6, BLOCK 103 OF THE OCEAN BEACH REALTY CO.'S OCEAN BEACH ADDITION NO. 3, according to the plat thereof, recorded in Plat Book 26, at Page 62, of the Public Records of Dade County, Florida.

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