CFN: 20190681439 BOOK 31670 PAGE 2960
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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: October 02, 2019

FILE NO: DRB19-0407

PROPERTY: **7125-7145 Carlyle Avenue, 7100-7144 Byron Avenue and 527 71st Street**

APPLICANT: KGTC LLC

LEGAL: See attached "Exhibit A"

IN RE: An application has been filed requesting Design Review Approval for the construction of a new multistory mixed-use residential and retail development, including one or more waivers and variances to exceed the maximum allowable encroachment in required yards, to exceed the maximum building height, and to reduce the required setbacks, to replace seven one- and two-story existing buildings. This project is proposed to take place in two (2) phases as a phased development project

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 inconsistent with Design Review Criteria 1, 2, 3, 4, 5, 6, 9, 12, and 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 the Sea Level Rise Criteria 1, 10, 11, and 12 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. The Phased Development plan shall be approved as proposed. Phase I of the project site includes the replacement of all one- and two-story existing buildings, except for the existing one-story post office. The phased development approval requires the nonconforming building to be redeveloped into a conforming building. In the event that the Federal Government terminates its lease and relocates the

post office, the applicant will submit an application for Phase II to the Design Review Board.

2. Revised elevation, site plan, and floor plan drawings for the proposed new development at 7145 Carlyle shall be submitted, at a minimum, such drawings shall incorporate the following:

    a. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall configured to be as close to the center of the roof as possible and screened from view on all sides, in a manner to be approved by staff.

    b. Any future commercial kitchen ventilation shall be chased through the interior of the building to the roof. No exhaust ducts or vents shall be permitted on any building elevations.

    c. All window frames shall be composed of anodized aluminum frames, the final color selection shall be subject to the review and approval of staff.

    d. All windows shall consist of clear light grey glass and incorporate the minimum tint required by the energy code, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

    e. The architect shall further refine and coordinate design/screen of the following architectural elements: horizontal louvers between retail and parking, rounded fabric divider, and parking screen into a cohesive well designed architectural feature that evokes MiMo inspired elements, all of which shall be subject to the review and approval of by staff, consistent with the Design Review Criteria and/or the directions from the Board.

    f. The architect shall explore incorporating natural landscape on the ground floor façades of the building.

    g. The final design details and color selection of the metal perforated panels for the garage screening, including specific varying sizes of the circular design, 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.

    h. The final design details and pattern of the hardscape and exterior walkways shall be suibmittted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

    i. Any exterior ground floor exterior handrails and support posts shall incorporate a flat profile. The final design details, dimensions, material and color of all exterior handrails shall be made part of the building permit plans and shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.

j. The final design details of the exterior materials and finishes depicted on sheet A3-06 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.

k. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff.

l. 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.

m. 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.

3. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, 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 and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:

a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.

b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.

c. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.

d. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.

e. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.

f. Street trees shall be required within the swale at the front and side facing street of the property if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.

g. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.

h. 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.

i. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.

j. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures. The location of backflow preventors, Siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans, and shall be subject to the review and approval of staff.

k. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right of wall shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

l. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape 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) which were either approved by the Board with modifications, or denied:

The following variance was **approved** by the Board:

1. A variance to exceed by 65% (6'-6") the maximum 25% (2'-6") projection allowed in required yards in order to construct an eyebrow with a projection of up to 90% (9'-0") into the required yards on the east and west sides of the property (below

15'-0" in height as measured from 13.0' NGVD (BFE+5'-0")).

2. A variance to exceed by 75% (3'-9") the maximum 25% (1'-3") projection allowed in required yards in order to construct an eyebrow, with a projection of up to 100% (5'-0") into the required yards on the north side of the property (below 15'-0" in height as measured from 13.0' NGVD (BFE+5'-0")).

3. A variance to reduce by 4'-5" the minimum setback of 5'-0" in order to construct accessible amenity pool deck and accessible roof deck with parapet including a rooftop trellis with a setback of up to 0'-7" from the north property line facing 72nd Street.

   A variance to reduce by 5'-8" the minimum setback of 10'-0" in order to construct accessible amenity pool deck and accessible roof deck with parapet with a setback of up to 4'-4" from the east property line facing Carlyle Avenue.

4. A variance to reduce by 5'-7" the minimum setback of 10'-0" in order to construct accessible amenity pool deck with parapet with a setback of up to 4'-5" from the west side property line facing Carlyle Avenue.

The following variance was **withdrawn** by the applicant:

5. A variance to exceed by three feet (3'-0") the maximum height of 200'-0" (220'-0") for a residential tower in order to construct the structure up to 203'-0" (223-0") within the TCC district.

A. 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.

The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

B. The Board hereby **Approves** the Variance request(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. If required, the applicant shall obtain a revocable permit from the Public Works Department for the proposed improvements within the public right-of-way, subject to approval of the City Commission, prior to the issuance of a building permit.

3. The architect shall explore relocating the required 10'-0" pedestrian path to be as close to the building as possible away from the street lines, yet not interfere with the clearance, subject to review and approval of staff.

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. If applicable, private requests for permanent parking space or loading zone removal shall only be allowed for the purpose of creating access to an off-street parking facility or other vehicular access to the property. Any such request shall be subject to the approval of the Parking Department. If permitted, the fee for the permanent removal of an on-street parking space shall be at the expense of the applicant.

B. If required, the applicant shall obtain a revocable permit from the Public Works Department for the proposed street improvements and paving/hardscape designs within the public right-of-way, subject to approval of the City Commission, prior to the issuance of a building permit. Prior to the issuance of a building permit for any work approved by the Design Review Board, as it relates to the subject development project, the applicant shall enter into and record a Maintenance Agreement and Restrictive Covenant running with the land, form approved by the Miami Beach City Attorney, and approved by the Planning Director and Public Works Director, confirming the applicant's agreement to design, permit, construct and maintain the proposed sidewalk and paving, in perpetuity, and confirming public access to such sidewalk, in

accordance with the conditions herein. The restrictive covenant shall be recorded in the public records, at the expense of the applicant.

C. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.

D. The applicant intends on satisfying the Public Benefits requirement by virtue of the 'Expedited Development Construction' option detailed in Section 142-747 of the LDRs. In the event Applicant is unable to satisfy the expedited development timeline, Applicant will be required to contribute to the public benefits fund or satisfy one of the other public benefit options detailed in Section 142-747 of the LDRs,

E. An easement to the city providing for perpetual public access shall be provided for portions of the Clear Pedestrian Path that fall within the setback area.

F. The applicant shall comply with the electric vehicle parking requirements, pursuant to Sec. 130-39 of the City Code.

G. A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department, in a manner to be reviewed and approved by staff.

H. 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, subject to the review and approval of staff based upon the design review or appropriateness criteria, and/or directions received from the Board.

I. If required, the applicant shall obtain a revocable permit from the Public Works Department for the existing parking paving within the public right-of-way, subject to approval of the City Commission, prior to the issuance of a building permit. Prior to the issuance of a building permit for any work approved by the Design Review Board, as it relates to the subject development project, the applicant shall enter into and record a Maintenance Agreement and Restrictive Covenant running with the land, in a form approved by the Miami Beach City Attorney, and approved by the Planning Director and Public Works Director, confirming the applicant's agreement to design, permit, construct and maintain the proposed parking paving, in perpetuity, and confirming public access to such parking, in accordance with the conditions herein. The restrictive covenant shall be recorded in the public records, at the expense of the applicant.

J. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.

K. The Public School Concurrency Proportionate Share Mitigation Development Agreement shall be fully executed by all parties and the monetary proportionate share mitigation be paid in full. Furthermore, the applicant must obtain the "Finding" from the School Board prior to the recordation of the Design Review Final Order.

L. All new construction over 7,000 square feet shall be required to be, at a minimum, certified as LEED Gold by USGBC. In lieu of achieving LEED Gold certification, properties can elect to pay a sustainability fee, pursuant to Chapter 133 of the City Code. This fee is set as a percentage of the cost of construction

M. 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.

N. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.

O. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

P. 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.

Q. 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.

R. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

S. 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 Finding of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "72nd and Park" as prepared by **Arquitectonica,** dated signed and sealed August 05, 2019, and as approved by the Design Review Board, as determined by staff.

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 22nd day of October, 2019.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
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 22nd day of October 2019 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.

WILLIAM BLACHAR
MY COMMISSION #GG308052
EXPIRES: MAR 05, 2023
Bonded through 1st State Insurance

_____
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: March 5th, 2023

Approved As To Form:
City Attorney's Office: _____ (10/22/2019)

Filed with the Clerk of the Design Review Board on _____ (10/22/19)

"Exhibit A"

Parcel 1:
Lots 4, 5, 6, 7 and 8, of Block 5 of NORMANDY BEACH SOUTH, according to the Plat thereof, as recorded in Plat Book 21, at Page 54, Public Records of Miami-Dade County, Florida.

Parcel 2:
Lots 1, 2, 9, 10, 11 and 12, of Block 5, of NORMANDY BEACH SOUTH, according to the Plat thereof, as recorded in Plat Book 21, at Page 54, Public Records of Miami-Dade County, Florida.

Parcel 3:
Lot 3 of Block 5 of NORMANDY BEACH SOUTH, according to the Plat thereof as recorded in Plat Book 21, at Page 54, of the Public Records of Miami-Dade County, Florida.