



# BERCOW RADELL FERNANDEZ LARKIN & TAPANES

ZONING, LAND USE AND ENVIRONMENTAL LAW

DIRECT LINE: (305) 377-6229

E-Mail: gpenn@BRZoningLaw.com

## VIA ELECTRONIC FILING

November 10, 2020

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

Re: Certificate of Appropriateness for Demolition and Design and Related Variances for 2901-11 Indian Creek Drive.

Dear Tom:

This firm represents 29 ICD, LLC (the "Owner"), the successor in interest to the original applicant and owner of the property located at 2901-2911 Indian Creek Drive, Miami Beach, Florida (the "Property"). Please consider this letter the Owner's letter of intent for a Certificate of Appropriateness for Demolition and Design as well as related variances in order to allow for a redevelopment of the Property. The proposed redevelopment plan is one of the first private developments to incorporate the principles of the City's "Buoyant City" study. The study, as you know, encouraged raising of existing historic structures in the Collins Waterfront Historic District as a counter to the impact of sea level rise.

Property's Existing Development. The 2901 Indian Creek Drive parcel is 8,550 square foot in size and is improved with an 8,968 square foot two-story apartment complex, comprised of 15 units. The building was constructed in 1962 and is a typical post-war apartment arrangement, with an open catwalk along the northern side of the building. A second floor walkway linking the 2901 Indian Creek Drive building to the western building at 2911 Indian Creek was constructed at the same time. The construction of the 1962 building resulted in a re-orientation of the site that obscured the pre-war construction behind it.

The 2911 Indian Creek Drive parcel is 8,600 square foot in size and is improved with two (2) two-story buildings comprising 6,796 square feet and 16 apartment units.

Both buildings, unlike the 2901 Indian Creek Drive building, are pre-war construction. The western building is the more elegant of the two, including curved stairways that face each other across a central patio. The eastern building is a simple cube with few distinguishing architectural elements.

Given the age of the development, it should be little surprise that the existing buildings are significantly below the current base flood elevation. As shown on the submitted plan, the Property is currently at elevation 1.35 NAVD. Base flood elevation is 6.44 feet NAVD.

Previous Approvals. In 2006, the Historic Preservation Board (File 3479) approved a Certificate of Appropriateness for the demolition of the building located at 2901 Indian Creek Drive, the partial demolition and renovation of the two buildings located at 2911 Indian Creek Drive, and the construction of a new seven story multifamily building. That project was never completed.

In 2015, through HPB File No. 7518, the Owner's predecessor in interest secured the Board's approval for a unified residential development that included the following: (1) the partial demolition of the building at 2901 Indian Creek and the development of a one-story addition with rooftop deck to that building; (2) the restoration of the western building at 2911 Indian Creek; (3) the demolition of the eastern building at 2911 Indian Creek; and (4) the development of a new seven story building with rooftop deck on the eastern portion of the Property. That project also did not go forward.

Indian Creek Drive Road Project. The City is in the midst of a significant roadway modification project along Indian Creek Drive. As applied to the Property, the City's project will involve the raising of both Indian Creek Drive and 29 Street significantly. As shown on our plan submittal, the Indian Creek Drive sidewalk will be raised over two feet from its current location. 29 Street will be similarly raised in order to harmonize that street with the new Indian Creek Drive elevation.

Given the location and elevation of the existing structures on the site, the City's road project will have a significant impact on the construction and operation of the Property. The City's road project will significantly alter the manner in which the Property relates to the public right of way, especially the 1962 structure at 2901 Indian Creek, which has a minimal setback from 29<sup>th</sup> Street. Given the roadway project underway, the western edge of the 1962 building will be literally under the street elevation.

Condition of 1962 Building. The submitted engineer's report indicates that the 1962 building is currently in poor condition. As noted by the reviewing structural engineer, Youssef Hachem, "[a]ll the wood members of the building such as the roof, floor joists on all floors, and interior stud walls are in very poor and failing condition. concrete members of the building are cracked, and spalled. Moreover, reinforcing rebars of the concrete members also are in poor condition."

Proposed Development. The Owner proposes to develop the Property with an unified residential development that includes the following: (1) the demolition of the 1962 building at 2901 Indian Creek; (2) the restoration, relocation, reorientation, and raising of the western building at 2911 Indian Creek; (3) the demolition of the eastern building at 2911 Indian Creek; and (4) the development of a new six-story building with rooftop deck on the eastern portion of the Property. The new building is intended to be consistent with the historic built environment while, at the same time, being a first-rate modern architectural example.

The western building at 2911 Indian Creek Drive, designed by Schoepl & Southwell was the first constructed on the Property (1936) and remains the best architectural example on the site. Until the construction of the 1962 building, the lot at 2901 Indian Creek remained empty, functioning like a front yard for the 1930s construction at 2911 Indian Creek. The proposed development plan will bring the 1936 building back to its original prominence by (1) restoring the building; (2) relocating it to the center of the two lots, (3) reorientating the building to face west, and (4) raising the building more than five (5) feet to base flood elevation to protect the structure against the impact of sea level rise.

Variances. We have recognized the following variances from the requirements of the code:

1. Front pedestal setback variance to permit the relocated historic building to locate at 15'8" where 20' would be required (15.16' existing)
2. Rear tower setback variance to permit the new tower to locate fifteen (15) feet from the east property line where 22'6" would be required.
3. Interior north side tower setback variance to permit new tower to locate at 12'2" where 12'-7" is required.
4. Variance of the maximum pedestal balcony projection for the north side to permit a balcony to extend to 8'7" into the setback where 2'6" would be permitted on the new building.

5. Variance of the maximum pedestal balcony projection for the south side to permit a balcony to extend to 8'2" into the setback where 2'6" would be permitted on the new building.
6. Variance of the maximum pedestal balcony projection for the east side to permit a balcony to extend to 8'2" into the setback where 3'9" would be permitted on the new building.
7. Variance of the maximum tower balcony projection for the north side to permit a balcony to extend to 8'7" into the setback where 3'1" would be permitted on the new building.
8. Variance of the maximum tower balcony projection for the south side to permit a balcony to extend to 8'2" into the setback where 2'6" would be permitted on the new building.
9. Variance of the maximum tower balcony projection for the east side to permit a balcony to extend to eight 8'2" into the setback where 3'9" would be permitted on the new building.

Plan Review Standards. Below are the standards applied by your Department and the Historic Preservation Board as well as the status of the proposed development with each criterion:

a. 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.

*The provided plans provide the necessary details.*

b. 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.

*The provided plans provide the necessary details.*

c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the city identified in section 118-503.

*The provided plans provide the necessary details.*

d. The proposed structure, and/or additions to an existing structure is appropriate to and compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties, or the purposes for which the district was created.

*Care has been taken in the design of the proposed development to be compatible as possible with the surrounding development.*

e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces 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 preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

*The Owner has created the site plan in a manner that most efficiently utilizes the Property without negatively impacting the surrounding area.*

f. 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 any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

*Care has been taken to enhance the pedestrian experience and minimize the amount of vehicular and pedestrian interaction. The site will have a single driveway entrance along 29 Street.*

g. 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 and consistent with a city master plan, where applicable.

*The building elevations have been designed to minimize glare on adjacent parcels.*

h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

*Landscaping has been designed in a manner to provide buffering from adjacent uses.*

i. 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.

*Care has been taken in limiting the glare and noise escaping the Property. All of the parking will be inside the new structure.*

j. Any proposed new structure shall have 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).

*There are no view corridors that need to be retained. The design places the bulk of the new construction on the east side, adjacent to the loading area of the AC Hotel building.*

k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, 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 sidewalk street, or streets shall have residential or commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.

*The proposed development is exclusively residential in character along the street.*

l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

*The proposed new multi-family building has an innovative and integrated rooftop.*

m. Any 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).

*The additional development on the Property has been designed in a manner that honors and remains compatible with the existing buildings on the site. Care has been taken to make the 1936 building the focus of attention from both Indian Creek Drive and 29 Street.*

n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.

*Significant transparency has been designed on the first floor elevation of both streets for the new multi-family building, including innovative open-air gallery space.*

o. 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.

*The loading and trash area has been located for the unified development along the eastern property line and will be significantly buffered from the development to the east by the loading and parking areas for that adjacent parcel.*

Appropriateness of Variances. The approval of the proposal variances will not result in a development that is inconsistent with the surrounding area. Moreover, the bulk of the new construction is to be located to the east, adjacent to a much larger new multifamily building. Overall, the impact of the proposed variances on surrounding properties will be minimal.

As explained above, we have two categories of variances. First, variances of the side and rear setbacks for the new building. These variances will allow the new structure to match the building line of the relocated 1936 building. Second, the Owner is seeking variances associated with the balconies of the new building. Both of these variance categories are justified by the need to accommodate existing historic development on a smaller tract.

The relevant listed standards in Section 118-353(d) are below and will be followed by a brief analysis.

- (1) special conditions exist that are peculiar to the applicant's land;

*As explained above, this site is uniquely burdened by size, orientation, location and status of existing development in a manner that makes redevelopment very difficult. As the Board has recognized in the past, there is a special burden imposed on development within sites with contributing historic buildings that rises to the category of a special condition that could justify variances. The variances associated with the new structure are made necessary by the need to relate new development to the existing development. As you will note, the existing development on the Property does not meet current setback standards in several ways.*

- (2) the special conditions were not created by the applicant;

*The Owner did not create the special conditions inflicted on the Property. The unusual orientation of the existing buildings on the site, makes the design of new development in a manner consistent with the existing character difficult.*

- (3) granting the requested variance would not confer upon the applicant special privileges;

*The approval of the requested variances will only serve to bring the Property into parity with similarly situated sites, which have not been burdened with the issues seen here.*

- (4) literal application of the City's standards would result in unnecessary and undue hardship;

*This Property is so uniquely impacted by the above-described issues (size, orientation, historic development) that it would cause unnecessary hardship on the Owner if the variances were not approved. Reasonable redevelopment of the site would be impossible without the requested variances. As noted above, the Owner is seeking several variances just to legalize the existing nonconforming, but historic buildings.*

- (5) the variance would be the minimum necessary for a reasonable use of the land, building, or structure;

*The requested variances are the minimum needed to develop a project that is consistent and compatible with the existing development on the Property. As explained above, several variances are necessary just to retain two of the three historic structures. Other variances are necessary to accommodate development among the historic buildings.*

- (6) the variance would be in harmony with the general intent of the City's regulations; and

*The approval of the requested variances would permit the development of a compatible residential development. The City's regulations are intended to encourage the successful redevelopment of historic buildings and sites, which all of the requested variances will encourage. The City's regulations are intended to promote compatible development throughout the City. The instant application seeks approval of a project that is compatible with its surroundings and accounts for the impacts of sea level rise.*

- (7) the granting of the variance would be consistent with the City's comprehensive plan and does not reduce minimum levels of service established in the comprehensive plan.

*The requested variances will keep the development consistent with the Comprehensive Plan and will not intensify the development of the land in a manner inconsistent with established levels of service. Specifically, none of the requested variances will lead to the intensification of the potential development of the Property.*

As a result, the granting of the variances will permit a cohesive redevelopment of the Property that will be in harmony with the intent and purpose of the Code and consistent with the neighboring use, will not be injurious to the area involved or otherwise detrimental to the public welfare, and will provide the Owner with a reasonable use of its Property.

Sea Level Rise and Resiliency. 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.

*The plan will be provided at the time of building permit.*

(2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

*All windows in the development will be hurricane proof.*

(3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

*Operable windows are being retained where possible. Large sliding doors are proposed for new balconies to allow for passive cooling.*

(4) Resilient landscaping (salt tolerant, highly water-absorbent, native, or Florida-friendly plants) shall be provided, in accordance with chapter 126 of the city Code.

*The proposed landscape plan is resilient as it is comprised of native and Florida-friendly plants appropriate for the area.*

(5) The project applicant shall consider the 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. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.

*The underlying project has been designed with sea level rise in mind. As noted above, the Owner is proposing to raise the 1936 building over five (5) feet as contemplated by the City's Buoyant City plan.*

(6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-way and adjacent land, and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three additional feet in height.

*The underlying project has been designed with future road raising in mind. Moreover, the development plan was largely a function of needing to respond to current road raising.*

(7) As applicable to all new construction, all critical mechanical and electrical systems shall be located above base flood elevation. All redevelopment projects shall, whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood elevation.

*Both the new construction and the restoration work have been designed to meet this requirement.*

(8) Existing buildings shall, wherever reasonably feasible and economically appropriate, be elevated up to base flood elevation, plus City of Miami Beach Freeboard.

*The Owner is proposing to raise the 1936 building to base flood elevation – over five (5) feet above its current elevation.*

(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 54 of the city Code.

*The 1936 building improvements have been designed to accommodate this requirement.*

(10) As applicable to all new construction, stormwater retention systems shall be provided.

*The underlying project has been designed with stormwater retention as required/*

(11) Cool pavement materials or porous pavement materials shall be utilized.

*The plan incorporates significant new porous materials.*

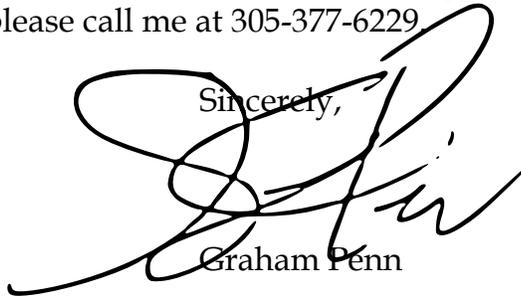
(12) The design of each project shall minimize the potential for heat island effects on-site.

Thomas Mooney, Director  
November 10, 2020  
Page 12

*The underlying project has been designed with to avoid the heat island effect.*

Conclusion. The Owner is excited to bring this new development to a property that has been ignored for too long. We look forward to your recommendation on our application. If you have any questions or comments, please call me at 305-377-6229. We look forward to your recommendation on our application. If you have any questions or comments, please call me at 305-377-6229

Sincerely,

A handwritten signature in black ink, appearing to read 'Graham Penn', written over the printed name.

Graham Penn

cc: Jason Halpern  
Sebastian Velez  
JJ Wood