

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: November 10, 2015

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **File No. 7575, 7815 Atlantic Way.**

The applicant, Robert Chavez, is requesting a variance to reduce the required setback for a structure from the Miami Beach Bulkhead line within the Altos del Mar District in order to increase the height of an existing wall located along the south side of the property.

STAFF RECOMMENDATION

Approval of the Variance with conditions

EXISTING STRUCTURE

Local Historic District:	Altos Del Mar
Construction Date:	2015
Architect:	Ramon Pacheco & Associates

ZONING / SITE DATA

Legal Description:	Lot 5, Block 5 of "Altos del Mar No. 1 Subdivision", According to the Plat Thereof, as recorded in Plat Book 31, Page 40 of the Public Records of Miami Dade County, Florida.
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Zoning:	RS-3
Future Land Use Designation:	RS
Lot Size:	15,987 S.F.
Unit Size:	~4,700 S.F.
Height:	3 stories / 37 feet

THE PROJECT

The applicant has submitted plans entitled "Remedial Privacy Wall Work for Mr. & Mrs. Keller" as prepared by Eastshore Architects, dated September 16, 2015.

The applicant is requesting a variance to reduce the required setback for a structure from the Miami Beach Bulkhead line within the Altos del Mar district in order to increase the height of an existing wall located along the south side of the property.

The applicant is requesting the following variance(s):

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The applicant is requesting the following variance(s):

1. A variance to reduce by 14'-6" the minimum required setback of 130'-0" from the City's bulkhead line in the Altos del Mar Historic District in order to increase the height of an existing wall located on the south side up to 10'-0" in height as measured from grade and setback 115'-6" from the City's bulkhead line along the south side of the property.
 - Variance requested from:

Sec. 142-107. Development regulations for the Altos Del Mar Historic District.

Notwithstanding the development regulations contained in sections 142-101—142-106 above, the following development regulations shall apply to those portions of the RS-3 and RS-4 zoning districts located within the Altos Del Mar Historic District:

(h)Setback Ocean: - Up to 25' in building height: 130 feet from Miami Beach Bulkhead Line for principal and accessory buildings.

This variance request is limited to the increase of an existing wall with approximately 6'-6" in height up to 10 feet, along 14'-5" of length and a setback of 115'-6" from the city's bulkhead line. The existing wall on the south side of the property was approved by the Board of Adjustment in 2014 with two variances in order to reconstruct a 10' high wall damaged during the construction of the new single family home on the subject property. One of the variances allowed to exceed 3 feet above the maximum 7' in height permitted for a fence. The second variance allowed the wall to exceed 3 feet in height within 130 feet from the City's bulkhead line. However, the maximum height for a fence in this area is 3'-6" and only 3 feet in height can be granted above the maximum established. The continuation of the 10 feet in height within 130 feet from the Bulkhead Line requires a setback variance for a structure included in this application.

Staff believes that the applicant's request satisfies the practical difficulty and hardship criteria established for the granting of a variance. The existing 10' high wall existed in this location for more than 80 years providing for the privacy between the properties. The strict compliance with the Code would impose and undue hardship on the neighbor to the south, who is the most affected party. The granting of this variance will not confer on the applicant a special privilege, on the contrary it will reinstate a site condition that existed for many years and has been part of the quality of life of the property owners. Staff would note that the portion of the wall with 10 feet in height is setback more than 50 feet from the Atlantic Way and extends mostly along the existing adjoining building facades. The granting of this variance will not be injurious to other properties on the neighborhood as it is basically self-contained between the properties. For these reasons, staff is supportive of the variance as requested due to the practical difficulties associated with the property.

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.

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, with the exception of the variance(s) requested herein, appears to be consistent with the City Code.

This 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.

VARIANCE ANALYSIS

The subject site is located within the Altos del Mar Local Historic District. The Historic Preservation Board approved the construction of a new two story single family home in 2005. The construction of the new house is finalized with approved certificate of occupancy.

The original house on the lot was constructed in 1936 and the house immediately to the south was constructed in 1935. The two properties were separated by a clay brick wall that was built around the same time with the houses. During the construction of the new home on the subject property, the wall was damaged and led to unsafe conditions that ultimately required its replacement. Because the original wall was 10 feet in height, and exceeded the maximum height allowed today for a fence, variances were approved by the Board of Adjustment to reconstruct the wall. However, the length and height of the approved wall did not match the original wall.

As shown in the 2013 survey provided by the applicant in the submitted documents, the wall extended approximately 93 feet. The height of the previously approved fence did not have the 10' high for 14'-5" feet of length as the original wall on the east side facing the ocean. The applicant is requesting a variance to complete that portion of the wall up to the original height in the current application. The intent of the previously approved variances was to restore the

existing site conditions with the wall that separated the properties. Considering the minor area of work related to this variance and that the granting of such variance would not be injurious to other properties, except for the two adjoining neighbors who would otherwise be deprived of a site condition specifically to the internal yards of the properties, staff recommends approval of the variance 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 Practical Difficulty and Hardship criteria, as applicable.

**HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida**

MEETING DATE: November 10, 2015

FILE NO: 7575

PROPERTY: 7815 Atlantic Way

APPLICANT: Robert Chavez

LEGAL: Lot 5, Block 5 of "Altos del Mar No. 1 Subdivision", According to the Plat Thereof, as recorded in Plat Book 31, Page 40 of the Public Records of Miami-Dade County.

IN RE: The application for a variance to reduce the required setback for a structure from the Miami Beach Bulkhead line within the Altos del Mar District in order to increase the height of an existing wall located along the south side of the property.

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

1. No Certificate of Appropriateness was filed as 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 by 14'-6" the minimum required setback of 130'-0" from the city's bulkhead line in the Altos del Mar Historic District in order to increase the

height of an existing wall located on the south side up to 10'-0" in height as measured from grade and setback 115'-6" from the city's bulkhead line along the south side of the property.

- 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.

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 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.

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 "Remedial Privacy Wall Work for Mr. & Mrs. Keller" as prepared by Eastshore Architects, dated September 16, 2015 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
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: _____

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HPB File No. 7575
Meeting Date: November 10, 2015

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

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

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