

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: March 12, 2018

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: HPB17-0166, **534 Washington Avenue.**

The applicant, 536 Washington, LLC, is requesting variances to reduce the interior side setback required to install air conditioning equipment within the north and south side yards.

STAFF RECOMMENDATION

Approval of the variances.

BACKGROUND

On February 13, 2018, the Board reviewed and continued the subject application to a date certain of March 12, 2018.

EXISTING STRUCTURE

Local Historic District:	Ocean Beach
Status:	Contributing
Original Architect:	Henry Hohauser
Construction Date:	1939

ZONING / SITE DATA

Legal Description:	Lot 4, Block 48 of "Ocean Beach Addition No.3", According to the Plat Thereof, as Recorded in Plat Book 2, at Page 81 of the Public Records of Miami-Dade County.
Zoning:	CPS-2 (General Mixed-Use Commercial)
Future Land Use:	CPS-2 (Residential, Medium Intensity)
Lot Size:	11,500 S.F. (Max FAR = 2.0)
Existing FAR:	14,658 S.F. / 1.27 FAR
Existing Use:	Hotel w/accessory commercial use

THE PROJECT

The applicant has submitted plans entitled "Fashion Boutique Hotel" as prepared by Mendez Professional Engineering Corp., signed and sealed November 6, 2017.

The applicant is requesting variances for the installation of new air conditioning equipment along the north and south sides of the property.

The applicant is requesting the following variance(s):

1. A variance to reduce by 4'-0" the minimum required interior side setback of 7'-6" for mechanical equipment in order to install twenty-two (22) air conditioning units on the north side yard at 3'-6" from the property line.
2. A variance to reduce by 4'-0" the minimum required interior side setback of 7'-6" for mechanical equipment in order to install twenty-six (26) air conditioning units on the south side yard at 3'-6" from the property line.

- Variances requested from:

Sec. 142-1132. Allowable encroachments within required yards.

(f) Central air conditioners, emergency generators and other mechanical equipment. Accessory central air conditioners, generators and any other mechanical equipment, including attached screening elements, may occupy a required side or rear yard, in single-family, townhome, or in the RM-1 residential multifamily low intensity districts, provided that:

(1) They are not closer than five feet to a rear or interior side lot line or ten feet to a side lot line facing a street.

(2) The maximum height of the equipment including attached screening elements, shall not exceed five feet above current flood elevation, with a maximum height not to exceed ten feet above grade, as defined in subsection 114-1, of the lot at which they are located.

(3) If visible from the right-of-way, physical and/or landscape screening shall be required.

(4) Any required sound buffering equipment is located outside the minimum five-foot yard area specified in subsection (f)(1) of this section.

(5) If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), (3), and (4) above, then such equipment shall follow the setbacks of the main structure.

The existing building has a non-conforming side setback of 5'-0" on the north and south sides where 7'-6" is the required based on today's Code. The applicant is proposing the installation of 48 new air conditioning units attached to the building walls on both sides. The units will be elevated and supported by metal brackets. There are some air conditioning units installed without the appropriate approved permits and some wall units that still exist in the building. Because the building was constructed with non-conforming setbacks, the installation of air conditioning equipment at the required 5'-0" setback would not be possible. Although the units could technically also be placed on the existing roof; they would also have to be screened from view which will add roof load to the existing structure in addition to the units themselves. Further, since the previous meeting, a structural engineer's letter has been submitted indicating that the location of the 48 units on the roof may compromise the structural integrity of the building.

Based on the physical location of the building with non-conforming setbacks and the retention of the existing structure and the professional letter submitted, staff finds that the variances requested satisfy the practical difficulties criteria for the granting of the variances requested. The location and relatively small size of the units would not negatively impact the historic character of the building as their visibility from the street would be minimal or non-existent. Based on this analysis, staff recommends that the Board approve the variances as requested.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application satisfy 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.

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 subject site contains the Contributing 'Henry Hotel', constructed in 1939 with 50 rooms. As originally constructed, the building apparently did not have air conditioning equipment and wall mounted units were installed sometime in the past. The building has been under renovation throughout the years with a new roof and other interior and exterior work, as per Building Department records. The applicant is proposing the replacement of the existing air conditioning wall units with smaller units attached to the building walls. As the side setbacks of the building are only 5 feet, the equipment does not comply with the minimum setback of 7'-6" required by the City Code. Based on the existing constraints for the property and letter submitted by a structural engineer, there is no other suitable place to install the air conditioning units and comply with at least a 5 (five) foot setback from the property lines.

Based on the reduced setbacks and the retention and renovation of the existing contributing building, staff is supportive of the variances conditioned to the addition of landscape material abutting the residential property to the south, which should be installed to mitigate noise spillage onto the adjacent property. In addition, in the event Code Compliance receives complaints of unreasonably loud noise from the mechanical equipment, and determines the complaints to be valid, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, in a manner to be reviewed and approved by staff.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application for variances be **approved**, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Practical Difficulty and Hardship criteria.

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HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: March 12, 2018

FILE NO: HPB17-0166

PROPERTY: 534 Washington Avenue

APPLICANT: 536 Washington, LLC

LEGAL: Lot 4, Block 48 of "Ocean Beach Addition No.3", According to the Plat Thereof, as Recorded in Plat Book 2, at Page 81 of the Public Records of Miami-Dade County, Florida.

IN RE: The application for variances to reduce the interior side setback required to install air conditioning equipment within the north and south side yards.

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):

1. A variance to reduce by 4'-0" the minimum required interior side setback of 7'-6" for mechanical equipment in order to install twenty-two (22) air conditioning units on the north side yard at 3'-6" from the property line.
2. A variance to reduce by 4'-0" the minimum required interior side setback of 7'-6" for mechanical equipment in order to install twenty-six (26) air conditioning units on the south side yard at 3'-6" from the property line.

B. The applicant has submitted plans and documents with the application that also indicate the following, 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 **Approves** the requested variance(s) 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.
2. All air conditioning equipment shall be screened from public view, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
3. Applicant agrees that in the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, in a manner to be reviewed and approved by staff.
4. A revised landscape plan, and corresponding site plan, shall be submitted to and approved staff, prior to the issuance of a building permit. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated. At a minimum, such plan shall incorporate the following:
 - a. Hedge material with a minimum height of 8 feet at the time of installation along the property line and extending toward the east and west side shall be provided, in a manner to be reviewed and approved by staff. The

height of the plant material at the time of planting may be modified at the discretion of staff depending upon the plant material.

- b. 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.

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. Certificate of Appropriateness' and 'II. Variances' noted above.

- A. 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.
- B. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- C. 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.
- D. 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.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- F. 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 Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans "Fashion Boutique Hotel" as prepared by Mendez Professional Engineering Corp., signed and sealed November 6, 2017, and as approved by the Historic Preservation 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 set forth in this Order. No building permit may be issued unless and until all 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 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 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 Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project should 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 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

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Meeting Date: March 12, 2018

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 _____ ()

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