

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Design Review Board

TO: DRB Chairperson and Members

DATE: November 03, 2015

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: Design Review File No. 23210  
**240 76<sup>th</sup> Street – Swimming Pool**

The applicant, Museum Walk Apartments, LLC., is requesting Design Review Approval for the construction of a new pool and deck for the existing multifamily building including variances to reduce the required side facing a street setback for a pool and pool deck.

#### **RECOMMENDATION:**

Approval with conditions

#### **LEGAL DESCRIPTION:**

Lot 1 less western 2.5 ft to city & northern ½ lot 2 less western 2.5 ft to city of Block 1 of the "Altos Del Mar No. 3" according to Plat thereof as recorded in Plat Book 8, Page 41 of the Public Records of Miami-Dade County, Florida.

#### **SITE DATA:**

Zoning:	RM-1
Future Land Use:	RM-1
Lot Size:	8,165 SF
Existing FAR:	±8,618.6 SF / 1.05)
Maximum FAR:	10,206.25 SF (1.25)
Existing use:	16 Apartments
Existing height:	2 Stories

#### **SURROUNDING PROPERTIES:**

North: Two-story MiMo residential building  
South: Surface parking lot  
West: Two-story MiMo residential building  
East: Two-story MiMo residential building

#### **EXISTING STRUCTURE:**

The existing two-story building is an excellent example of a typical midcentury MIMO courtyard building, built in 1953 by MacKay & Gibbs. The building contains 16 apartment units.

#### **THE PROJECT:**

The applicant has submitted plans entitled "Museum Walk Apartments New Swimming Pool and Deck" as prepared by **JD Engineering & Construction Corp.** signed sealed and dated September 11, 2015.

The applicant is proposing to construct a swimming pool within the small courtyard of an existing two-story courtyard building.

The applicant is requesting the following variance(s):

1. A variance to reduce 9'-3" of the minimum required street side setback of 15'-0" for a pool, deck or platform, in order to construct the pool deck at 5'-9" from the side property line facing 76<sup>th</sup> Street.

- Variance requested from:

**Sec. 142-1133. Swimming pools.**

*This section applies to swimming pools in all districts, except where specified. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:*

*(3)Side yard facing a street. For a side yard facing a street:*

*b. All other districts. In all other districts a 15'-0" setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.*

The existing two-story apartment building is non-conforming regarding setbacks on all sides. A new pool is proposed in the only open area existing on the property, the paved courtyard facing 76<sup>th</sup> Street. Due to the building constraints, variances are required in order to provide this amenity for the residents. The proposed pool deck will be constructed on the north side with a setback up to 5'-9" from the street side property line where 15'-0" is required. The pool deck will match similar site conditions pertaining to the amount of pavement. The existing conditions of the site do not allow placing the pool anywhere else on the property. Pools are a standard amenity that the property would not be able to have under the existing conditions. The practical difficulties of the site result in the recommendation of staff approval. Staff recommends that the variance request be approved as proposed.

2. A variance to reduce 5'-11" of the minimum required street side setback of 15'-0" for a pool, deck or platform, in order to construct a pool at 9'-1" from the side property line facing 76<sup>th</sup> Street.

- Variance requested from:

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*b. All other districts. In all other districts a 15'-0" setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.*

As proposed, the 13'-0" x 22'-0" pool will be constructed in the existing courtyard of the building. The uncovered outdoor courtyard that faces 76<sup>th</sup> Street is the only available area on

site that would be possible to install the outdoor pool amenity without demolishing portions of the building. The existing planters will be retained and new landscaping incorporated within same to establish a transition from the outdoor hallways leading to the residential apartment units to the proposed outdoor amenity. Staff has no objections to this variance request and recommends its approval. Pools and the accompanying facilities, are a standard amenity that the property would not be able to have under the existing conditions. The practical difficulties of the site result in the staff non-objection to the request and belief that the practical difficulties standard has been compiled with.

#### **PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application 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.

#### **CONSISTENCY WITH COMPREHENSIVE PLAN**

A preliminary review of the project indicates that the proposed **residential use** appears to be **consistent** with the Future Land Use Map of the 2025 Comprehensive Plan.

#### **COMPLIANCE WITH ZONING CODE:**

The application, as proposed, may be inconsistent with the following requirements of the City Code, in addition to the variances requested:

1. Backflow prevention devices shall not be permitted within any required yard or any area fronting a street or sidewalk.

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.

**COMPLIANCE WITH DESIGN REVIEW CRITERIA:**

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.  
**Satisfied**
2. 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 Satisfied; See Compliance with the Zoning Code, multiple variances are required.**
3. 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 Compliance with the Zoning Code, multiple variances are required.**
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.  
**Satisfied**
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.  
**Not Satisfied; See Compliance with the Zoning Code, multiple variances are required.**

6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.  
**Satisfied**
7. The design and layout of the proposed site plan, as well as all new and existing buildings 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 contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.  
**Satisfied**
8. 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 all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.  
**Satisfied**
9. 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. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.  
**Not Applicable**
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.  
**Satisfied**
11. 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**
12. The proposed structure has 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).  
**Not Applicable**
13. The building has, where feasible, space in that part of the ground floor fronting a 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 street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

**Not Applicable**

14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

**Not Applicable**

15. An 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**

16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

**Satisfied**

17. 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:**  
**DESIGN AND VARIANCE REVIEW**

The subject property has been under renovations including the replacement of windows and extensive interior work. As part of the improvements to preserve the existing structure, the applicant is proposing to construct a swimming pool within the small courtyard of the two-story building. The property is a corner parcel with the main access on 76<sup>th</sup> Street and Harding Avenue, but for zoning purposes the "front" of the property is identified along Harding Avenue. The 8,165 SF lot is fairly developed with the existing MiMo building occupying a footprint that contains non-conforming setbacks of 7'-6" from the front, and nonconforming interior side and rear setbacks of 5'-0".

The uncovered outdoor courtyard that faces 76<sup>th</sup> Street is the only available unimproved area on site that would be possible to install the pool amenity without demolishing portions of the building. Therefore, the variances requested are the minimum necessary in order to preserve the contributing structure, while allowing the construction of a pool, and satisfying the Design Review Criteria. The limited open space available on site is not the result of the actions of the applicant and the strict compliance with the Code would impose an undue hardship on the applicant as the residents would not be able to enjoy this amenity without affecting the existing structure.

Staff has no objections with regard to the design of the proposed pool and pool deck and recommends approval of the variances as requested.

**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 Design Review criteria and/or Practical Difficulty and Hardship criteria.

TRM/JGM/IV

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**DESIGN REVIEW BOARD  
City of Miami Beach, Florida**

MEETING DATE: November 03, 2015

FILE NO.: 23210

PROPERTY: **240 76<sup>th</sup> Street**

APPLICANTS: Museum Walk Apartments, LLC.

LEGAL: Lot 1 less western 2.5 ft to city & northern ½ lot 2 less western 2.5 ft to city of Block 1 of the "Altos Del Mar No. 3" according to Plat thereof as recorded in Plat Book 8, Page 41 of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for the construction of a new pool and deck for the existing multifamily building including variances to reduce the required side facing a street setback for a pool and pool deck.

**ORDER**

The City of Miami Beach Design Review 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. Design Review**

- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not an individually designated historic site.

- 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 is inconsistent with Design Review Criteria 3, and 5 in Section 118-251 of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of Section 118-251 if the following conditions are met:
  - 1. Revised elevation, site plan, and floor plan drawings for the proposed new pool at 240 76<sup>th</sup> Street shall be submitted, at a minimum, such drawings shall incorporate the following:
    - a. The final Design details of the exterior materials and finishes shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
    - 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. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.

**In accordance with Section 118-262, the applicant, or the city manager on behalf of the city administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for rehearing shall not be reviewed by the Commission.**

## **II. Variance(s)**

- A. The applicant filed an application with the Planning Department for the following variance(s):
  - 1. A variance to reduce 9'-3" of the minimum required street side setback of 15'-0" for a pool, deck or platform, in order to construct the pool deck at 5'-9" from the side property line facing 76<sup>th</sup> Street.
  - 2. A variance to reduce 5'-11" of the minimum required street side setback of 15'-0" for a pool, deck or platform, in order to construct a pool at 9'-1" from the side property line facing 76<sup>th</sup> Street.

- 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 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.
  2. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
    - a. The backflow preventor and Fire Department Connection (FDC) shall be relocated out of the required front yard in a manner to be reviewed and approved by staff.

**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.**

**II. General Terms and Conditions applying to both 'I. Design Review Approval and II. Variances' noted above.**

- A. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- B. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- 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 City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.
- H. A traffic mitigation plan, which addresses all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, if required, shall be submitted prior to the issuance of a Building Permit and the final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- I. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design

Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.

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 Finding of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "Museum Walk Apartments New Swimming Pool and Deck" as prepared by JD Engineering & Construction Corp. signed sealed and dated September 11, 2015, and as approved by the Design Review 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 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 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 shall 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.

