

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. 7519, **2901 Collins Avenue.**

The applicant, Seville Acquisition, LLC, is requesting variances to reduce the minimum required side and rear setbacks for a perimeter fence.

STAFF RECOMMENDATION

Approval with conditions

EXISTING STRUCTURE

Local Historic District:	Collins Waterfront
Status:	Contributing
Original Construction Date:	1955
Original Architect:	Melvin Grossman

ZONING / SITE DATA

Legal Description:	All of block 11, together with alley of Block 11 extending from the north line of block 11 to the northerly line of Miami Beach Drive plus circular tract located between Block 8 & 11., According to the Plat Thereof, as Recorded in Plat Book 5, Page 7&8, 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

THE PROJECT

The applicant has submitted plans entitled "The Seville Beach Hotel", as prepared by Nichols Brosch Wurst Wolfe & Associates, dated April 22, 2015.

The applicant is proposing a new perimeter fence at the rear yard of the property.

The applicant is requesting the following variances:

1. A. A variance to waive all of the minimum required side setback of 15'-0" in order to construct a perimeter fence in the Dune Preservation Overlay District at 0'-0" from the north side property line at a height up to 16.50 NGVD.
- B. A variance to waive all of the minimum required side setback of 15'-0" in order to construct a perimeter fence in the Dune Preservation Overlay District at 0'-0" from the south side property line at a height up to 16.50 NGVD.

- Variance 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.

- C. A variance to waive all of the minimum required setback of 10'-0" from the Erosion Control Line in order to construct a perimeter fence in the Dune Preservation Overlay District at 0'-0" from the Erosion Control Line and a height up to 16.50 NGVD.

- Variance requested from:

Sec. 142-775. - Development regulations

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

(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.

2. A. A variance to waive all of the minimum required setback of 15'-0" from the side property line in order to construct a perimeter fence in the Oceanfront Overlay District at 0'- 0" from the north property line and a height up to 16.50 NGVD.
- B. A variance to waive all of the minimum required setback of 15'-0" from the side property line in order to construct a perimeter fence in the Oceanfront Overlay District at 0'- 0" from the south property line and a height up to 16.50 NGVD.

- Variance requested from:

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.

The applicant is proposing a perimeter fence along the east side of the property, included within the Oceanfront Overlay and Dune Preservation Overlay Districts. Because the existing grade along the rear is much higher than the established grade for the site, a 5 foot high fence, measured from grade would be impossible to construct as it would exceed the maximum height the Board can approve for a variance. Therefore, the applicant is requesting a setback variance.

Due to the increase in height of the grade elevations at the rear of the property, the height of the proposed fence will be approximately 5'-0" high from the adjacent grade.

CONSISTENCY WITH 2025 COMPREHENSIVE PLAN

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

COMPLIANCE WITH ZONING CODE

A preliminary review of the project indicates that the application, as proposed, is consistent with the City Code; other than the sections for variances which are sought.

The above noted comment 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.

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.

STAFF ANALYSIS

The proposed perimeter fence is located at the rear of the property along the east, north, and south property lines, within the Dunes and Oceanfront Overlay Districts. Within these overlay districts structures have a minimum setback of 10'-0" and 15'-0" respectively. Although the proposed fence has a height of 16'-6" NGVD, the perceived height will actually be 5'-0" because the elevation of the property and the surrounding area increases substantially between the front of the site on Collins Avenue and the rear of the site. The maximum height is measured from the grade (sidewalk) elevation at the front of the property, and thus the reason for the variance request.

Staff has no objections to the requested variances, as a fence could not otherwise be constructed unless substantially setback from the side and rear property lines.

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, as applicable.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: September 8, 2015

FILE NO: 7515

PROPERTY: 2901 Collins Ave

APPLICANT: Seville Acquisition, LLC

LEGAL: All of block 11, together with alley of Block 11 extending from the north line of block 11 to the northerly line of Miami Beach Drive plus circular tract located between Block 8 & 11., According to the Plat Thereof, as Recorded in Plat Book 5, Page 7&8, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for variances to reduce the minimum required side and rear setbacks for a perimeter fence.

FINAL 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 Certificate of Appropriateness has not been requested as part of this application.

II. Variance(s)

A. The applicant filed an application with the Planning Department for the following variance(s):

1. A. A variance to waive all of the minimum required side setback of 15'-0" in order to construct a perimeter fence in the Dune Preservation Overlay District at 0'-0" from the north side property line at a height up to 16.50 NGVD.
- B. A variance to waive all of the minimum required side setback of 15'-0" in order to construct a perimeter fence in the Dune Preservation Overlay District at 0'-0" from the south side property line at a height up to 16.50 NGVD.

- C. A variance to waive all of the minimum required setback of 10'-0" from the Erosion Control Line in order to construct a perimeter fence in the Dune Preservation Overlay District at 0'-0" from the Erosion Control Line and a height up to 16.50 NGVD.
2. A. A variance to waive all of the minimum required setback of 15'-0" from the side property line in order to construct a perimeter fence in the Oceanfront Overlay District at 0'- 0" from the north property line and a height up to 16.50 NGVD.

B. A variance to waive all of the minimum required setback of 15'-0" from the side property line in order to construct a perimeter fence in the Oceanfront Overlay District at 0'- 0" from the south property line and a height up to 16.50 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 imposes the following conditions 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.

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

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 Certificate of Appropriateness and Variances are 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 approved by the Historic Preservation Board, as determined by staff, entitled "The Seville Beach Hotel", as prepared by Nichols Brosch Wurst Wolfe & Associates, dated April 22, 2015.

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 a Certificate of Appropriateness and Variances 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 Certificate of Appropriateness and Variances were granted, the Certificate of Appropriateness will expire and become null and void. 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 Certificate of Appropriateness will expire and become null and void.

In accordance with Section 118-561 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 Certificate of Appropriateness to Section 118-564, City Code, for revocation or modification of the Certificate of Appropriateness.

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: _____

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

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