

MIAMI BEACH


PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: February 14, 2017

FROM: Thomas R. Mooney, AICP 
Planning Director

SUBJECT: HPB16-0078, **3301 Indian Creek Drive.**

The applicant, 3420 Collins Avenue, LLC, is requesting an after-the-fact Certificate of Appropriateness for the installation of a sculpture within the front yard facing Collins Avenue including a variance to reduce the minimum required front setback.

STAFF RECOMMENDATION

Approval of the Certificate of Appropriateness with conditions.
Denial of the variance.

EXISTING STRUCTURE

Local Historic District:	Collins Waterfront
Status:	Non-Contributing
Construction Date:	2016
Architect:	OMA (Office for Metropolitan Architecture)

ZONING / SITE DATA

Legal Description:	All of Block 20 and all that land lying west of Indian Creek Drive and between the north line of Lot 10 in Block 20 and the south line of Lot 10 in Block 20 both produced westerly to the waters of Indian Creek, all of the amended map of the Ocean Front Property of the Miami Beach Improvement Company, according to the amended plat thereof recorded in plat book 5, pages 7 & 8 of the Official Records of Miami-Dade County.
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Zoning:	RM-2, Residential Multi-Family, medium intensity
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THE PROJECT

The applicant has submitted plans entitled "Faena Forum – Tree of Life sculpture", dated December 27, 2016.

The applicant is requesting an after-the-fact Certificate of Appropriateness for the installation of a sculpture within the front yard facing Collins Avenue including a variance to reduce the minimum required front setback.

The applicant is requesting the following variance:

1. An after the fact variance from the minimum required pedestal front setback of 20'-0" to allow the retention of a sculpture located at 6'-3" from the front property line facing Collins Avenue.

- Variance requested from:

Sec. 142-218. Setback requirements.

The setback requirements in the RM-2 residential multifamily, medium intensity district are as follows:

Pedestal, Front: 20 feet

The applicant has installed a permanent 20-foot high sculpture within the front yard of the property. Because its height exceeds the maximum allowed for structures in required yards, a front setback variance is required. Based on the letter of request provided by the applicant, staff has concluded that the variance is self-imposed and that there are no practical difficulties or hardship associated with this variance. The size, height, location and construction of the sculpture was the applicant's choice. The property is located within the Faena Overlay District that contains several properties with large frontage along Collins Avenue. Staff recommends further study of the area to find an alternate location that would not require a variance. The granting of this variance would confer to the applicant a benefit that is denied to other properties within the Historic District with the placement of a large sculpture within a required front yard. Staff recommends that the Board does not approve the variance request.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents submitted with the application **DO NOT** comply with the following hardship criteria 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.

COMPLIANCE WITH ZONING CODE

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the City Code, in addition to the requested variances:

1. The existing above grade goose neck pipes located within the front yard facing Collins Avenue and Indian Creek Drive are not permitted to be located within required yards facing a street.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

CONSISTENCY WITH 2025 COMPREHENSIVE PLAN

A preliminary review of the project indicates that the **existing use** appears to be **consistent** with the Future Land Use Map of the Comprehensive Plan.

COMPLIANCE WITH CERTIFICATE OF APPROPRIATENESS CRITERIA

A decision on an application for a Certificate of Appropriateness shall be based upon the following:

- I. Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable, compliance with the following criteria pursuant to Section 118-564(a)(1) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
 - a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time.
Satisfied
 - b. Other guidelines/policies/plans adopted or approved by Resolution or Ordinance by the City Commission.
Satisfied
- II. In determining whether a particular application is compatible with surrounding properties, the Board shall consider the following criteria pursuant to Section 118-564(a)(2) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):

- a. Exterior architectural features.
Satisfied
- b. General design, scale, massing and arrangement.
Satisfied

- c. Texture and material and color.
Satisfied
- d. The relationship of a, b, c, above, to other structures and features of the district.
Satisfied
- e. The purpose for which the district was created.
Satisfied
- f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.
Satisfied
- g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.
Not Applicable
- h. The original architectural design or any subsequent modifications that have acquired significance.
Not Applicable
- III. The examination of architectural drawings for consistency with the criteria pursuant to Section 118-564(a)(3) of the Miami Beach Code and stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community. The criteria referenced above are as follows (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
 - 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.
Not Applicable
 - 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.
Not Satisfied; see variance analysis.

- 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.
Satisfied
- 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.
Not Applicable
- 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.
Satisfied
- 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.
Not Applicable
- 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.
Satisfied
- h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.
Satisfied
- 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.
Not Applicable

- 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).
Satisfied
- 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.
Not Applicable
- l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
Not Applicable
- 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).
Satisfied
- 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.
Satisfied
- 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.
Not Applicable

STAFF ANALYSIS

The applicant is requesting approval for the after the fact installation of a sculpture located at the northeast corner of the Faena Forum property. The sculpture, which was installed in November 2016 to coincide with the 2016 Art Basel Art Fair, is a work of art by internationally recognized design house, Studio Job. Staff has no objection to the applicant's request to retain the unique sculpture on site and is confident that the artwork will not detract from the surrounding historic district; however, staff recommends that the sculpture be relocated so that it complies with the minimum yard setbacks required.

VARIANCE ANALYSIS

The applicant is requesting an after the fact variance to retain a sculpture in the subject property. The structure was installed without proper building permits, or zoning approval. It is not associated with the retention of a historic building and the letter of intent does not provide a solid hardship to satisfy the minimum criteria for the granting of the variance. Staff recommends that the sculpture be relocated to comply with the required setbacks. If the sculpture cannot be

relocated on the site due to the structural conflict, as stated by the applicant, staff would recommend that the sculpture be removed and relocated to a site which may accommodate it in accordance with the setbacks requirements.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Certificate of Appropriateness be **approved**, subject to the conditions enumerated in the attached draft Order, which address the inconsistencies with the aforementioned Certificate of Appropriateness criteria, and that the variance request be **DENIED**.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: February 14, 2017

FILE NO: HPB16-0078

PROPERTY: 3301 Indian Creek Drive

APPLICANT: 3420 Collins Avenue, LLC

LEGAL: All of Block 20 and all that land lying west of Indian Creek Drive and between the north line of Lot 10 in Block 20 and the south line of Lot 10 in Block 20 both produced westerly to the waters of Indian Creek, all of the amended map of the Ocean Front Property of the Miami Beach Improvement Company, according to the amended plat thereof recorded in plat book 5, pages 7 & 8 of the Official Records of Miami-Dade County.

IN RE: The application for an after-the-fact Certificate of Appropriateness for the installation of a sculpture within the front yard facing Collins Avenue including a variance to reduce the minimum required front setback.

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:

I. Certificate of Appropriateness

- A. The subject site is located within the Collins Waterfront Local Historic District.
- 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:
 1. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
 2. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code.
 3. Is not consistent with Certificate of Appropriateness Criteria "b" in Section 118-564(a)(3) of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met:
 1. Revised elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:

- a. The sculpture and associated foundation shall comply with the required minimum yard setbacks.
 - b. The sculpture shall not contain any signage or advertising. A plaque shall be provided with the name of the artist, date, title of the piece, and a description and explanation of the artwork, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
2. Where one or more parcels are unified for a single development, the property owner shall execute and record an unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
 3. 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.
 4. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
 5. 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.
 6. 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.
 7. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
 8. 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.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):
 1. An after the fact variance from the minimum required pedestal front setback of 20'-0" to allow the retention of a sculpture located at 6'-3" from the front property line facing Collins Avenue. **Variance DENIED**
- B. The applicant has submitted plans and documents with the application that the Board has concluded **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, the Board has concluded that the plans and documents submitted with the

application **DO NOT** comply with the following hardship criteria 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 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.

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 Certificate of Appropriateness is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I and II of the Findings of Fact, to which the applicant has agreed, and that the variance application is DENIED WITHOUT PREJUDICE.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "Faena Forum – Tree of Life sculpture", dated December 27, 2016, as approved by the Historic Preservation Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all

conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this Order shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated this _____ day of _____, 20__.

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
DEBORAH TACKETT
CHIEF OF HISTORIC PRESERVATION
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, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.

NOTARY PUBLIC

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HPB16-0078
Meeting Date: February 14, 2017

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 _____ ()

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