



# WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

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November 8, 2017

City of Miami Beach  
Historic Preservation Board  
c/o Thomas Mooney, Planning Director  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, FL 33139

**Re: First Amended Letter of Intent - 819 2<sup>nd</sup> Street**

Dear Board Members:

This is the first amended letter of intent in support of the Land Use Board Hearing Application (the "Application") filed by Stephen Helfman and Gerri Helfman for individual Certificates of Appropriateness for total demolition and design approval, as well as lot size and lot frontage variances to allow for the construction of a new single-family residence at 819 2<sup>nd</sup> Street (the "Property"). Pursuant to Article X, Section 118-564(c) of the City's Land Development Regulations (the "LDRs"), this letter will also serve as a request for a waiver of all applicable provisions of Article X of the LDRs on the basis of economic hardship.

I. **Background.** The Property is a 2,684 square-foot legal non-conforming lot improved with a 1,537 square foot non-conforming one story, two (2) unit structure built in or about 1923 (the "Building"). The Property is located along the most southwesterly boundary of the Ocean Beach Historic District (the "District"). In 1995, when the District was established, the Building was listed as contributing to the District. The Building has no notable features other than a stucco parapet with a design similar to dozens of buildings in the District. The architect is unknown and, importantly, the building is not historically designated nor is the Building or any of its features described in the 1995 Designation Report or listed as historic in the City's Historic Properties Database.

The public record shows that the Building was used as a rental property until it was abandoned sometime in 2010. In 2015, the Bank of New York foreclosed and took possession of the Property. During that entire seven (7) years, the Building fell into complete and total disrepair resulting in extensive collapse and other irreparable conditions. Compounding the problem, with the exception of minor repairs in 1981 and 1987, there has been no documented work on the Building in nearly 60 years. Finally, in the past several years, a fire has "substantially damaged" the Building.

Because of the overall condition of the Building, the Building has been found to be unsafe by the City's Building Official who has ordered that it be demolished. This condition is also supported by an extensive structural report discussed below in Section III. 1. of this first amended letter of intent. A demolition permit (process number BC1705240) has been processed.

II. **Variances.** The Application includes a request for a variance of lot frontage (50 feet required/47.9 feet existing) and lot size (5,750 square feet required/2,684 square feet existing).<sup>1</sup> The lot size/frontage problem is strictly due to a change in the LDRs adopted by the City decades after the site was established as a legal building site. As a result of the changes in the LDRs, the Property is now a legal non-conforming lot. To the extent the City does not recognize the legal non-conformity status, then a true hardship has occurred by action of the City.

If compelled to seek a variance, you will find that the property actually conforms with all of the criteria listed in Section 118-353(d) as follows:

1. The subdivision in 1923, which created the alleged non-conformity, is unique and not applicable to other lots in the zoning district.

2. We have done nothing to create the existing condition, which requires variances. The City actually created the existing condition/non-conformity.

3. The granting of the variances will not confer any special benefit or privilege not granted to all other properties in the zoning district, each of which have the right to use their land for numerous permitted uses.

4. The application of the lot frontage and lot size requirements, if strictly enforced, would totally eliminate the right to redevelop or use the Property.

5. The request is to vary the criteria to only the existing size and frontage of the Property and not more.

6. The granting of the variances will be in absolute harmony with all properties in the zoning district. In fact, the Property in its current configuration has compatibly existed in the neighborhood for almost 100 years, far longer than most any other property in the District.

7. The granting of the variances will allow the Property to be used for a single family home, which use is consistent with the land use designation under the City's Comprehensive

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<sup>1</sup> As a "legal non-conforming" lot under Article X, Section 118-390(d)(1) of the City's LDRs, the Property is buildable without variances. This request is made in protest.



Plan and will not result in a reduction in the level services set out in the plan. To the contrary, the change in use will reduce the demand on all public services.

Without the granting of these variances, the construction of the proposed home, or any structure for that matter, is prohibited. Importantly, without the variances we would be denied all use of our Property and suffer extreme economic hardship as outlined in the Affidavit of Economic Hardship filed with the Application.<sup>2</sup>

### III. Certificates of Appropriateness

1. Demolition. Subject to the caveat below,<sup>3</sup> we are requesting the approval to demolish the Building.<sup>4</sup> While the Building might have been contributing to the District in 1995, its altered and substantially damaged condition no longer makes it a viable and contributing structure. The extent of the damage to the Building precludes any rehabilitation, reconstruction or repair without demolishing the entire Building. This is substantiated in a comprehensive report from South Florida's preeminent (historic structure) engineer, Douglas Wood.<sup>5</sup> His conclusion is as follows:

**"It will not be possible to correct the existing conditions, damage, deterioration and collapse, meet the Building Code requirements and provide appropriate safety and performance without dismantling the Building."**

This is particularly true because any work on the Building is deemed a Level 3 Substantial Structure Alteration under the Florida Building Code (the "FBC"). That designation requires methods of construction that cannot be accomplished without demolishing the Building.<sup>6</sup>

Not only does the FBC preclude any restorative work, but under Chapter 54, Floods, of the City's Code, the Building is deemed "substantially damaged" (50% Rule) and therefore, any repairs or reconstruction must comply with all the provisions of Chapter 54 and, in particular, all habitable floors must be elevated to Base Flood Elevation (the "BFE") plus Freeboard, which is at least 2 feet above the existing elevation. Of course, that is not possible without total demolition.

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<sup>2</sup> See, November 7, 2017 Affidavit of Economic Hardship.

<sup>3</sup> As with the variances, the City Staff has determined that a Certificate of Appropriateness from the HPB is required for the demolition of the Building. The Applicant believes this is a misapplication of the LDRs. The ability to demolish an unsafe structure under the order of the Building Official cannot be conditioned upon a discretionary approval of the Historic Preservation Board. See, Section 118-503(c).

<sup>4</sup> Within this request is approval of the removal of two (2) Royal Poinciana trees that have caused significant structural damage to the Building.

<sup>5</sup> See, the General Assessment Report for the Structural Systems, dated September 28, 2017, prepared by Douglas Wood Associates, Inc. and filed with the Application.

<sup>6</sup> See, Chapter 9 of the FBC.



Finally, Section 118-395(b)(2) of the LDRs mandates that all work in excess of 50% of the value of the building must comply with the FBC, Life Safety Code and the current development regulations. Of course, this is impossible without removing the entire Building including the foundation.

2. Design. Understanding that the Building must be removed and that the Property lies in the District, the architects were charged with the task of designing a home which compliments both the historic and modern architectural styles within the District. An extensive survey of the area revealed a mixture of designs ranging from Mediterranean Revival to ultra-modern steel and glass buildings. In the effort to draw upon the past as well as the current architectural styles, the decision was made to design a "Tropical Modern" home.

The particular design of the home is reminiscent of the many Mid-Century and Moderne buildings within the District and certainly consistent with the design of the more recent modern structures approved by the Historic Preservation Board (the "HPB"), including Louver House just one block to the north as well as the ultra-modern Glass, 300 Collins, Ocean House, SoFi House, Meridian 5 Lofts and of course, the recently approved three (3) story duplex at 809 2<sup>nd</sup> Street directly next door to our Property.

The unique aspect of this proposal is that it is a single-family residence surrounded by multi-family, hotel and commercial buildings. The usual approach for designing homes in the many residential areas of Miami Beach must be reconsidered to address the needs and character of this context. The relationship and interaction of the home with the street is extremely important and heavily influenced the design. The facades have extensive movement, incorporating many recesses and undulations that help to break down the scale of the home and create architectural interest on the street. The louvers play with revealing and covering aspects of the home, and manipulating light as it passes into and out of the home, which will also be experienced by pedestrians at the street level.

This is a small lot and correspondingly, the home will also be rather small. It will be entirely surrounded by multi-story apartment buildings, most higher than this one, and so the home will sit discretely in its site. There are 2 similar contributing one-story structures that are existing directly east of this property. A Certificate of Appropriateness was just issued by the HPB for a new three (3) story duplex on the lot immediately adjacent, which included the demolition of the existing structure. In this context, we feel the scale and proportion of the home is compatible and consistent with its surroundings.

Many design features were incorporated to promote the interaction between the home and the street, such as a corner entry at the 1<sup>st</sup> level, concentrating bedrooms along 2<sup>nd</sup> street and the alley at the 2<sup>nd</sup> floor, as well as overhanging balconies into the streetscape from this floor, and a large terrace that runs the length of the building at the 3<sup>rd</sup> floor. The pool on the roof

deck also overhangs the 3<sup>rd</sup> floor terrace and has exposure to the alley. This allows for interactivity between the roof deck and pool and the 3<sup>rd</sup> floor terrace, as well as the streetscape. Importantly, all vehicular access is limited to the side alley; therefore, eliminating any pedestrian conflicts and providing much needed off-street parking.

As primary finish materials, the home will have elements of architectural concrete, painted stucco and louvers. There is a lot of glass as well, to wash the interiors with light and add to the openness of the structure. The frames will be finished in a taupe shade, to match the louvers. The Miami Beach sunlight, and the tones and feeling of the beach were major sources of inspiration for the selections that were made and help to anchor the design of the home to its place. The painted stucco surfaces, used primarily where facing adjacent buildings help to better integrate with the surrounding context, and the simple compositions of these facades would ease the transition between this structure and those surrounding it.

Finally, our landscape architect has incorporated large shade trees along the sidewalk to create a covered canopy for pedestrians. The green walls and water feature facing the street also lend to the interactive street experience.

#### IV. **Sea Level Rise/Resiliency**

The demolition and redevelopment will comply with all applicable requirements of the recently enacted Section 133-50(a) of the LDRs. Each item is addressed below:

1. All equipment, appliances and metal will be salvaged for recycling. All other materials will be sorted and disposed of at a licensed C&D facility/landfill.
2. All windows and doors will be impact and comply with the FBC and Miami-Dade County standards.
3. The new home will include operable windows, icynene insulation and extensive open balconies for indoor/outdoor living.
4. All landscaping will be native, salt tolerant and highly water absorbent. *See*, landscape plan.
5. In developing the proper elevations and design of the home, sea level rise projections and the South Florida Regional Climate Change Compact were considered.
6. In establishing the ground and first level floor elevations, the architects reviewed and considered all existing and proposed City plans for raising adjacent public rights-of-way.

7. All critical mechanical and electrical equipment will be elevated well above BFE plus Freeboard, including HVAC, generator, natural and propane gas connections, tankless water heaters and electric switch panels.

8. There are no existing buildings to be elevated. The new home will be elevated at BFE plus Freeboard.

9. No habitable space shall be located below BFE.

10. All stormwater will be retained on site per the FBC and environmental regulations.

V. **Economic Hardship**

Section 118-564(c) of the LDRs provides that the HPB may vary or modify the requirements under Section 118 for development within the District. This relief is appropriate and justified where strict enforcement of the regulations will result in economic hardship on the owner. We have furnished the required Affidavit with the essential facts and testimony supporting the fact that strict enforcement will most certainly result in an extreme economic hardship.

In short, the Property as it is currently configured is a legal non-confirming lot; however, should the City determine otherwise and require variances of the lot size and frontage requirements, the HPB would be compelled to waive strict enforcement. Otherwise, the Property will have no use and we will incur a complete and total economic loss in excess of \$1,000,000. The Building itself is a non-confirming structure and because of its condition, including the substandard elevation, it has lost its legal status and cannot be repaired or restored under any of the applicable codes. Should the City deny the proposed demolition, it would leave us with no habitable building or use of the Property and we would incur an economic loss of over \$1,000,000.

VI. **Conclusion**

We purchased the Property with the intent to make it our home and contribute to the vibrancy and success of the South of Fifth community. We recognize that contributing buildings lend character to the District; however, the passage of time, development, new laws, the environment and casualty have made it impossible for the Building to any longer contribute to the District's character. In fact, it has become a dangerous nuisance and reflects negatively on the entire neighborhood.

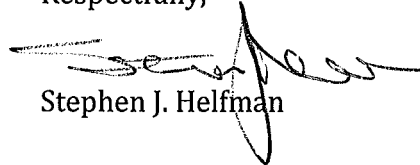
Recognizing the hard reality of the circumstances, we hope that the community, our neighbors, City staff and the HPB will help promote the revitalization of the District by approving



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our proposal which will undoubtedly enhance the daily enjoyment of the neighborhood by all. We respectfully request favorable action on our proposal, which will provide a building that proudly adds to the special character of the area.

Respectfully,



Stephen J. Helfman



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