

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: January 9, 2018

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: HPB17-0147, **3201 & 3315 Collins Avenue.**

The applicant 3201 Hotel, LLC, is requesting after-the-fact variances to reduce the required rear setback, to exceed the maximum width for a walkway and to exceed the maximum area for structures within the Dune Preservation Overlay District, to reduce the required setback from the Bulkhead Line, to reduce the minimum required lot coverage and minimum view corridor within the Oceanfront Overlay District in order to retain miscellaneous structures within the rear of the property facing the Ocean.

### **STAFF RECOMMENDATION**

Denial of the variances.

### **BACKGROUND**

On December 14, 2004, the Board approved a Certificate of Appropriateness for the substantial rehabilitation, renovation, restoration and partial demolition of the existing twelve (12) story Saxony Hotel, along with the construction of a new nineteen (19) story multifamily building (HPB File No. 2523.)

On January 7, 2005, the Board of Adjustment approved variances to reduce the minimum required pedestal and tower side setbacks in order to construct a new multistory residential building. (ZBA File No. 3064).

On September 13, 2005, substantial alterations to the original design of the Saxony's lobby, public interior spaces, and entry storefront were approved by the Board.

On May 9, 2006 a one (1) year Extension of Time to obtain a Full Building Permit was approved by the Board, however, a full building permit was not obtained and the approval expired on June 14, 2007.

On July 10, 2007, the project was again approved by the Board, and a full building permit was subsequently issued. (HPB File No. 5015).

On August 3, 2007, the Board of Adjustment approved variances from the minimum required pedestal and tower side and sum of the side setbacks, from the required residential component fronting a street, from the minimum required setback and driveway width for a two-way driveway in order to permit the renovation of the existing Saxony Hotel and the construction of a new multistory building. (ZBA File No. 3323).

On May 12, 2009 and November 10, 2009 additional modifications including a modification to the condition of the Final Order requiring that the existing Saxony Hotel be fully renovated and restored, prior to the issuance of a Temporary Certificate of Occupancy (T.C.O.) for the proposed new structure.

On January 6, 2012, the Board of Adjustment approved modifications to previously approved variances from the required pedestal sides and sum of the side setbacks and a new variance to exceed the maximum building height in order to construct a new multistory residential building. (ZBA File No. 3547).

On October 9, 2012, the Board reviewed and approved modifications to a previously issued Certificate of Appropriateness which included the construction of a new 3-story building, modifications to the landscape plan and site plan, including the construction of a new pergola structure, and modifications to existing window openings along the south elevation and design modifications to the previously approved east elevation (HPB File No. 5015).

On September 10, 2013 the Board approved a Certificate of Appropriateness for the temporary installation of a super graphic on the southwest facade of the Saxony Hotel. (HPB File No. 7383).

On December 5, 2014 the Board of Adjustment approved variances from the minimum required setbacks for a perimeter fence located in the Dune Overlay District (ZBA File No. 3741).

On December 9, 2014 the Historic Preservation Board approved a Certificate of Appropriateness for the introduction of a mosaic tile art installation located around the perimeter of the historic Saxony lobby floor (HPB File No. 7499)

On November 10, 2015 the Board approved a Certificate of Appropriateness for the installation of a building identification sign located on the west façade, the relocation of the original terrazzo medallion from the west entrance to an entrance along 32<sup>nd</sup> street and the installation of a new Faena medallion within the west entrance, including variances to exceed the maximum size for a projecting sign, to relocate a permitted flat sign from the first floor to the second floor and to exceed its maximum size (HPB File No. 7571)

On February 9, 2016, the Board approved an after-the-fact Certificate of Appropriateness for the installation of a temporary art exhibit within the southeast portion of the property. (HPB File No. 7605)

On November 14, 2017, the Board reviewed and approved an after-the fact application to retain an art exhibit within the southeast portion of the property including a variance for associated mechanical equipment and screening. (File No. HPB17-0109 a.k.a. HPB File 7605).

### **EXISTING STRUCTURES**

Local Historic District:	Collins Waterfront
Status:	Contributing
Original Construction Date:	1948
Original Architect:	Roy France

## **ZONING / SITE DATA**

### **Legal Description:**

All of Block 17 of Ocean Front Property on the Miami Beach Improvement Company's Subdivision according to the plat recorded in plat book 5, pages 7 & 8 of the Official Records of Miami-Dade County, and also all of that part of a strip of land formerly a public alley, which lies between lots 1, 2, 3, & 4 of Block 17 on the east side thereof and lots 5, 6, 7, & 8 on the west side thereof, together with all of lots 1, 2, 5, and 6 in block 19 of Ocean Front Property on the Miami Beach Improvement Company's Subdivision according to the plat recorded in plat book 5, pages 7 & 8 of the Official Records of Miami-Dade County.

### **Zoning:**

RM-3, Residential Multi-Family, high intensity

## **THE PROJECT**

The applicant has submitted plans entitled "Faena Hotel and Faena House - after-the-fact variances for improvements in the Dune Preservation and Oceanfront Overlay Zones" as prepared by Geomantic Designs, Inc., dated November 3, 2017.

**The applicant is requesting six (6) after-the-fact variances to retain miscellaneous structures within the Oceanfront Overlay District and Dune Preservation Overlay District.**

The applicant is requesting the following variance(s):

1. An after-the-fact variance to exceed by 312 square feet the maximum 400 square feet of area allowed for structures in order to retain a wood deck with an area of 721 square feet located within the Dune Preservation Overlay District.
2. An after-the-fact variance to reduce by 7'-2" the minimum required setback of 10'-0" from the Erosion Control Line in order to retain a wood deck and canopy structures at a minimum of 2'-10" from the Erosion Control Line on the Dune Preservation Overlay District.

- Variances requested from:

### **Sec. 142-775. - Development regulations**

*(b) Size and spacing of chickees, shade structures and outdoor cafes. As the dune overlay regulations are intended to provide a natural beach environment, it is required that individual structures/decks be less than 400 square feet in floor area and that structures be separated by a distance of ten to 25 feet and that this area be landscaped.*

*(d) Minimum yards. Minimum yards in the dune preservation district shall be as follows:  
(3) Ten feet from the erosion control line when any structure has a finished floor elevation of three feet or less than the elevation of the top of the dune.*

A wood deck and three (3) shade structures have been constructed at the rear of the property without required approvals. The deck is setback at 2'-10" from the Erosion Control Line and two of the canopies are setback 3'-8" and 5'-11" where 10'-0" is required. The structures are located on the narrowest portion of the Overlay District that limits the area and setbacks for these structures. However, the Dune Preservation Overlay District at the rear of the property currently features other open areas that allow the relocation of the deck and canopy structures to comply with the required setbacks.

The area of the wood deck also requires a variance from the maximum area for a structure, noted in variance number 1. Staff finds that the variances requested lack any practical difficulties or hardship as the structures can be constructed on other adjacent areas or be modified in the current location to comply with the required area and setbacks. The property has sufficient open area to construct the deck with the maximum area required. The relocation or modification of these lightweight structures would not have a negative impact on other historic structures on site. Staff finds that the variances requested are self-created and recommends that both variances be denied.

3. An after-the-fact variance to exceed by 3'-0" the maximum width of 6'-0" for walkways located within the Dune Preservation Overlay District in order to retain a walkway with a width of 9'-0".

- Variance requested from:

**Sec. 142-774. - Uses and structures permitted.**

*(6) Walkways and ramps constructed of wood materials and which are not more than six feet in width.*

A wood walkway connecting the Saxony hotel's pool deck with the beach walk was constructed exceeding the maximum width of 6'-0' within the Dune Preservation Overlay District. As noted on the plans provided by the applicant, the walkway was partially shown on a revised landscape plan (BREV142555) although, the permit description is exclusively for landscape and the approvals did not include the structures. The master permit for the hotel (B0703535) also shows the walkway, but does not clearly indicate its width. Staff finds that there are no practical difficulties for the retention of the walkway with the existing width and its modification will not have an adverse impact on the adjacent historic structures. The existing width of the walkway also contributes to the impervious surfaces that count against the lot coverage required, which triggers variance #5. For this reason, staff recommends denial of the variance.

4. An after-the-fact variance to eliminate all required setback of 10'-0" from the Bulkhead Line in order to retain the pool deck up to the Bulkhead Line within the Oceanfront Overlay District.
5. An after-the-fact variance to reduce by 5% (955 square feet) the minimum required lot coverage of 50% (10,335 square feet) in order to retain the pool deck, walkways and other miscellaneous structures and provide an open space of 45% (9,380 square feet) within the Oceanfront Preservation Overlay District.

- Variances requested from:

**Sec. 142-802. - Additional regulations for oceanfront lots.**

*These regulations apply to buildings and structures located west of the bulkhead line. Oceanfront lots shall have a minimum required rear yard setback of 50 feet at grade and subterranean levels measured from the bulkhead line in which there shall be no construction of any dwelling, hotel, apartment building, commercial building, seawall, parking areas, revetment or other structure incidental to or related to such structure except in accordance with the following provisions:*

**(3) There shall be a minimum required 15-foot setback from a side lot line and a minimum required ten-foot setback from the bulkhead line.**

(7) Lot coverage shall be at least 50 percent of the required rear yard setback, open to the sky and landscaped. All areas covered by permitted uses, other than portable beach furniture, shall be considered in the lot coverage calculation.

The pool deck at the rear of the property does not comply with the required setback of 10' from the Bulkhead Line. The pool deck was previously approved under B0703535 with a configuration that reduced the minimum lot coverage required. As noted on pages A1.01.2 and page 12 showing calculations of lot coverage, the current pool deck configuration exceeds the maximum area for impervious surface, as previously approved. Apparently, an oversight of the Oceanfront Overlay District regulations occurred at the time of the building permit. However, this fact does not constitute a practical difficulty to increase further the impervious area or to retain the existing non-conforming conditions, particularly for a property of this size with ongoing improvements and modifications to the site. The applicant is proposing the removal of a small portion of the pool deck; however staff believes that this is insufficient to remedy the non-conforming conditions created by the applicant. The amount of paving to be retained also triggers variance #5 to reduce the minimum lot coverage required.

Staff finds that there are no practical difficulties associated with the variances requested. The compliance with the required pool deck setback, lot coverage and view corridors do not limit the reasonable use of the property as a hotel. Therefore, staff recommends that the deck be modified to comply with the required setback. The reduction of the pool deck would increase the required lot coverage within the Overlay District and would reduce or eliminate variance #5. In summary staff recommends denial of variances #4 and #5.

6. An after-the-fact variance to reduce by 8.6% (36.5 feet) the minimum required view corridors of 50% (213.2 feet) in order to retain miscellaneous structures and provide a view corridor of 41.4% (176.5 feet)
  - Variance requested from:

**Sec. 142-802. – Additional regulations for oceanfront lots**

(8)A view corridor shall be created by maintaining a minimum of 50 percent of the required rear yard setback open and unencumbered, apart from landscaping and decorative open picket type fences, from the erosion control line to the rear setback line.

The current conditions of the rear of the property and the existing structures do not conform to the required view corridor due to the over improvements of the area. Due to the length of the rear yard of the property which is approximately 426 feet, this requirement can be reasonably achieved without any negative impact on the building. There are no practical difficulties associated with this variance request and staff recommends that the variance be denied.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicants have submitted plans and documents with the application that staff has concluded **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts, 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, staff has concluded that the plans and documents submitted with the application **DO NOT** satisfy compliance with the following hardship criteria, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

- That 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;

**Not Satisfied**

- That the special conditions and circumstances do not result from the action of the applicant;

**Not Satisfied**

- That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

**Not Satisfied**

- That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

**Not Satisfied**

- That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

**Not Satisfied**

- That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

**Not Satisfied**

- That 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.

**Satisfied**

#### **COMPLIANCE WITH ZONING CODE**

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the applicable sections of the City Code, with the exception of the variances requested.

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.

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.

**Not Applicable**

- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

**Not Applicable**

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**Not Applicable**
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.  
**Not Applicable**
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.  
**Not Applicable**
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.  
**Not Applicable**
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.  
**Not Applicable**
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.  
**Not Applicable**
- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.  
**Not Applicable**
- (10) Where feasible and appropriate, water retention systems shall be provided.  
**Not Applicable**

### **VARIANCE ANALYSIS**

The property has been reviewed by the Historic Preservation Board and Board of Adjustment on several occasions, as noted on the background portion of this report. The subject of this application pertains solely to (6) after-the-fact variances for the construction of various structures at the rear of the property facing the ocean. Staff is not supportive of any of the variances requested as there are no practical difficulties linked to the existing conditions and that the compliance of the Code is achievable without an adverse impact on the historic building or the surrounding properties.

### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that all variances be **denied**, subject to the conditions enumerated in the attached draft Order, which address the inconsistencies with the aforementioned Practical Difficulty and Hardship criteria, as applicable.

TRM:DJT:JS-MAB:IV

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**HISTORIC PRESERVATION BOARD  
City of Miami Beach, Florida**

MEETING DATE: January 9, 2018

FILE NO: HPB17-0147

PROPERTY: 3201 Collins Avenue

APPLICANT: 3201 Hotel, LLC.

LEGAL: All of Block 17 of Ocean Front Property on the Miami Beach Improvement Company's Subdivision according to the plat recorded in plat book 5, pages 7 & 8 of the Official Records of Miami-Dade County, and also all of that part of a strip of land formerly a public alley, which lies between lots 1, 2, 3, & 4 of Block 17 on the east side thereof and lots 5, 6, 7, & 8 on the west side thereof, together with all of lots 1, 2, 5, and 6 in block 19 of Ocean Front Property on the Miami Beach Improvement Company's Subdivision according to the plat recorded in plat book 5, pages 7 & 8 of the public records of Miami Dade County, Florida.

IN RE: The application for after-the-fact variances to reduce the required rear setback, to exceed the maximum width for a walkway and to exceed the maximum area for structures within the Dune Preservation Overlay District, to reduce the required setback from the Bulkhead Line, to reduce the minimum required lot coverage and minimum view corridor within the Oceanfront Overlay District in order to retain miscellaneous structures within the rear of the property facing the Ocean.

**ORDER**

The City of Miami Beach Historic Preservation 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. Certificate of Appropriateness**

A. Certificate of Appropriateness has not been requested as part of this application.

**II. Variance(s)**

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

The following variances were **denied** by the Board:

1. An after-the-fact variance to exceed by 312 square feet the maximum 400 square feet of area allowed for structures in order to retain a wood deck with an area of 721 square feet located within the Dune Preservation Overlay District.



2. An after-the-fact variance to reduce by 7'-2" the minimum required setback of 10'-0" from the Erosion Control Line in order to retain a wood deck and canopy structures at a minimum of 2'-10" from the Erosion Control Line on the Dune Preservation Overlay District.
  3. An after-the-fact variance to exceed by 3'-0" the maximum width of 6'-0" for walkways located within the Dune Preservation Overlay District in order to retain a walkway with a width of 9'-0".
  4. An after-the-fact variance to eliminate all required setback of 10'-0" from the Bulkhead Line in order to retain the pool deck up to the Bulkhead Line within the Oceanfront Overlay District.
  5. An after-the-fact variance to reduce by 5% (955 square feet) the minimum required lot coverage of 50% (10,335 square feet) in order to retain the pool deck, walkways and other miscellaneous structures and provide an open space of 45% (9,380 square feet) within the Oceanfront Preservation Overlay District.
  6. An after-the-fact variance to reduce by 8.6% (36.5 feet) the minimum required view corridors of 50% (213.2 feet) in order to retain miscellaneous structures and provide a view corridor of 41.4% (176.5 feet)
- B. The applicant has submitted plans and documents with the application that the Board has concluded **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts, 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 **DO NOT** comply with the following hardship criteria as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That 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;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

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

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That 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.

C. The Board hereby **Denies** the requested variance(s), as noted and imposes the following condition based on its authority in Section 118-354 of the Miami Beach City Code:

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.**

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 for the above-referenced project subject to those certain conditions specified in Paragraph I and II of the Findings of Fact, to which the applicant has agreed, that the variance application is DENIED WITHOUT PREJUDICE.

In accordance with Chapter 118 of the City Code, 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 118 of the City Code, for revocation or modification of the application.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

HISTORIC PRESERVATION BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
DEBORAH TACKETT  
CHIEF OF HISTORIC PRESERVATION  
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by Deborah Tackett, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

\_\_\_\_\_  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: \_\_\_\_\_

Approved As To Form:  
City Attorney's Office: \_\_\_\_\_ (                    ) )

Filed with the Clerk of the Historic Preservation Board on \_\_\_\_\_ (                    ) )