Docusign Envelope ID: DCCF2E60-3CEB-4994-92FB-40A0310CC624

CFN: 20240668280 BOOK 34389 PAGE 519
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JUAN FERNANDEZ-BARQUIN
CLERK OF THE COURT & COMPTROLLER
MIAMI-DADE COUNTY, FL

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: June 4, 2024

PROPERTY/FOLIO: 3907 Alton Road / 02-3222-019-0020
3915 Alton Road / 02-3222-019-0030
976 West 41st Street / 02-3222-019-0040

FILE NO: DRB24-1016

IN RE: An application has been filed requesting Design Review Approval for the construction of a new seven story commercial building, to replace existing commercial buildings. Specifically, the application includes a variance to reduce the required rear setback and including one or more waivers.

LEGAL: LOTS 2, 3, 4, AND 5, BLOCK 1, 41ST STREET BUSINESS SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 34, PAGE 92 OF THE PUBLIC RECORDS OFMIAMI-DADE COUNTY, FLORIDA

APPLICANT: Gateway Associates, LTD., Gateway I & II, LTD

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, h, i 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 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 new 7-Story Commercial building at 976 West Alton Road shall be submitted, at a minimum, such drawings shall incorporate the following:

    a. The final design, details, and materials of the garage screening mosaic 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.

    b. The Long Frontage Standards for new construction with non-residential uses on the ground floor on Alton Road, 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 West 41st Street and, per sec. 7.1.2.2.g.1 of the Resiliency Code are waived as proposed.

    a. 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.

    b. 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.

    c. The final details of all proposed storefront systems and associated details shall be provided for all of the structures 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.

    d. All kitchen ventilation shall be chased through the interior of the building to the roof. No exhaust ducts or vents shall be permitted on any building elevations.

    e. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall screened from view on all sides, 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 rooftop light poles located along the perimeter of the building edge shall be eliminated or replaced with a lighting fixture that is affixed to, and no higher than, the rooftop parapet wall. All rooftop light poles shall be limited to a maximum height of 10'-0". All roof-top lighting fixtures shall be designed to preclude light from 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.

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g. The internal garage lighting shall be shielded to inhibit direct views of all internal light sources, subject to the review and approval of staff.

h. The final design details, dimensions material and color of all exterior handrails shall be made part of the building permit plans and shall be subject to the review and approval of staff.

i. A high quality finish for the loading area roll-down door, as well as for the trash compactor area, shall be required; the location of all housing, as well as the dimensions of the door shall be subject to the review and approval of staff.

j. All electrical conduits, interior lighting elements and sprinkler lines and sprinkler heads located within the proposed parking garage levels shall be contained within the concrete structure of the building and shall not be surface mounted wherever visible from the public right of way or wherever they may otherwise have an adverse aesthetic impact upon the design integrity the structure, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

k. A fully enclosed, air-conditioned trash room shall be provided, which is sufficient to handle the maximum uses intended for the proposed structure. External dumpsters shall not be permitted.

l. 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.

m. URBAN HEAT ISLAND ORDINANCE Section 7.5.3.2(g)(iv) Driveways and parking areas that are open to the sky within any required yard shall be composed of porous pavement or shall have a high albedo surface consisting of a durable material or sealant, as defined in Section 1.2.1 of this Code, and (v) Driveways and parking areas composed of asphalt that does not have a high albedo surface, as defined in Section 1.2.1, shall be prohibited.

n. 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 shall be prepared by and bear the seal of a Landscape Architect licensed to practice in the State of Florida. The corresponding landscape plans shall be submitted to and approved by staff. At a minimum, landscape plans shall comply with Chapter 46 Tree Preservation and Protection Ordinance of the City Code and Chapter 4, Landscape Requirements of the Land Development Regulations and shall incorporate the following:

   a. Any existing canopy shade tree(s) on site with a caliper size of 4" of greater being impacted by the construction shall be carefully root pruned, protected and/or relocated. This shall not apply to prohibited tree species. A Tree

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Disposition Plan shall be provided for Planning staff review and approval prior to the issuance of a Building Permit.

b. The design of the exterior landscaping area located on the corner of Alton Road and West 41st Street shall be subject to the approval of the Public Works Department and shall be subject to a maintenance agreement with the City.

c. Prior to the issuance of a building permit, the applicant shall submit a tree survey and tree disposition plan that includes the approved tree protection fencing detail for existing mature trees and palms to remain. Such plans shall be subject to the review and approval of staff. A tree work permit shall be obtained prior to the removal of any existing trees and palms.

d. In new construction projects, street trees are required within the public right of way. Street trees are in addition to the required lot trees according to the Chapter 2 Landscape Ordinance. All proposed street tree plantings shall be reviewed and approved by the Public Works Department and a right of way permit shall be obtained prior to any plantings in the right of way.

e. Suspended paver systems such as Silva Cells or equal shall be installed where street trees are planted in right of way sidewalk and other hardscape areas in a manner to be reviewed and approved by staff. Suspended paver systems shall be clearly delineated in the landscape plans. Structural soils may be considered where proposed trees are located immediately adjacent to large open space areas.

f. Root guards or barriers shall be installed to protect utilities and structures within close proximity of proposed tree plantings. The root guards shall be clearly delineated in the landscape plans and shall be reviewed and approved by staff.

g. Irrigation systems shall be designed and installed corresponding to the water requirements of the proposed plantings and as required in the Chapter 2 Landscape Ordinance. The irrigation system shall be extended into the public right of way. A rain shut off device is required to be installed as part of the irrigation system.

a. 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.

b. 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.

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h. Prior to the issuance of a Certificate of Occupancy, the Project Landscape 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.

II. Variance(s)

A. The applicant filed an application with the Planning Department for the following variance(s), which ~~were either approved by the Board or Denied~~ continued to a future meeting date:

1. A variance from the rear setback requirements as specified in 7.2.12.3. Specifically, the rear setback is reduced from 5 feet to 0 feet.

~~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~~

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~~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**, and imposes the following condition 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 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'* noted above.

A. All new construction over 7,000 square feet shall be required to be, at a minimum, certified as LEED Gold by USGBC. In lieu of achieving LEED Gold certification, properties can elect to pay a sustainability fee or post a bond, pursuant Section 7.1.3.2 of the Land Development Regulations. This fee is set as a percentage of the cost of construction.

B. 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.

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

D. 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.

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

F. 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.

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

H. 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.

I. 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.

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

K. 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.

L. 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.

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

N. 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 revised plans, entitled "Giller Tower", as prepared by **Giller & Giller, Inc.**, dated April 7, 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

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the Board, modified in accordance with the conditions set forth in this Order.

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 8/27/2024 | 10:59 AM EDT.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: DocuSigned by: Rogelio Madan
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 27th day of August 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.

GABRIELA C. FREITAS
MY COMMISSION # HH 173574
EXPIRES: September 8, 2025
Bonded Thru Notary Public Underwriters

Notary
Print Name Gabriela C. Freitas
Notary Public, State of Florida
My Commission Expires: 9-8-25
Commission Number: HH173574

{NOTARIAL SEAL]

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Approved As To Form:
City Attorney's Office: DocuSigned by: Faroat Rudasheva (8/27/2024 | 10:15 AM EDT)

Filed with the Clerk of the
Design Review Board on: DocuSigned by: Jessica Gonzalez (8/28/2024 | 11:52 AM EDT)

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