

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: September 6, 2016

FROM: Thomas R. Mooney, AICP
Planning Director

MB for TRM

SUBJECT: DRB0716-0045 (a.k.a. DRB File No. 22841)
49 Collins Avenue

The applicant, Southpointe Heights II LLC, is requesting Design Review Approval for the construction of a generator pad and an after-the-fact variance to reduce the required rear setback.

RECOMMENDATION:

Approval of the After-the-Fact variance with conditions

LEGAL DESCRIPTION:

Lots 14 and 15, Block 1, of Ocean Beach Fl., According to the Plat Thereof, as recorded in Plat Book 2 at Page 38, of the Public Records of Miami-Dade County, Florida.

HISTORY:

On August 2, 2011, the Design Review Board approved a new four-story parking garage (DRB File No. 22841). Since that time, the applicant reworked portions of the building to include changes in plan, as well as some exterior changes to the elevations, but most notably replacing the previously approved robotic parking system with a more traditional mechanical lift system, which was approved on August 6, 2013. Additional modifications to the rooftop elements were approved on September 3, 2013.

On June 28, 2011, the Planning Board approved plans to redevelop an existing parking lot as a 4-level commercial main use robotic parking garage with ground floor retail and restaurant/commercial space (Planning Board File No. 2000). On November 19, 2013, the Planning Board approved modifications to the Conditional Use approval to change the previously approved robotic parking system to a mechanical lift system.

A building permit, B1405296, was approved on 2/17/16 in accordance with all the enumerated conditions within the Final Order(s).

SITE DATA:

Zoning:	CPS-1 (Limited Mixed-Use Commercial)
Future Land Use:	CPS-1 (Limited Mixed-Use Commercial)
Lot Size:	13,000 SF
Approved FAR:	0.59 / 7,695 SF as identified by the applicant (B1405296)
Maximum FAR:	1 / 13,000 SF
Approved Height:	40'-0" / 4-stories (B1405296)
Maximum Height:	40'-0" / 4-stories
Approved Uses:	
Parking Spaces:	181
Restaurant:	+/-7,078 SF / 240 seats (B1405296)

LAND USES:

East: CPS-1: 1-story commercial restaurant (defunct)
8-story residential building, 'One Ocean'
North: CPS-1: 5-story residential building w/ ground floor parking
South: CPS-1: 5-story residential building, 'One Ocean'
West: CPS-1: 3-story health care facility

THE PROJECT:

The applicant has submitted plans entitled "49 Collins: Generator Setback Variance" as prepared by **Urban Robot**, dated August 2, 2016.

The applicant is requesting Design Review Board approval for revisions to the approved plans for the construction of a generator pad and an after-the-fact variance to reduce the required rear setback.

The applicant is proposing the following variance(s):

1. An (AFTER THE FACT) variance to reduce by 3'-0" the minimum required rear setback of 3'-6" in order to construct a generator pad at 0'-6" setback from the rear property line.

- Variance requested from:

Sec. 142-699. - Setback requirements in the C-PS1, 2, 3, 4 districts.

(a) The setback requirements in the C-PS1, 2, 3, 4 districts are as follows:

REAR: 3'-6" for the Block 1 Properties

Structures in the C-PS1 district, and specifically the subject site which is part of the Block 1 properties, are required to be setback 3'-6" from the rear property line. The existing 4-story garage building will use mechanical parking lifts, which requires the installation of a back-up generator to allow the elevators to continue operating in case of a power outage. As provided by the applicant, original plans approved by the Board showed a generator located at the rear of the site, in a similar location as the existing generator, but with no referenced dimensions. The applicant obtained a building permit for a larger size generator that complied with the required rear setback. Subsequently, as noted in the applicant's hardship letter, the City's Fire Department and Florida Power and Light (FPL) required a generator with a larger pad than that originally designed, encroaching within the required rear yard. Because the generator concrete pad is required to be elevated to flood elevation + 1 foot (9.00' NGVD), the structure requires a rear setback variance. Grade elevation for the site is 6.37 NGVD which creates a difference of 2.6' to the required finish floor elevation of 9.00' NGVD. A typical at grade concrete slab would not require a setback variance, however, in this instance, the existing difference between grade and required elevation of the generator, create the practical difficulties that result in the variance requested. Based on this site condition, staff is supportive of the variance as requested.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of the requested variances if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

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.

CONSISTENCY WITH COMPREHENSIVE PLAN:

A preliminary review of the project indicates that the proposed **parking garage** is **consistent** with the Future Land Use Map of the 2025 Comprehensive Plan.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the City Code, aside from the requested variance. This shall not be considered final zoning review or approval. All zoning matters shall require final review and verification by the Zoning Administrator.

CONCURRENCY DETERMINATION:

In accordance with Chapter 122 of the Code of the City of Miami Beach, the Transportation and Concurrency Management Division has conducted a preliminary concurrency evaluation and determined that the project does meet the City's concurrency requirements and level-of-service standards. The City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division will make the determination of the project's fair-share mitigation cost.

A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance

of a Temporary Certificate of Occupancy or Certificate of Occupancy.

ACCESSIBILITY COMPLIANCE

Additional information will be required for a complete review for compliance with the Florida Building Code 2001 Edition, Section 11 (Florida Accessibility Code for Building Construction.) These and all accessibility matters shall require final review and verification by the Building Department 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.
Satisfied
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 Satisfied
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 satisfied
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
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.
Not Satisfied
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.
Not Satisfied
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 Satisfied

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.

Satisfied

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 Satisfied

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 Satisfied

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

STAFF ANALYSIS:

VARIANCE REVIEW

The applicant is requesting an after-the-fact variance to retain an emergency generator within the required east rear yard. The property contains a recently constructed modern four-story main use parking garage that utilizes automobile elevators and mechanical parking lifts for the stalls. As required for the specific use, a back-up generator is an on-site requirement in order to ensure the continued operation in the event of a power outage. From concept through permitting, the generator has consistently been planned to be located along the rear of the building, abutting the alley.

The installed location, along the alley, is well suited for the generator as similar “back of house” operations serve the surrounding properties. It must be noted that the original master permit referenced as #B1405296 in the City’s previous permitting system, depicted the generator and associated pad setback 3’-10” from the rear property line, comporting with the zoning requirements. Traditionally, a sub-permit for a generator—noted as a ‘BG’ permit—would have been required to be applied for by the applicant and reviewed by the necessary disciplines. Effective last month, the City’s department-wide permitting system has been overhauled and switched from ‘Permits Plus’ system to ‘Energov’ system. In this transition, the applicant was not required to obtain a ‘BG’ (mechanical generator) permit but instead applied for an ‘ELC’ (electrical) permit, #ELC0616-0276. This permit was reviewed and approved by the applicant’s generator subcontractor and installed accordingly. Unfortunately, the generator itself required a larger generator pad than originally thought, reducing the original setback from 3’-10” to 0’-6” thus requiring a variance due to the elevated location of the base. The generator itself complies with the setback requirements. As noted in the project portion of this report, the difference between grade elevation and required elevation for the generator creates the practical difficulties that justify the variance requested.

Further, the applicant has worked with staff to remedy and mitigate the oversized generator and, with the exception of the voluntarily installation of an 8’-0” high clusia hedge to obscure the generator pad along the southern property line, has exhausted options.

In this instance, staff recommends approval of the variance request.

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 criteria and Practical Difficulty and Hardship criteria.

TRM/JGM

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: September 6, 2016

FILE NO: DRB0716-0045 (a.k.a. DRB File No. 22841)

APPLICANT: Southpointe Heights II LLC

PROPERTY: **49 Collins Avenue**

LEGAL: Lots 14 and 15, Block 1, of Ocean Beach Fl., According to the Plat Thereof, as recorded in Plat Book 2 at Page 38, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for the construction of a generator pad and an after-the-fact variance to reduce the required rear setback.

SUPPLEMENTAL 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 Approval

- 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 inconsistent with Design Review Criteria 2, 3, 5, 6, 7, 11 and 12 in Section 118-251 of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-251 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 prior DRB File No. 22841 Final Order dated August 6, 2013, except as modified herein.
 - 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. The final details of all exterior surface finishes and materials, including samples, shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

- b. 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.
- c. 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. The applicant filed an application with the Planning Department for the following variance(s):
 - 1. An (AFTER THE FACT) variance to reduce by 3'-0" the minimum required rear setback of 3'-6" in order to construct a generator pad at 0'-6" setback from the rear property line.

- B. The applicant has submitted plans and documents with the application that 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.

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 grants the requested variance(s) and imposes the following conditions 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. Except in the case of a true power outage for the property, the generator shall not be utilized or run, including for any required testing or repairs between 5 pm and 10 am.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

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

- A. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- B. The Supplemental 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 Supplemental 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 City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the **application** is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Finding of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "49 Collins: Generator Setback Variance" as prepared by **Urban Robot**, dated August 2, 2016, and as approved by the Design Review Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board approved plans, this approval does not mean that such handicapped access is not required. When requesting Building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by 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 shall expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 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_____.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
DEBORAH J. TACKETT
DESIGN AND PRESERVATION MANAGER

