

January 30, 2019

By Hand and Electronic Mail

Rafael E. Granado, Esq.
City Clerk
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Re: MOTION TO REMAND TO SUPPLEMENT THE RECORD
Appeal to the City Commission — DRB 18-0226
Continuum on South Beach, South Tower Condominium
100 South Pointe Drive, Miami Beach, FL 33139

Mr. Granado:

On behalf of our client, Continuum on South Beach, The South Tower Condominium Association, Inc., and in connection with the above-referenced appeal, we enclose ten bounded copies of Petitioner's Motion to Remand to Supplement the Record. Please distribute the enclosed documents to the City Commission and the City Attorney's Office, consistent with standard practice.

We respectfully request that the City Commission hear the enclosed motion as part of the companion appeal on February 13, 2019, at 3:00 p.m., as scheduled.

Thank you.

Sincerely,



Kristofer D. Machado

Enclosures

cc: Raul J. Aguila, Esq.

MIAMI BEACH CITY COMMISSION
FILE NO. 2018-001

APPEAL OF DESIGN REVIEW BOARD
ORDER NO. DRB 18-0226

CONTINUUM ON SOUTH BEACH,
SOUTH TOWER CONDOMINIUM,
100 SOUTH POINTE DRIVE,
MIAMI BEACH, FL 33139

CONTINUUM ON SOUTH BEACH,
THE SOUTH TOWER CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

vs.

CITY OF MIAMI BEACH DESIGN REVIEW
BOARD,

Respondent.

_____ /

PETITIONER'S MOTION TO REMAND TO SUPPLEMENT THE RECORD

AKERMAN LLP

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Counsel for Petitioner

INTRODUCTION

The Association has appealed the decision of the Design Review Board denying the Association's request to remove certain defective and dangerous metal panels that were taped to the South Tower's tempered glass balcony railings during the building's construction. The DRB denied the Association's application even though the unsafe panels were *not* part of the South Tower's original design, were *not* shown on the DRB-approved plans, and were *not* required by the DRB orders that approved the design of the South Tower.

Since filing its appeal, the Association learned that the DRB—a mere two months after denying the Association's application and rehearing request—approved a virtually identical application for the Murano at Portofino Condominium, located at 1000 South Pointe Drive, just a few blocks from the Continuum South Tower. Murano, like the Association, sought design approval to permanently remove metal panels that were taped to the Murano's tempered glass balcony railings. Unlike the Association, however, the Murano's panels *were* required by the DRB order that approved the design of the Murano Condominium. While the DRB *denied* the Association's application and also *denied* a rehearing, the DRB *approved* Murano's application unanimously in a hearing lasting but a few minutes.

This disparate, unequal treatment raises equal protection and other serious legal concerns on a matter of public safety and citywide importance. To redress these legal deficiencies and to avoid future potential litigation, the Association respectfully requests that the City Commission ***remand*** this matter to the DRB ***and direct*** that they supplement the record and consider additional evidence, in light of their Murano decision, as to why the Association's defective metal panels should also be permanently removed.

BACKGROUND

Last year, the Association and the Murano Condominium filed virtually identical design review applications with the DRB, seeking to cure the same ailment.¹ The two applications are indistinguishable in every essential respect:

- Both the Continuum South Tower and the Murano are multistory residential towers in the city's South Pointe neighborhood, overlooking Government Cut.
- Both towers were constructed in the late 1990s with the involvement of Fullerton Diaz Architects Inc.
- Both towers were built with tempered glass balcony railings with metal panels taped to the lower portion of the glass to give the effect of a horizontal band.
- Both towers have been beset by falling panels that detach from the balcony railings without warning and tumble several stories to the ground below, posing grave life-safety hazards.

¹ See the Association's briefs and Appendix, on file with the City Clerk; *see also* the Murano's Letter of Intent dated July 31, 2018, the City's Staff Report dated December 4, 2018, and DRB Order 18-0276, all enclosed as ***Exhibit A***.

- Both towers petitioned the DRB for design approval to remove the defective metal panels and leave their balcony railings in clear glass on all façades to ensure the safety of residents, visitors, and the general public.

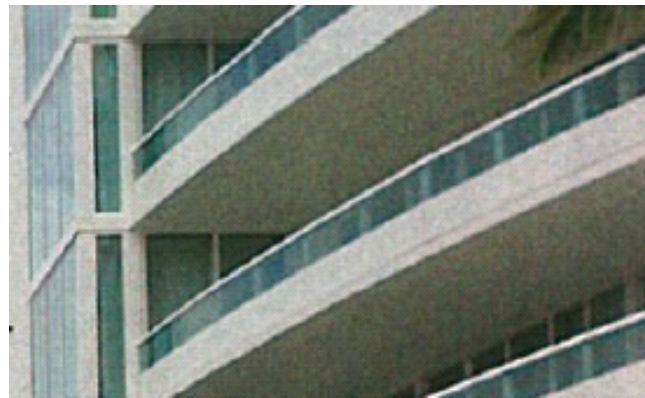
In fact, the *only* essential difference between the applications is that *the Murano’s original DRB approval expressly required the installation of the metal panels, while the Continuum’s panels were not required by the original DRB approval*, but instead were added after the fact as a value-engineering substitute for the approved balcony railing design. Yet, despite the obvious and overwhelming similarities between the two applications—and the Association’s superior claim to relief—the DRB approved only the Murano’s application, denying the Association’s original application as well as its request for a rehearing, as summarized below.

Summary of Continuum and Murano Applications

	Continuum	Murano
Address	100 South Pointe Drive	1000 South Pointe Drive
Architect	Fullerton Diaz; Skidmore Owings & Merrill	Fullerton Diaz; Sieger Suárez
Original DRB Approval	1998	1999
Balcony Railing Condition	Glass railings with metal panels affixed to the glass	Glass railings with metal panels affixed to the glass
2018 Request	“Remove existing metal panels along the glass balcony railings on all elevations of the building and retain all clear glass railings”	“Remove existing metal panels along the glass balcony railings on all elevations of the building and retain all clear glass railings”
Were the metal balcony panels <i>required</i> by the original DRB approval?	No	Yes
Result	Denied; Rehearing Denied	Approved Unanimously



Continuum’s Balconies



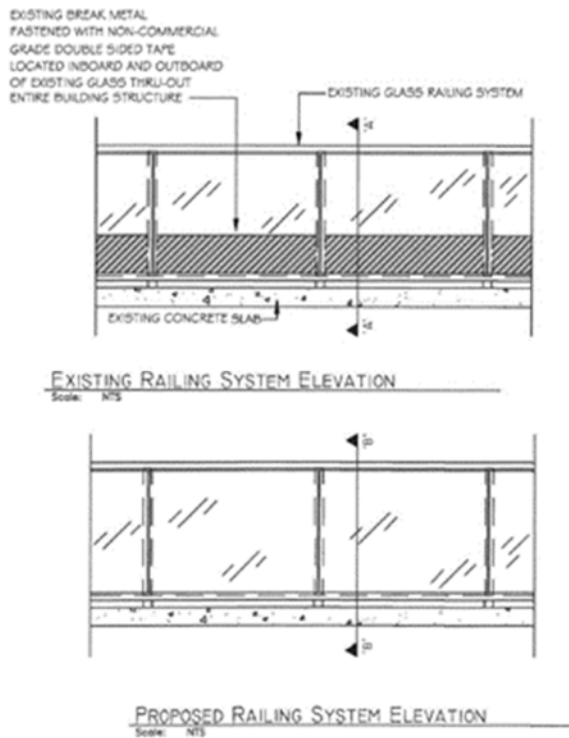
Murano’s Balconies



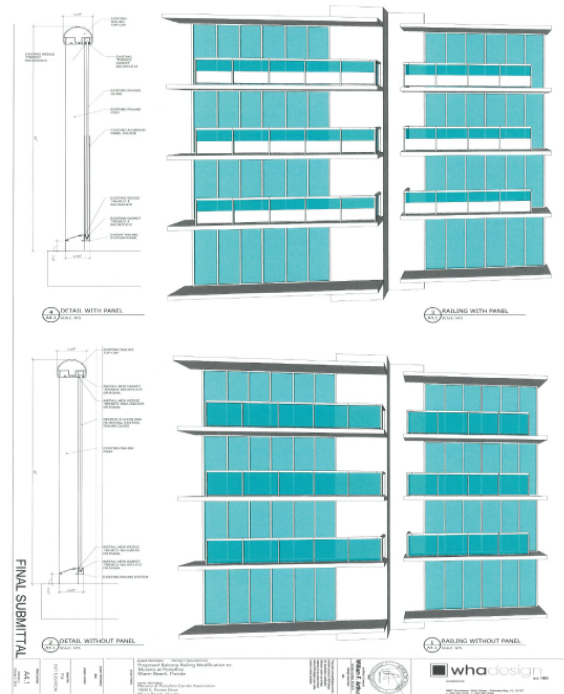
Continuum



Murano



Continuum's Panel Removal Proposal



Murano's Panel Removal Proposal

The DRB's unequal treatment of the Continuum and Murano applications raises equal protection and other serious legal concerns on a matter of public safety and citywide importance. By law, the DRB must apply its design review criteria consistently and uniformly, *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001), and it *cannot* treat similar applicants differently on a whim. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985). The same is true whether the unequal treatment affects an entire class or—as here—a single applicant. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *State v. Robinson*, 873 So. 2d 1205, 1209 n.2 (Fla. 2004).

That the DRB approved the Murano's application, but twice denied the Association's essentially identical application, suggests that the Association has been singled out and treated differently from other similarly situated properties, denying the Association its constitutional right to equal protection. *Olech*, 528 U.S. at 564-65. The DRB's inequitable treatment of these two virtually identical applications also raises serious questions as to whether the DRB violated 42 U.S.C. § 1983, the federal Civil Rights Act, which provides legal redress for deprivation of rights, privileges, and immunities secured by law. *City Nat'l Bank of Fla. v. City of Tampa*, 67 So. 3d 293, 297 (Fla. 2d DCA 2011) ("A claim that a party's equal protection rights have been violated during the zoning process is cognizable pursuant to section 1983").

REQUEST

The City Commission has the power to remand cases to the DRB with direction to hold a new hearing to consider new evidence. *Sec. 118-9(c)(4), City Code*. Accordingly, to redress the legal deficiencies inherent in the DRB's decision and to avoid future potential litigation, the Association respectfully requests that the City Commission **remand** this matter to the DRB **and direct** that they supplement the record and consider additional evidence, in light of their Murano decision, as to why the Association's defective metal panels should be permanently removed.

Respectfully submitted,

AKERMAN LLP

By: /s/ Neisen O. Kasdin

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Phone: 305.374.5600
Fax: 305.374.5095

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the individuals listed below by e-mail generated this 30th day of January 2019.

Raul J. Aguila, City Attorney
Eve A. Boutsis, Chief Deputy City Attorney
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City of Miami Beach
1700 Convention Center Drive
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RaulAguila@miamibeachfl.gov
EveBoutsis@miamibeachfl.gov
Counsel for Respondent,
City of Miami Beach
Design Review Board

Rafael E. Granado, City Clerk
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RafaelGranado@miamibeachfl.gov

By: /s/ Neisen O. Kasdin
Neisen O. Kasdin

EXHIBIT A

Murano Case Documents



BERCOW RADELL FERNANDEZ & LARKIN

ZONING, LAND USE AND ENVIRONMENTAL LAW

DIRECT LINE: (305) 377-6238
E-Mail: mmarrero@BRZoningLaw.com

VIA E-MAIL AND HAND-DELIVERY

July 31, 2018

Thomas Mooney, Planning Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Letter of Intent for a Request to Modify DRB Order No. 11468 as Related to the Design of the Balconies due to Life Safety Concerns Related to the Property Located 1000 S. Pointe Drive in Miami Beach, Florida

Dear Tom:

As you know, this law firm represents the Murano at Portofino Condominium Association, Inc. (the "Applicant"), in connection with the property located at 1000 S. Pointe Drive in Miami Beach, Florida ("Property"). Please allow the following to serve as the required letter of intent in connection with the request to modify Design Review Board ("DRB") Order No. 11468, which approved the original design of the existing multi-family structure to allow for modification to the balcony design due to life safety concerns.

Description of the Property. The Property is located on a waterfront parcel on Alton Road, just south of 1st Street. See Exhibit A. The Property is generally identified by Miami-Dade County Folio No. 02-4203-251-0001; however, each individual unit also has been given its own Folio No. due to the condominium form of ownership. See Exhibit B. The Property is located within the CPS-4 zoning district. The Property, which was built in 2001, consists of approximately 189 residential units and certain amenities, encased within a 37-story structure.

The design of the Property was previously and originally approved by the DRB in July 1999 via DRB Order No. 11468. See Exhibit C. The design of the Property's glass balcony panels with white metal paneling was encompassed in this development approval.

Thomas Mooney, Planning Director
July 31, 2018
Page 2 of 2

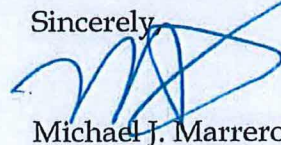
Description of the Request. Recently, the previously approved white metal panels have come to be unglued from the glass balcony panels due to natural causes, triggering the panels to fall off the balconies without warning. After numerous inspections and meetings, it was determined that the balcony condition was not only unsound, but posed an imminent life safety threat. Due the life safety concerns caused by the metal panels spontaneously falling off the balconies, the City issued Building Permit No. B1602380 to remove the glass panels from the balcony rails to detach metal panels, then clean and re-install the glass with new gaskets, subject to application to the DRB for approval of the modified balcony design by May 9, 2016. See Exhibit D. Due to the imminent danger posed by the Property's condition, the panels had to be removed prior to the DRB's approval. Nevertheless, the Applicant is seeking approval for the glass balcony design, without white paneling, in accordance with the building permit condition.

More relevant, however, is whether the design of the building relies on these panels for its architectural integrity. The Applicant's architectural analysis of the design with or without the inclusion of the panels indicates that it does not. The Applicant has been diligently worked to remove the metal panels from the Property balconies in accordance with the aforementioned building permit. The current request would include the removal of Condition 1(K) from the previously approved DRB Final Order No. 11468.

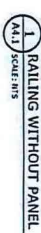
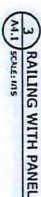
Conclusion. While the Applicant works to preserve the previously approved design of the Property, it must also preserve life safety above all else. The Applicant has taken every measure to remove the paneling in accordance with the aforementioned building permit. In accordance with the building permit conditions, the Applicant seeks to modify DRB Order No. 11468 to permit the modified balcony design, which will only consist of glass balcony panels. The Property, its residents, and others strolling in the vicinity of the Property will greatly benefit from the removal of the hazardous metal balcony panels, as well as benefit from the safer, proposed design.

Pursuant to the aforementioned, we respectfully request your recommendation of approval of the Applicant's request. If you have any questions or comments with regard to the application, please do not hesitate to phone me at (305) 377-6238.

Sincerely,



Michael J. Marrero



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A4.1
SCALE: M15

These facts and specifications are the exclusive property of this design. Any reproduction, modification, distribution, or use of these materials for any purpose without written consent of the design is strictly prohibited.

 **whadesign**
est. 1992

ADMINISTRATIVE

8017 Fourteenth Hill Street, Phoenix, AZ 85018
480.443.3100 • 480.259.2068



DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: May 18, 1999

IN RE: The Application for Design Review Approval for the construction of a 37-story residential building, inclusive of a 435-space, three (3) story parking garage and thirteen (13) townhome units abutting the garage structure.

PROPERTY: Alton Road between Michigan Avenue and Biscayne Street - SSDI South

FILE NO: 11468

ORDER

The applicant, the Related Group of Florida, filed an application with the City of Miami Beach's Planning Department for Design Review approval.

The City of Miami Beach's Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which is part of the record for this matter:

- A. 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 not consistent with the Design Review Criteria Nos. 2, 4, 6, 7 & 14 in Section 118-251 of the Miami Beach Code.
- B. The project would be consistent with the afore-stated criteria and requirements if the following conditions are met:
 - 1. Revised site plan, floor plan and elevation drawings shall be submitted to and approved by staff; at a minimum, said drawings shall incorporate the following:
 - a. The exterior design of the southeast corner of the proposed structure shall be further studied and refined, in a manner to be approved by staff.

Agm
5-27-99

- b. The mechanical room located at the southeast corner of the proposed structure shall be replaced with active program and transparent windows.
- c. At least one (1) additional townhome shall be added to the south side of the proposed townhomes on the east side of the site, so as to fill-in a part of the open area and allow the area of the relocated mechanical room to be developed as an active program space with transparent windows and a courtyard area south of the townhouses.
- d. All townhomes on the east side of the site shall be moved forward, with a maximum twenty (20') foot setback from the sidewalk along Alton Road; the devising courtyard wall system shall be brought forward so as to be generally five (5)' feet from the front property line.
- e. All townhome units on the east and west sides of the site shall be made more prominent by better defining the entrances, as well as the two-story height.
- f. The proposed entrance drive-way on the south side of the site shall be moved substantially northward in order to allow for a substantially larger and fully segregated pedestrian accessway to the sunset plaza and baywalk.
- g. The two (2) circular driveways on the south side of the site shall be combined into one (1) larger oval driveway.
- h. On-Street parallel parking spaces shall be required on the west side of Alton Road, fronting the sidewalk of the subject site, to the extent permitted by all applicable traffic analysis.
- i. The tennis courts on the roof shall be screened or relocated in a manner so as not to be visible from the street below.
- j. The final layout, design, pedestrian and vehicular circulation pattern, and surface finishes for the proposed "sunset" plaza on the south side of the site shall be brought back before the Board, prior to the issuance of a Building Permit for the project.
- k. The proportions of glass and white aluminum on balconies shall comport approximately with the proportions shown on Exhibit "A",

Apr 5-27-99

submitted at the meeting.

- l. Direct access to the roof deck of the parking garage from the townhomes shall be explored by the applicant and may be approved by staff.
 - m. The final design and detailing of the proposed front canopy, as well as all other peripheral design features, shall be further developed and refined, in a manner to be approved by staff.
2. A revised landscape plan, and corresponding site plan, prepared by a Professional, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated; at a minimum, said plan shall incorporate the following:
 - a. All exterior walkways shall consist of decorative pavers, set in sand or other semi-pervious material, subject to the review and approval of staff.
 - b. All landscape areas shall be defined by continuous concrete curb.
 - c. 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.
 - d. Continuous shade canopy shall be provided on the north side of the property, in a manner to be approved by staff.
3. The final exterior surface finish and color scheme, including glass color samples, shall be submitted; the base of the proposed structure shall consist of a variation of flat white, off-white or light grey.
4. All building signage shall be consistent in type, composed of flush mounted, non-plastic individual letters and shall require a separate permit.
5. The project shall meet all level of service requirements pursuant to the City's Comprehensive Plan and the Development of Regional Impact (DRI) Development Order conditions of approval to mitigate any negative impacts.
6. Manufacturers drawings and Dade County product approval numbers for all new windows, doors and glass shall be required, prior to the issuance

of a building permit.

7. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.
8. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).
9. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which is part of the record for this matter and the staff report and analysis, which is adopted herein, including the staff recommendations which were amended by the Board, that the Application for Design Review approval is granted for the above-referenced project subject to those certain conditions specified in paragraph B of the Findings of Fact hereof (conditions #1-9, inclusive), to which the applicant has agreed.

No building permit may be issued unless and until all conditions of approval as set forth herein have been met. The issuance of Design Review approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including zoning approval. If adequate handicapped access is not provided, this approval does not mean that such handicapped access is not required or that the Board supports an applicant's effort to seek waivers relating to handicapped accessibility requirements.

When requesting a building permit, three (3) sets of plans approved by the Board, modified in accordance with the above conditions, as well as annotated floor plans which clearly delineate the Floor Area Ratio (FAR) calculations for the project, shall be submitted to the Planning Department. If all of the above-specified conditions are satisfactorily addressed, the plans will be reviewed for building permit approval. Two (2) sets will be returned to you for submission for a building permit and one (1) set will be retained for the Design Review Board's file. If the Full Building Permit is not issued

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5-27-97

within one (1) year of the rendition of this Order and construction does not commence within two (2) years of the rendition of this Order, and continue diligently through completion, the Design Review approval will expire and become null and void.

Dated this 27 day of MAY, 1999.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

By: _____

Arthur J. Therman
Chairperson

Approved as to Form: _____

af 5/21/99
Office of the City Attorney (Initials/Date)

Final Order filed and in possession of the Clerk of the Board:

af 5/27/99
Clerk of the Design Review Board
(Initials/Date)

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PLANNING AND ZONING
MAY 27 PM 1:55

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: December 04, 2018

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB18-0276
1000 South Pointe Drive – Murano at Portofino Condominium

DRB18-0276, 1000 South Pointe Drive—Murano at Portofino. The applicant, Murano at Portofino Condominium Association Inc, is requesting exterior design modifications to façades of an existing 37-story building to remove existing metal panels along the glass balcony railings on all elevations of the building and retain all clear glass railings. Additionally, the applicant is requesting the deletion of a condition of the Final Order. This item was originally approved in 1999, pursuant to DRB File No. 11468.

Recommendation:

Approval with conditions

LEGAL DESCRIPTION:

See attached "Exhibit A"

HISTORY:

On May 18, 1999, the Design Review Board approved an application for the construction of a 37-story residential building inclusive of 435-space, three-story garage and 13 townhouses, pursuant to DRB File No. 11468.

SITE DATA:

Zoning: CPS-4
Future Land Use: CPS-4

NEIGHBORING PROPERTIES:

East: Marea (5-story)
North: Yacht Club At Portofino (34-story)
South: Biscayne Bay/South Pointe Park
West: Biscayne Bay

EXISTING STRUCTURE:

37-story multifamily building (2001 The Sieger Suarez Architectural Partnership)

THE PROJECT:

The applicant has submitted plans and renderings entitled "Design Review Board Renovations to: Murano at Portofino Balcony Railings", as prepared by whadesign; signed, sealed and dated October 03 2018.

The applicant is seeking to remove decorative kick-plate metal panels from all of the glass panels of the balcony railing system.

The applicant is proposing to delete the following condition of the May 18 1999, Final Order:

Condition B.1(k): The proportions of glass and white aluminum on balconies shall comport approximately with the proportions shown on Exhibit "A", submitted at the meeting.

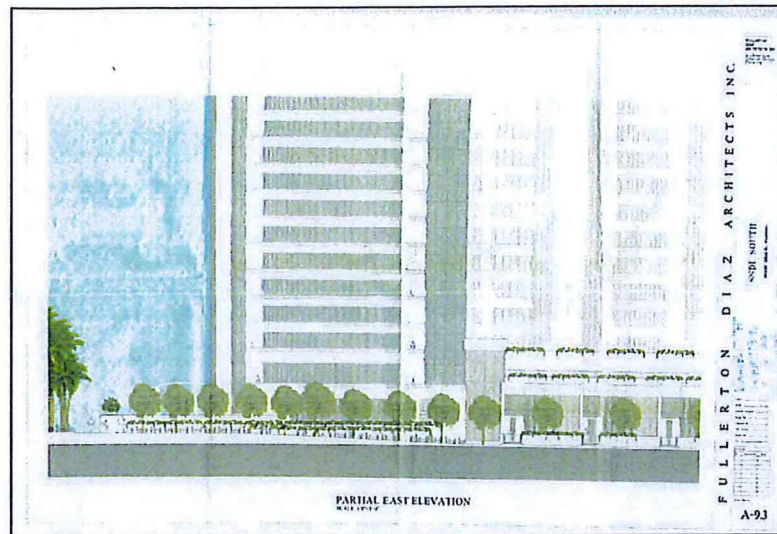


Exhibit "A"

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the City Code. 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 DESIGN REVIEW CRITERIA:

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Not Applicable
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
Not Applicable
3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
Not Applicable

4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Satisfied; the existing metal panels affixed to the balconies are not an integral part of the exterior design of the building.
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Satisfied; the existing metal panels affixed to the balconies are not an integral part of the exterior design of the building.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Satisfied; the existing metal panels affixed to the balconies are not an integral part of the exterior design of the building.
7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.
Not Applicable
8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.
Not Applicable
9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.
Not Applicable
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.
Not Applicable
11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.
Not Applicable

12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

Not Applicable

13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

Not Applicable

14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Not Applicable

15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

Not Applicable

16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

Not Applicable

17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

Not Applicable

18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the city Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.

Not Applicable

19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

Not Satisfied; see below

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 Satisfied

A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department.

- (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
While the site is currently built-out, the applicant is proposing to remodel the existing balconies.
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
Not Applicable
While the site is currently built-out, the applicant is proposing to remodel the existing balconies.
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
Not Applicable
While the site is currently built-out, the applicant is proposing to remodel the existing balconies.
- (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
The proposal does not include any habitable space located below the base flood elevation.
- (10) Where feasible and appropriate, water retention systems shall be provided.
Not Applicable
While the site is currently built-out, the applicant is proposing to remodel the existing balconies.

STAFF ANALYSIS:
DESIGN REVIEW

The applicant is proposing exterior façade modifications to existing balconies of the 37-story Murano at Portofino bayfront tower. Specifically, the applicant is requesting an after-the-fact design approval to allow for the all-glass railings, where previously the glass railings were affixed with lower metal panels to both sides. The white metal panels had originally occupied half of the 42" high railing systems and are found throughout the exterior balconies on all elevations.



Exterior Images of the falling adhesive of the panels

A permit for emergency railing repair was approved by the City under Building Permit No. B1602380. The removal of the metal panels was a life safety concern as the panels were "falling off the building" at random locations and areas. A notation by the Planning Department was added that the applicant would be required to appear before the Design Review Board (DRB) should the applicant not reinstall new panels to match the original configuration. Due to life safety concerns, the permit was issued to remove the glass panels from the balcony railing system, to detach the metal panels mounted with industrial adhesive to both sides of the glass. Once the "kick plate" break panels are removed and the gaskets replaced, the glass panels are to be cleaned, prepared, and reinstalled within the balcony framing systems with the existing cap top railing to remain. This approved permit was subject to an application to the DRB for approval of the modified balcony design by May 09, 2016, which the applicant failed to do.

The original design of the balcony and rail continued the banding of the floor slabs at each of the building's 37 floors with a white painted balcony slab edge. The architectural metal panels were added by way of the introduction of an exhibit at the meeting. The metal panels, in conjunction with the white stucco balcony slab, are not a critical component of the architectural design. The thickness of the white stucco balcony slab is equal to the wall banding that runs along the floor levels of each façade, effectively continuing the horizontal movement of the architecture unaccompanied. In fact, the metal panels, covering nearly half

of the face of the glass panel, disrupt the architecture. Staff maintains that the design of the building does not rely of the applied metal panels for its architectural integrity.



As evidenced in the elevations, the direct application of the white aluminum panels onto the balcony railings do not accentuate the horizontality of the architecture, nor does the paneling align geometrically with the exterior glazing and concrete wall system. Further, there is no direct relationship with the visual alignment of the top of the balcony rails to the glass window system. The intent of the original design was to have full view windows, without horizontal mullion or transom window systems, to pick up the horizontal lines of the architecture. Moreover, there doesn't exist a relationship between the top or the bottom (of the panels) that carries the visual direction across the horizontal datum of the architecture.



As enumerated in the 1999 final order for the project, "*Condition B.1(k): The proportions of glass and white aluminum on balconies shall comport approximately with the proportions shown on Exhibit "A", submitted at the meeting.*" Based on the analysis above, staff is supportive of the deletion of Condition B.1(k) in the recorded Final Order.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **approved**, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review and Sea Level Rise criteria.

TRM/JGM

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DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: **December 04, 2018**

FILE NO: DRB18-0276

PROPERTY: **1000 South Pointe Drive –Murano at Portofino Condominium**

APPLICANT: Murano at Portofino Condominium Association Inc

LEGAL: See attached "Exhibit A"

IN RE: **The application requesting design modifications to façades of an existing 37-story building to remove existing metal panels along the glass balcony railings on all elevations of the building and retain all clear glass railings. Additionally, the applicant is requesting the deletion of a condition of the Final Order. This item was originally approved in 1999, pursuant to DRB File No. 11468.**

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 118-252(a) of the Miami Beach Code. 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 consistent with Design Review Criteria 19 in Section 118-251 of the Miami Beach Code.
- 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, 4, and 5 in Section 133-50(a) of the Miami Beach Code.
- D. The project would be consistent with the criteria and requirements of Section 118-251 and/or Section 133-50(a) if the following conditions are met:
 1. All of the original conditions of approval by this Board shall remain in full force and effect under the Final Order dated May 18, 1999 for DRB File No. 11468 except as modified herein:



Condition B.1(k): ~~The proportions of glass and white aluminum on balconies shall comport approximately with the proportions shown on Exhibit "A", submitted at the meeting.~~

2. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. On all elevations, all glass railings shall be permitted as proposed along the balconies.
 - b. Fully and carefully designed details for the proposed balconies shall be submitted; the method of railing connection to the slab, as well material finishes and dimensions shall be provided, in a manner to be reviewed and approved by staff.
 - c. Color samples for the glass railing shall be submitted for the review and approval of staff.
 - d. 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.
 - e. 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.

In accordance with Section 118-262, the applicant, or the city manager on behalf of the city administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the city commission, except that orders granting or denying a request for rehearing shall not be reviewed by the commission.

II. Variance(s)

- A. No variance(s) were filed as part of this application.

III. General Terms and Conditions applying to both 'I. Design Review Approval' and 'II. Variances' noted above.

- A. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- B. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- C. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.



- D. 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.
- E. 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.
- F. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- G. 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, entitled "Design Review Board Renovations to: Murano at Portofino Balcony Railings" as prepared by **whadesigns** signed, sealed and dated October 03 2018, 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 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.

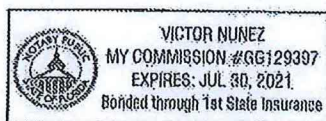
Dated this 06 day of December, 2018.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
JAMES G. MURPHY
CHIEF OF URBAN DESIGN
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this 7 day of December, 2018 by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



[Signature]
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: July 30, 2021

Approved As To Form:

City Attorney's Office: [Signature] (12/5/18)

Filed with the Clerk of the Design Review Board on [Signature] (12/7/18)

[Signature]

"Exhibit A"

MURANO AT PORTOFINO CONDO
PT OF N132FT SEC AKA TR A OR
SMITH BAY FRT TR BNDED ON N BY
N/L SEC E BY JEFF AVE S BY LINE
PAR TO & 132FT OF N/L & ON W BY
BAY & LOTS 1 TO 7 & SELY30FT
LOT 8 BLK 111 & PORT BISC ST-AVE
LYG WLY OF SLY PROJ OF W/R/W/L
JEFF AVE PB 2-81 LOT SIZE 172300
FAU 02-4210-000-0110

