

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: September 13, 2022

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: HPB22-0524 & HPB22-0525 a.k.a. HPB21-0481, **1901 Collins Avenue – The Shore Club Hotel**.

Petitions have been filed by i. Setai 1808, LLC, Setai 2204, LLC, 2304 Setai, LLC, and Dr. Stephen Soloway and ii. Setai Resort & Residences Condominium Association, Inc. requesting a re-hearing of the May 10, 2022, decision of the Historic Preservation Board wherein it approved a Certificate of Appropriateness for the partial demolition and renovation of two buildings on the site, the total demolition of two buildings, the construction of two new additions and landscape and hardscape modifications (HPB21-0481), including a motion for consolidation of the two petitions. If the request for a re-hearing is granted, the original application may be re-heard by the Board immediately thereafter.

RECOMMENDATION

Denial of the Consolidated Petition for Rehearing.

EXISTING STRUCTURES

Legal Description:

All of Lot 1 and a portion of Lots 2 and 3, Block B, of the OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, According to the Plat Thereof, as Recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida and all of Lots 5, 6, 8, 9 and 10 and a portion of Lots 4 and 7, Block 1, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, According to the Plat Thereof, as Recorded in Plat Book 2, Page 77, of the Public Records of Miami-Dade County, Florida; and a portion of land lying East of and contiguous to the east line of said Blocks B and 1.

Local Historic District:

Ocean Drive/Collins Avenue

Shore Club Hotel – 1901 Collins Avenue

Classification: Contributing
Construction Date: 1939
Architect: Robert A. Taylor

8-story rear addition

Classification: Contributing
Construction Date: 1955
Architect: Melvin Grossman

17-story addition

Classification: Non-Contributing
Construction Date: 1998
Architect: David Chipperfield Architects

Cromwell Hotel – 110 20th Street

Classification: Contributing
Construction Date: 1949
Architect: Albert Anis

STATEMENT OF FACTS

Two Petitions for Rehearing have been filed. The first petition (HPB22-0524), was filed by Setai 1808, LLC (“Setai 1808”), Setai 2204, LLC (“Setai 2204”), Setai Unit 2304, LLC (“Setai 2304”) and Dr. Stephen Soloway (“Dr. Soloway”) (collectively referred to as “Petitioner 1”). The second petition (HPB22-0525), was filed by Setai Resort & Residence Condominium Association, Inc. (“Petitioner 2”). Section 118-9(a)(1)(D) of the City Code states: “There shall only be allowed one rehearing for each final order arising from an application, although multiple persons may participate in or request the rehearing.” As such, the rehearing requests from Petitioner 1 and Petitioner 2 (collectively referred to as the “Petitioners”) have been consolidated (the “Consolidated Petition for Rehearing” or “Consolidated Petition”).

The subject of the Consolidated Petition for Rehearing, is the Historic Preservation Board’s (“HPB” or “Board”) decision, dated May 10, 2022, to approve a Certificate of Appropriateness for the partial demolition and renovation of two buildings on the site (The Shore Club and Cromwell hotels), the total demolition of two buildings, the construction of two new additions and landscape and hardscape modifications (HPB21-0481) (the “Application”). The Application was filed by Shore Club Property Owner LLC (the “Applicant”). The Board’s approval was memorialized in the Order rendered on May 16, 2022.

The Consolidated Petition raises several arguments, none of which establish a basis under the narrow scope of the Code for the HPB to grant a rehearing. The Petitioners have failed to identify “newly discovered evidence which is likely to be relevant to the decision of the board,” and failed to articulate that the HPB has “overlooked or failed to consider something which renders the decision issued erroneous.” See City Code Section 118-9(a)(2)(C). Accordingly, the Planning Director respectfully requests that the HPB deny the Consolidated Petition.

PARTIES ELIGIBLE TO REQUEST A REHEARING

Pursuant to City Code Section 118-9(a)(2), a petition for rehearing of a decision of the Historic Preservation Board may be filed by the original applicant, the City Manager, an affected person, the Miami Design Preservation League, or the Dade Heritage Trust. For purposes of this section, “affected person” shall mean either “a person owning property within 375 feet of the applicant’s project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board’s public hearing(s) for such project.” In this case, the Petitioners are property owners within 375 feet of the Applicant’s project and are therefore eligible to request a rehearing.

STANDARD OF REVIEW

In order to be granted by the Board, a petition for rehearing must demonstrate the following: “(i) [n]ewly discovered evidence which is likely to be relevant to the decision of the board, or (ii) [t]he board has overlooked or failed to consider something which renders the decision issued erroneous.” City Code Section 118-9(a)(2)(C).

ARGUMENT

For the reasons set forth below, the Petitioners have failed to establish, pursuant to City Code Section 118-9(a)(2)(C), that they are entitled to a rehearing of the May 10, 2022 HPB approval.

1.I. The approved Architectural Plans meet the off-street loading space numerical requirements of the Land Development Regulations.

The Parking Department is not required to provide a detailed plan delineating on-street loading since all required loading is located within the private property.

The HPB did not waive the deficiency in the off-street loading space requirement because there is no deficiency.

Petitioners assert that a rehearing is warranted because the HPB overlooked or failed to consider that the approved Architectural Plans do not meet the off-street loading space numerical requirements of the Zoning Code. However, a close examination of the plans presented to the Board on May 10, 2022 would reveal that the area labeled “Loading Area” on sheet A2.31 is sufficiently sized to accommodate all required loading. More specifically, the “Loading Area” is generally thirty (30) feet wide by seventy-five (75) feet deep whereas, the minimum required loading space dimensions are ten (10) feet by twenty (20) feet. The transcript of the HPB proceedings, including testimony by the Applicant’s traffic engineer and Petitioners, clearly demonstrates that the HPB was properly informed of the proposed loading operations and Petitioners’ concerns relative to this aspect of the project.

Petitioners assert that a rehearing is warranted because the HPB overlooked or failed to consider that the Parking Department did not provide any plan delineating on-street loading. As noted above, the “Loading Area” on sheet A2.31 and presented to the HPB on May 10, 2022 is sufficiently sized to accommodate all required loading. Therefore, the Applicant is not required to request a loading space waiver and a plan delineating on-street loading is not required.

1.II. The traffic engineering assessment for the Shore Club, dated April 14, 2022, relied upon correct data to determine the project’s trip generation.

Petitioners assert that a rehearing is warranted because the City staff report and the HPB overlooked and did not consider the actual impact the approved project would have when it evaluated the traffic impact concerns on the adjacent corridor, that is, 20th Street. Further, the Petitioners assert that the April 14, 2022 Kimley Horn Traffic Assessment Report considered inaccurate data in the determination of the traffic impact.

However, a close examination of the traffic report would reveal the land uses in question were correctly accounted for in the trip generation analysis. Specifically, the Petitioners claim the traffic assessment which includes three-hundred and four (304) “Quality Restaurant” seats undercounted what they believe should have been four hundred and forty-four (444) seats as part

of the trip generation analysis. However, the traffic engineer's analysis was performed using Institute of Transportation Engineers' (ITE) *Trip Generation Manual*, 10th Edition. Trip generation is calculated based upon specific land use categories identified in the manual. In addition to the "Quality Restaurant" category, there is also a "Drinking Place" category. In accordance with the manual, trip generation for the category of "Quality Restaurant" was calculated based upon the number of seats and the trip generation for the category of "Drinking Place" was calculated based upon square footage. The one-hundred and forty (140) seats the Petitioners assert were not included were in fact, included as square footage under category of "Drinking Place". These areas were properly included as part of the trip generation analysis. Therefore, the City staff report and the HPB did not overlook or fail consider the actual traffic impact of the proposed project.

1.III. The HPB did not overlook the Petitioners' May 9, 2022 letter to the Board moving to strike the Applicant's "Supplemental Plans 05-10-22," and the HPB was not required to rule on that motion.

The Petitioners' letter, dated May 9, 2022, was transmitted to the HPB and Planning Department staff via email the evening prior to the hearing. Additionally, during the public hearing on May 10, 2022, the Petitioners verbally asked the HPB to strike the "Supplemental Plans 05-10-22" submitted by the Applicant. The record clearly indicates the Board was aware of Petitioners' objection. The Board is however, under no obligation to rule on a motion submitted by a member of the public. And the Board was within its discretion to accept Petitioners' supplemental submissions. Further, Petitioners' contention that this was a violation of due process is outside the scope of the standard of review for a petition for rehearing.

2.I. Petitioners have failed to identify newly discovered evidence, and failed to demonstrate that the Board overlooked or failed to consider any information which would render erroneous the conditions of the Order.

Petitioners assert that a rehearing is warranted because the HPB did not have the authority to impose conditions on the approval of the Project. However, Section 118-561(b) of the City Code expressly empowers the HPB and the Planning Department to prescribe appropriate conditions and safeguards, either as part of a written order or on approved plans. Further, Section 118-563(d) authorizes staff to the HPB to review certain modifications on behalf of the HPB. Regardless, given that Petitioners can point to no newly discovered evidence and nothing overlooked by the Board, Petitioners' objections are outside the scope of the standard of review for rehearing.

The Petitioners argue that all testimony and evidence presented to the Board at the quasi-judicial hearing was based upon the Shore Club application prior to the Applicant's proposal to reduce the massing of the tower, and the Board had no competent substantial evidence to review the project. Again, whether the conditions were supported by competent substantial evidence is outside the scope of a petition for rehearing. However, examination of the plans, documents and staff analysis submitted indicates the Board did indeed base its decision upon competent substantial evidence and acted within its authority to prescribe appropriate conditions and safeguards. Likewise, the Petitioners' assertion that there was a procedural defect is outside the scope of a request for rehearing.

2.II. Petitioners have failed to establish a basis for rehearing with regard to the functionality of 20th Street.

As noted in response 2.I. the Petitioners' assertion that there was a procedural defect is outside the scope of the standard of review on a petition for rehearing.

CONCLUSION

In summary, Petitioners fail to establish, as a matter of law, how the HPB overlooked or failed to consider any evidence which would render its decision erroneous. Further, the Petitioners fail to identify newly discovered evidence which is likely to be relevant to the decision of the board. Accordingly, Petitioners have not set forth a basis for the HPB to grant a rehearing pursuant to the City Code.

In view of the foregoing analysis, the Planning Director requests that the Consolidated Petition for Rehearing be **DENIED**.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: September 13, 2022

PROPERTY/FOLIO: 1901 Collins Avenue / 02-3226-001-0020

FILE NO: HPB22-0524 & HPB22-0525 a.k.a. HPB21-0481

IN RE: Petitions have been filed by i. Setai 1808, LLC, Setai 2204, LLC, 2304 Setai, LLC, and Dr. Stephen Soloway and ii. Setai Resort & Residences Condominium Association, Inc. requesting a re-hearing of the May 10, 2022, decision of the Historic Preservation Board wherein it approved a Certificate of Appropriateness for the partial demolition and renovation of two buildings on the site, the total demolition of two buildings, the construction of two new additions and landscape and hardscape modifications (HPB21-0481), including a motion for consolidation of the two petitions. If the request for a re-hearing is granted, the original application may be re-heard by the Board immediately thereafter.

LEGAL: All of Lot 1 and a portion of Lots 2 and 3, Block B, of the OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, According to the Plat Thereof, as Recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida and all of Lots 5, 6, 8, 9 and 10 and a portion of Lots 4 and 7, Block 1, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, According to the Plat Thereof, as Recorded in Plat Book 2, Page 77, of the Public Records of Miami-Dade County, Florida; and a portion of land lying East of and contiguous to the east line of said Blocks B and 1.

ORDER

The City of Miami Beach Historic Preservation Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

The petitions submitted by the re-hearing applicants Setai 1808, LLC ("Setai 1808"), Setai 2204, LLC ("Setai 2204"), Setai Unit 2304, LLC ("Setai 2304"), Dr. Stephen Soloway and Setai Resort & Residence Condominium Association, Inc., inclusive of all exhibits and testimony, fails to establish that the standard for the granting of a re-hearing has been satisfied for the Historic Preservation Board's approval, dated May 16, 2022, of a Certificate of Appropriateness.

Following argument of the parties, the Historic Preservation Board determined that the petition for rehearing failed to demonstrate, pursuant to City Code Section 118-9(a)(2)(C), "(i) [n]ewly discovered evidence which is likely to be relevant to the decision of the board, or (ii) [t]he board has overlooked or failed to consider something which renders the decision issued erroneous."

IT IS HEREBY ORDERED, based upon the foregoing finding 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 recommendation, that the subject Petition for Rehearing is **DENIED**.

Dated this _____ day of _____, 20__.

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
DEBORAH TACKETT
HISTORIC PRESERVATION & ARCHITECTURE OFFICER
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by Deborah Tackett, Historic Preservation & Architecture Officer, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.

NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: _____

Approved As To Form:
City Attorney's Office: _____ ()

Filed with the Clerk of the Historic Preservation Board on _____ ()