

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: July 11, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: HPB17-0120, **6901 Collins Avenue**

The applicant, SMGW Golden Sands, LLC, is requesting variances from the required rear and interior side setbacks for a perimeter fence located within the Dune Preservation Overlay and Oceanfront Overlay Districts as part of the property's renovation.

STAFF RECOMMENDATION

Approval of the variances with conditions.

BACKGROUND

On January 13, 2015, the Board reviewed and approved modifications to a previously issued Certificate of Appropriateness for the partial demolition, restoration and renovation of an existing structure, and the construction of a new 17-story multifamily building including design modifications and a variance to exceed the maximum permitted height.

EXISTING STRUCTURE

Local Historic District:	North Beach Resort
Status:	Contributing
Original Construction Date:	1951
Original Architect:	Norman M. Giller

ZONING / SITE DATA

Legal Description:	Lots 5 and 6 of Block A of Lands in Atlantic Heights, According to the Plat Thereof, as Recorded in Plat Book 9, Page 14, of the Public Records of Miami-Dade County, Florida.
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Zoning:	RM-3 (Residential Multifamily, High Intensity)
Future Land Use Designation:	RM-3 (Residential Multifamily, High Intensity)
Previous Use/Condition:	Hotel
Proposed Use:	Multi-Family Residential /20 units

THE PROJECT

The applicant has submitted plans entitled "L'Atelier", as prepared by Revuelta Architecture International, P.A. dated June 19, 2017.

The applicant is requesting variances from the required setbacks for the construction of a perimeter fence located within the Dune Preservation Overlay and Oceanfront Overlay Districts.

The applicant is requesting the following variances:

1. A variance to reduce all minimum required setback of 13'-0" from the Erosion Control Line in order to construct a perimeter fence within the Dune Preservation Overlay District and within the Oceanfront Overlay District at a minimum of zero (0'-0") from the Erosion Control Line and up to a height up to 17.0' NGVD.
2. A variance to reduce all minimum required side setback of 15'-0" from the side property line in order to construct a perimeter fence within the Dune Preservation Overlay District and within the Oceanfront Overlay District at a minimum of zero (0'-0") from the north property line at a height of 17.0' NGVD

- Variances requested from:

Sec. 142-775. - Development regulations

(d) Minimum yards. Minimum yards in the dune preservation district shall be as follows:

(2) Fifteen feet adjacent to any side property line, municipal park, street end, or right-of-way.

(3) Ten feet from the erosion control line when any structure has a finished floor elevation of three feet or less than the elevation of the top of the dune. For every additional one foot increase in the finished floor elevation of the structure an additional one foot of setback is required, to a maximum of 15 feet.

Sec. 142-802. - Additional regulations for oceanfront lots.

These regulations apply to buildings and structures located west of the bulkhead line. Oceanfront lots shall have a minimum required rear yard setback of 50 feet at grade and subterranean levels measured from the bulkhead line in which there shall be no construction of any dwelling, hotel, apartment building, commercial building, seawall, parking areas, revetment or other structure incidental to or related to such structure except in accordance with the following provisions:

(3) There shall be a minimum required 15-foot setback from a side lot line and a minimum required ten-foot setback from the bulkhead line.

A perimeter fence is proposed at the rear of the property facing the ocean and along the rear yard at the north side. The fence is proposed at a minimum height of 5'-0" approximately from the existing adjacent grade of 9.0' NGVD along the south side of the property. The structure continues rising at intervals to a maximum height of 8.7' (17.0' NGVD) as measured from the adjacent grade of 8.3' NGVD at the north side. The structure continues the top 5'-0" portion of the fence with the same height and picket-type design and a retaining stepping wall at the bottom to compensate for the height difference. The maximum height of 8.7' is also continued throughout the north side of the property. The highest portions of the fence are adjacent to a proposed accessible ramp located in proximity to the rear and side of the property. As per the applicant's letter of intent, the accessible ramp is required by the Fire Department to connect the raised pool deck with the beach access.

The minimum base flood elevation for the property is 8.0' NGVD and the pool deck is at 14'-3" NGVD, as per copy of approved building permits plans provided by the applicant. Grade of the property at the sidewalk elevation is 6.1' NGVD and the elevation of the rear yard of the property ranges from 9.0' NGVD to 8.3' NGVD. The accessible ramp has about 5' to 6' of difference in elevation from the pool deck to the grade at the rear property line, which creates a design challenge due to the required length of the ramp. Portions of the accessible ramp are proposed adjacent to the property line and require a retaining wall to contain the ramp surface safely; however it would also conflict with the maximum height (5'-0" from grade) allowed for a fence at the rear of the site. The maximum elevation of the top of a fence without a height variance is 11.1' NGVD (5'-0" from grade at 6.1 NGVD). The applicant is proposing a maximum height of 17.0' NGVD for 5.9' of difference above the maximum height.

Staff would note that because the existing grade along the rear ranges from 9.0' NGVD to 8.3' NGVD and the established grade for the site is 6.1' NGVD, a permitted 5 foot-high fence, measured from grade would be impossible to construct without a variance. As the fence proposed is 8.3' in height, it exceeds the maximum height the Board can approve for a height variance. Therefore, setback variances are required for the fence structure proposed.

As a structure, the minimum rear setback is 10'-0" from the Erosion Control Line with a height not to exceed three feet above the top of the dune. The top of the structure is proposed at 17.0' NGVD and the top of the dune is at 11.7' NGVD as indicated in the survey. The maximum height is 5.3 feet above the highest point of the dune and therefore, additional 3 feet of setback is required for the additional height above three feet. The required setback in this case is 13'-0" from the Erosion Control Line and the proposed fence is located from zero to 5'-0" from the property line.

The portions of the fence that requires a retaining wall along the east side is proposed to be setback from 18", 24" and 5'-0" at the north corner of the site to mitigate the appearance of the taller fence as seen from the beach walk. However, in order to have a fence with a more consistent design and to not negatively impact the pedestrian experience along the beach walk, staff recommends that the fence be setback 5'-0" from the property line along all the portions of the structure that requires the addition of a solid wall or surface below the 5'-0" picket fence. The existing grade along the property shall be maintained within the 5'-0" setback inward toward the property and an additional 5'-0" picket fence shall be added at the property line to continue the fence at the same level along the entire rear of the property. The same setback and additional fence should be implemented at the north corner on the first 5'-0" from the rear property line along the side property line.

With these recommendations, staff is supportive of the variances 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 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.

COMPLIANCE WITH ZONING CODE

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the City Code.

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.

STAFF ANALYSIS

The subject site has been vacant for more than a decade, although a project for its development and renovations to the existing contributing structure has been reviewed and approved by the Board on several occasions. The project obtained a building permit on 2007 and the site is currently under construction. As part of the most recent modifications and improvements to the property, the applicant is requesting variances from the setbacks required for structures located within the Dune Preservation and Oceanfront Overlay Districts in order to construct a perimeter fence and retaining wall along the rear and north sides of the property.

As an oceanfront property, the rear yard is subject to additional zoning regulations under the Overlay Districts. The site features a triangular shape area on the east side regulated by the Dune Preservation Overlay District requirements and the rest of the rear yard regulated by the Oceanfront Overlay District.

Similar to other oceanfront properties, the site has a large difference between the grade elevation at the sidewalk, existing grade along the rear and finish floor elevations that result in the need for setback variances when constructing perimeter fences along the oceanfront side. In this case, a typical permitted 5 foot-high fence, measured from grade would be impossible to construct without a variance, as previously noted in this report. In this case, also a setback variance for a structure is also being requested due to the location of a raised accessible ramp at the rear.

Based on the current elevations of the different elements of the site, the need to address flooding concerns and the requirements to provide accessible routes within required yards to satisfy safety requirements of the Fire Department, staff finds that the applicant's request satisfies the practical difficulties criteria for the granting of the variances. However, based on the space between the property lines and the edge of the pool deck at the rear and north side, staff recommends that the accessible ramp be relocated closer to the pool deck, and the location of the fence at the northeast side be moved to be more internal to the site. The changes will allow for landscape material and additional lower fence with a consistent height along the rear property line. Conditioned to this change, staff recommends approval of the variances.

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 Practical Difficulty and Hardship criteria.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: July 11, 2017

FILE NO: HPB17-0120

PROPERTY: 6901 Collins Avenue

APPLICANT: SMGW Golden Sands, LLC.

LEGAL: Lots 5 and 6 of Block A of Lands in Atlantic Heights, According to the Plat Thereof, as Recorded in Plat Book 9, Page 14, of the Public Records of Miami-Dade County, Florida.

IN RE: The application for variances from the required rear and interior side setbacks for a perimeter fence located within the Dune Preservation Overlay and Oceanfront Overlay Districts as part of the property's renovation

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. No request for a Certificate of Appropriateness has been filed as a part of this application.

In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):
1. A variance to reduce all minimum required setback of 13'-0" from the Erosion Control Line in order to construct a perimeter fence within the Dune Preservation Overlay District and within the Oceanfront Overlay District at a minimum of zero (0'-0") from the Erosion Control Line and up to a height up to 17.0' NGVD.
 2. A variance to reduce all minimum required side setback of 15'-0" from the side property line in order to construct a perimeter fence within the Dune Preservation Overlay District and within the Oceanfront Overlay District at a minimum of zero (0'-0") from the north property line at a height of 17.0' NGVD

- 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 condition 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. A revised landscape plan, 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.

3. Revised elevation, site plan and section drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. The picket type fence with a maximum height to the top at 14'-0" NGVD shall be continued to the northeast corner of the side and along the first 5'-0' along the north side property line.
 - b. Any portion of the fence that requires additional retaining wall or solid surface shall be setback 5'-0" from the rear property line continuing on the first 5'-0" from the rear property line at the northeast corner. Finish grade within the 5'-0" setback shall not be higher than the current grade elevation along the rear property line.

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. Certificate of Appropriateness' and 'II. Variances' noted above.

- A. 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.
- 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. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- D. 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.
- E. 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.
- F. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- G. 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 Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "L'Atelier", as prepared by Revuelta Architecture International, P.A. dated June 19, 2017, 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
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 _____ ()