

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: September 8, 2015

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **HPB File No. 7515. 1901 Collins Avenue – Shore Club Hotel**

The re-hearing applicants, Setai Resort and Residences Condominium Association, Inc., Dr. Stephen Soloway and Setai Hotel Acquisition, LLC, are requesting a re-hearing of a previous decision of the Historic Preservation Board wherein it approved a Certificate of Appropriateness for the partial demolition and renovation of the existing 'Contributing' structures on the site, total demolition of the existing 2-story cabana structure, the construction of two 2-story ground level cabana structures, modifications to the existing 22-story 'Non-Contributing' structure and landscape and hardscape modifications, with the exception of the demolition proposed for the Crowmwell Hotel structure located along 20th Street. If the request for a re-hearing is granted, the matter may be heard immediately.

STAFF RECOMMENDATION

Denial of Re-hearing request

EXISTING STRUCTURES

Local Historic District:
Classification:

Ocean Drive / Collins Avenue
Contributing

LEGAL

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 ALTION 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.

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BACKGROUND

On February 11, 2015, the City Commission adopted an ordinance which allows for projecting balconies and balconies supported by columns to extend up to 30 feet from an existing building wall up to the highest habitable floor of the non-conforming building and not be considered a ground floor addition.

On March 10, 2015, the Board continued the application to the April 14, 2015 meeting.

On April 14, 2015, the Board continued the application to the May 12, 2015 meeting.

On May 12, 2015, the Board reviewed and approved a Certificate of Appropriateness for the partial demolition and renovation of the existing 'Contributing' structures on the site, total demolition of the existing 2-story cabana structure, the construction of two 2-story ground level cabana structures, modifications to the existing 22-story 'Non-Contributing' structure and landscape and hardscape modifications, with the exception of the demolition plan for the Cromwell Hotel structure fronting on 20th Street. The Board continued the demolition plan for the Cromwell building to a date certain of July 14, 2015.

The following portions of the application were approved on May 12, 2015:

- **Restoration and renovation of the existing Shore Club Hotel structure including the conversion of the entire south wing to accessory restaurant and commercial use.**
- **Conversion of the existing hotel units located within the 20-story north tower addition into 50 residential units.**
- **Design modifications to the existing 20-story tower addition including the introduction of expansive wrap around exterior terraces and expansion of existing window openings.**
- **Renovation of the pool deck area including the construction of a new pool and pool deck.**
- **Demolition of the existing 2-story cabana structure located at the rear of the property along the south property line and the construction of two 2-story cabanas within the rear yard, along the north and south property lines.**
- **A new landscape plan for the site.**
- **Construction of a new 5-story structure to the north of the Cromwell Hotel within the area currently containing a 2-level parking garage.**

On May 31, 2015, a 'Petition for Rehearing' was filed by Setai Resort and Residences Condominium Association, Inc., Dr. Stephen Soloway and Setai Hotel Acquisition, LLC.

Section 118-537 of the Miami Beach City Code specifies that the historic preservation board may consider a petition for rehearing by the applicant, the owner(s) of the subject property, the city manager, an affected person, Miami Design Preservation League, or 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. The petition for rehearing must demonstrate to the board that:

- a. There is newly discovered evidence which is likely to be relevant to the decision of the board;
- b. The board has overlooked or failed to consider something which renders the decision issued erroneous; or
- c. The board's action or order:
 1. Took place after May 11, 1995 and is actionable under the Bert J. Harris, Jr. Private Property Rights Protection Act, F.S. § 70.001 et seq., (referred to herein as the "Harris Act"); and
 2. Inordinately burdens an existing use of the applicant's real property or a vested right to a specific use of the applicant's real property (referred to herein as a "Harris Act claim").

The basis for the attached re-hearing petition submitted by the applicant is that there is newly discovered evidence which is likely to be relevant to the decision of the board and that the board overlooked or failed to consider something that makes the decision erroneous.

ANALYSIS

Staff analysis is outlined in the *Memorandum of Law in Opposition to the Petition for Rehearing*, attached.

RECOMMENDATION

Given the fact that the findings and conclusions of the appellant do not satisfy the re-hearing criteria in Section 118-537 of the City Code, staff would recommend that the request for a re-hearing be **DENIED**.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: September 8, 2015

FILE NO: 7515

PROPERTY: 1901 Collins Avenue

APPLICANT: Setai Resort and Residences
Condominium Association, Inc.,
Dr. Stephen Soloway and Setai
Hotel Acquisition, LLC

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 ALTION 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.

IN RE: A request for a re-hearing of a previous decision of the Historic Preservation Board wherein it approved a Certificate of Appropriateness for the partial demolition and renovation of the existing 'Contributing' structures on the site, total demolition of the existing 2-story cabana structure, the construction of two 2-story ground level cabana structures, modifications to the existing 22-story 'Non-Contributing' structure and landscape and hardscape modifications, with the exception of the demolition proposed for the Crowmwell Hotel structure located along 20th Street.

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 Ocean Drive/Collins Avenue Local Historic District.
- B. On May 12, 2015, the Board granted a Certificate of Appropriateness for the subject development project with the exception of the demolition proposed for the Crowmwell Hotel structure located along 20th Street, which were continued to a date certain of July 14, 2015.
- C. The petition submitted by the re-hearing applicants, Setai Resort and Residences Condominium Association, Inc., Dr. Stephen Soloway and Setai Hotel Acquisition, LLC, inclusive of all exhibits and testimony, fails to establish that the standards necessary for the granting of a re-hearing of the Certificate of Appropriateness that was granted by the Historic Preservation Board on May 12, 2015, are satisfied.

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, that the request filed by the Setai Resort and Residences Condominium Association, Inc., Dr. Stephen Soloway and Setai Hotel Acquisition, LLC, for a rehearing of the subject project is DENIED. The previous Certificate of Appropriateness granted May 12, 2015 shall remain in effect until final action on the rehearing, however no permits for demolition of the hotel structure shall be issued under such Certificate until such final action.

Dated this _____ day of _____, 20__.

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
DEBORAH TACKETT
PRESERVATION AND DESIGN MANAGER
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, Preservation and Design Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

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

Page 3 of 3
HPB File No. 7515 re-hearing
Meeting Date: September 8, 2015

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

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

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CMB PLANNING DEPT

BEFORE THE HISTORIC PRESERVATION
BOARD OF THE CITY OF MIAMI BEACH,
FLORIDA

HISTORIC PRESERVATION BOARD
FILE NO. 7515

IN RE: SHORE CLUB PROPERTY OWNER, LLC
1901 COLLINS AVENUE, MIAMI BEACH, FL

**CITY OF MIAMI BEACH'S MEMORANDUM OF LAW IN OPPOSITION
TO THE PETITION FOR REHEARING OF SETAI RESORT AND
RESIDENCE CONDOMINIUM ASSOCIATION, INC.,
DR. STEPHEN SOLOWAY, AND SETAI HOTEL ACQUISITION, LLC**

The City of Miami Beach (the "City") hereby submits this Memorandum of Law in Opposition to the Petition for Rehearing filed with the Historic Preservation Board (the "Board") by Petitioners Setai Resort and Residences Condominium Association, Inc. ("Setai Condo"), Dr. Stephen Soloway ("Dr. Soloway"), and Setai Hotel Acquisition, LLC ("Setai Hotel") (altogether, "Petitioners"). The subject of the Petition for Rehearing is the application of Shore Club Property Owner, LLC ("Shore Club" or "Applicant") to the Historic Preservation Board for a Certificate of Appropriateness for a redevelopment project (the "Project") at 1901 Collins Avenue, Miami Beach, Florida (HPB File No. 7515). After conducting a hearing on the Shore Club application on April 14, 2015, the Board continued the application. The Board heard the Shore Club

application on May 12, 2015, and approved a Certificate of Appropriateness, with conditions, for the Project. The Board did not rule on Petitioners' application for the partial demolition of the Sharalton building, which application shall be heard on July 14, 2015.

The City respectfully requests that the Board deny Petitioners' Petition for Rehearing, because Petitioners have failed to meet the standard set forth in the City Code to prevail on a petition for rehearing.

I. The Standard of Review for a Petition for Rehearing by the Historic Preservation Board.

To prevail on a petition for rehearing, a petitioner must demonstrate that "[t]here is newly discovered evidence which is likely to be relevant to the decision of the board" or "[t]he board has overlooked or failed to consider something which renders the decision issued erroneous." City Code Section 118-537(a)(1)(a)-(b).

II. Petitioners have failed to demonstrate that they are entitled to a rehearing based on the Project's alleged noncompliance with the City's off-street loading requirements.

The Petition for Rehearing relies in large part on Petitioners' assertion that the Board overlooked or failed to consider the Project's failure to comply with the off-street loading space requirements set forth in the City Code. However, the Board in fact considered various sources of information regarding the Project's compliance with off-street loading requirements: the City's Staff Report; argument and testimony before the Board; the Expert Planning and Zoning Report, dated

April 7, 2015, of Henry Iler, AICP, submitted by Petitioners; and the traffic analysis provided by Kimley Horn, on behalf of the Applicant.

The City's Planning Department, in its Staff Report, provided the Board with relevant analysis regarding the Project's compliance with the City's off-street loading requirements: "The removal of any existing loading spaces may require a variance and additional loading spaces may be required." HPB File No. 7515, Staff Report & Recommendation, dated May 12, 2015, at 3. In fact, the Staff Report recommended that any Certificate of Appropriateness for the Project contain the following condition: "The proposed new 5-story structure located along 20th Street shall be redesigned in order to accommodate an off-street loading area." *Id.* at 13. The Board, however, elected to exclude this condition from the Certificate of Appropriateness.

At the April 14, 2015 hearing, Deborah Tackett, the City's Preservation and Design Manager, stated, "there are potential Code implications regarding the removal of the parking spaces and/or loading spaces." Ms. Tackett raised this issue in the context of the proposed partial demolition of the existing structure to build the Amenities Building.

At the May 12, 2015 hearing, Kent Harrison Robbins, counsel for Petitioners, provided argument on the subject. Mr. Robbins stated, "we feel that the Applicant should be . . . reconfiguring 20th Street and putting their loading

facilities on their site.” Curiously, Mr. Robbins acknowledged that his client’s property, the Setai, at 2001 Collins Avenue, could not comply with the City’s current off-street loading requirements if it were built today: “Unfortunately, the Code was not in place requiring loading spaces on our site – on the Setai site – when our project was approved.”

Petitioners’ own expert, Henry Iler, addressed the Project’s compliance with the City’s off-street loading requirements in his report dated April 7, 2015, which was submitted to the Board for consideration and is a part of the Board’s record: “Loading zones for service and delivery vehicles serving the project are not provided on the proposed site plan as required by City Code Section 130-72.”¹ *See* Report of Henry Iler, AICP, dated April 7, 2015, at 4.

Likewise, Kimley Horn, the traffic expert retained by the Applicant, also addressed current and proposed off-street loading issues in its Traffic Study, dated April 13, 2015, and in its Memorandum and Review of Staff Analysis Documents, dated May 7, 2015. Petitioners reference Kimley Horn’s off-street loading analysis at length in their Petition for Rehearing. *See* Pet’rs’ Br. 8.

Petitioners now argue that the Board overlooked newly discovered evidence or failed to consider something which rendered its decision issued erroneous.

¹ Mr. Iler’s report recognizes that the City Code imposes requirements on developments to provide off-street loading spaces. However, Mr. Iler’s citation to Section 130-72 is incorrect. There is no such section in the City Code.

However, in the same Petition for Rehearing, Petitioners reference with great detail the evidence and argument relating to off-street loading that the Board considered before approving the Certificate of Appropriateness, with conditions, for the Project. Petitioners thereby effectively concede that the Board considered a breadth of information regarding the Project's compliance with off-street loading requirements. In their Petition for Rehearing, Petitioners have not pointed to any "newly discovered evidence which is likely to be relevant to the decision of the Board," and Petitioners cannot establish that the Board "overlooked or failed to consider something which renders the decision issued erroneous." *See* City Code Section 118-537(a)(1)(a)-(b). The Board, having considered the evidence and argument of counsel, approved the Certificate of Appropriateness without requiring the Applicant to revise the plan to provide off-street loading spaces.

Additionally, the Board could not have granted, at the May 12, 2015 hearing, any variances to reduce the number of required loading spaces, because the Applicant did not apply for any such variances. Any application for a variance would trigger the City Code's notice provisions. If indeed the Project would require a variance to reduce the number of required off-street loading spaces, the Applicant would need to apply for such variances and request a hearing. However, no application for variances was before the Board on May 12, 2015.

III. Petitioners have failed to demonstrate that they are entitled to a rehearing based on either (1) the Board's consideration of the Kimley Horn Memorandum, dated May 7, 2015 and submitted by the Applicant, or (2) the letter of Ralph Aronberg regarding the Kimley Horn report, dated June 3, 2015 and attached to the Petition for Rehearing.

Petitioners' argument relating to the Board's consideration of the traffic study by Kimley Horn, dated May 7, 2015, and the letter of Ralph Aronberg, P.E., dated June 3, 2015, conflates the issues of whether the Board is required to accept surrebuttal evidence, whether Petitioners were denied due process at the Board's hearing on the Shore Club application, and whether the letter of Ralph Aronberg constitutes "newly discovered evidence" that would require the Board to grant the Petition for Rehearing. The City hereby limits its response to whether Petitioners' argument regarding the Kimley Horn traffic study or the letter of Ralph Aronberg meet the standard set forth in the City Code for the Board to grant a rehearing. Petitioners' due process claims are outside the scope of a petition for rehearing.

A. The Kimley Horn Memorandum, dated May 7, 2015.

During the week before the April 14, 2015 meeting of the Board, the Applicant introduced a Kimley Horn traffic analysis report, dated April 13, 2015, in rebuttal to Petitioners' opposition to the Shore Club application. Section 2-513(c) of the City Code, which establishes the City's procedure for conducting quasi-judicial hearings, allows such rebuttal evidence by an applicant. City Code

Section 2-513(c)(2)(e). Petitioners then submitted, in advance of the May 12, 2015 hearing, several documents, including traffic and parking analyses.

To the extent that these analyses responded to the Applicant's rebuttal evidence and argument, the analyses constituted surrebuttal evidence, which the Board was *not* required to accept. Neither the City Code nor relevant case law required the Board to accept Petitioners' surrebuttal evidence. Section 2-513(c) of the Code does not contemplate surrebuttal evidence at all. "Substantial authority holds that there is no abuse of discretion in denying a rehearing . . . sought for the purpose of introducing evidence that could, in the exercise of due diligence, have been offered at the original hearing." *Fla. Dep't of Corrections v. Provin*, 515 So. 2d 302, 306 (Fla. 1st DCA 1987) (citing *Fla. Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 786 (Fla. 1st DCA 1981)). The Deputy City Attorney advised the Board accordingly. Nonetheless, the Chair of the Board stated, "I think we can accept the reports, and I don't believe it's necessary for oral argument on the rebuttal." Then, Lucia Dougherty, counsel for the Applicant, requested that the Applicant be allowed to submit surrebuttal evidence – the Kimley Horn traffic study – to rebut Petitioners' surrebuttal evidence. The Chair responded, "[the reports] can be submitted into the record." However, to be clear, surrebuttal evidence that could have been offered at the original hearing does not entitle a petitioner to a rehearing.

Petitioners object to the Board's consideration of the Kimley Horn Memorandum dated May 7, 2015. However, the Board could not have considered the Kimley Horn Memorandum if not for Petitioners' submission of surrebuttal evidence to the Board.

Petitioners assert that the Kimley Horn Memorandum, dated May 7, 2015, was untimely and that the Board should not have considered it. Petitioners argue that the Kimley Horn Memorandum "makes unfounded assertions that: 'It is our understanding that three (3) 20-foot loading bays will be provided as part of the Shore Club's redevelopment, consistent with the City of Miami Beach Code.'" Pet'rs' Br. 10-11 (citing Memorandum of Kimley Horn, dated May 7, 2015). Petitioners lament that they "were not allowed to present testimony of [their] traffic engineer expert, who was present at the hearing, in response to this report or to preserve their objections." Pet'rs' Br. 11. However, the law does not contemplate endless rounds of surrebuttals. A petition for rehearing is not the proper vehicle to raise what is effectively a due process challenge to the Board's denial of Mr. Robbins's request to submit surrebuttal evidence to the Applicant's surrebuttal evidence, which evidence Petitioners submitted in surrebuttal to the Applicant's rebuttal.

B. The letter of Ralph Aronberg regarding the Kimley Horn report, dated June 3, 2015.

Petitioners attach a letter of Ralph Aronberg, Petitioners' traffic expert, to the Petition for Rehearing. Petitioners state, "A report dated June 3, 2015 by traffic engineer expert Ralph Aronberg, which report addresses Kimley Horn's May 7, 2015 Memorandum/Traffic Study, is . . . new evidence which should be considered by the Board." Pet'rs' Br. 12. However, the June 3, 2015 letter of Ralph Aronberg is nothing more than a surrebuttal to a surrebuttal (the May 7, 2015 Kimley Horn Memorandum, submitted by the Applicant) to a surrebuttal (the reports and analyses submitted by Mr. Robbins in advance of the May hearing). Petitioners' attempt to introduce another layer of surrebuttal evidence that could, in the exercise of due diligence, have been offered at the original hearing, does not warrant the grant of a rehearing. *See J.W.C. Co.*, 396 So. 2d at 786.

IV. Contrary to Petitioners' assertion, the Planning Department's Staff Report correctly calculated the subject property's required side yard setbacks.

Petitioners erroneously assert that "[t]he Project and the Amenities Building do not comply with the side yard setback requirements of the Code under RM-3 zoning." In support of this assertion, Petitioners state as follows:

[t]he Survey in the Applicant's submission shows that the width of the lot at Collins Avenue is 200 feet but the scaled width at the location of the proposed Amenity Building from the survey is approximately 271 feet

which means the sum of the side yard [setbacks] at that point is 16%, that is, approximately 43 feet.

Pet'rs' Br. 14.

Petitioners correctly cite Section 142-247(a) of the City Code, which requires that, in the RM-3 zoning district, the sum of the side yards shall equal 16% of the lot width, and that the minimum side setback shall be the greater of 7.5 feet or 8% of the lot width. However, by incorrectly measuring the lot width of the property, Petitioners have incorrectly calculated the required side yard setbacks for the property.

Section 114-1 of the City Code defines "lot width" as "the level distance between the side lot lines measured at the **required front yard setback line** and parallel to the front street line." (Emphasis added). The minimum front setback requirement in the RM-3 zoning district, where the subject property is located, is 20 feet. City Code Section 142-247. The lot width of the subject property, therefore, must be measured at the 20-foot front setback line. The lot width of the subject property, which City staff correctly measured at the 20-foot front setback line, is 200 feet.

Petitioners' reliance on the "scaled width at the location of the proposed Amenity Building," which Petitioners claim to be "approximately 271 feet," to calculate the required side yard setbacks, is misguided, and Petitioners' resulting

calculation is incorrect. Petitioners have therefore failed to demonstrate that the City's setback calculations are a basis for rehearing.

CONCLUSION

Petitioners have failed to demonstrate to the Board that "[t]here is newly discovered evidence which is likely to be relevant to the decision of the board" or "[t]he board has overlooked or failed to consider something which renders the decision issued erroneous." Because Petitioners failed to meet their burden on a petition for rehearing, the Petition for Rehearing should be denied. The City respectfully requests that the Board uphold the Certificate of Appropriateness dated May 18, 2015, and deny Petitioners' request for rehearing.

Respectfully submitted,

RAUL J. AGUILA, CITY ATTORNEY
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Nicholas E. Kallergis
Assistant City Attorney
Florida Bar No. 105278

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via email to Kent Harrison Robbins, Esquire, Counsel for Petitioners, at khr@khrlawoffices.com; Eve A. Boutsis, Esquire, Deputy City Attorney, City of Miami Beach, Counsel for the Board, at eveboutsis@miamibeachfl.gov; and Alfredo J. Gonzalez, Esquire, Counsel for the Applicant, at gonzalezaj@gtlaw.com, this 30th day of June, 2015.



Nicholas E. Kallergis