

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: June 13, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: HPB23-0573, **239 1st Street.**

An application has been filed requesting variances from the minimum and average unit size requirements.

STAFF RECOMMENDATION

Approval of the variances with conditions.

EXISTING STRUCTURE

Local Historic District:	Ocean Beach
Classification:	Contributing
Original Construction Date:	1936
Original Architect:	B. Kingston Hall

ZONING / SITE DATA

Legal Description:	The west 50 feet of Lots 9 & 10, Block 9, Ocean Beach Subdivision, according to the Plat thereof, as recorded in Plat Book 2, Page 38 of the Public Records of Miami-Dade County, Florida.
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Zoning:	C-PS1, Commercial performance standard, limited mixed-use
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Future Land Use:	C-PS1, Commercial performance standard, limited mixed-use
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THE PROJECT

The applicant has submitted plans entitled "Renovations to Existing Apartments", as prepared by Village Architects of Key Biscayne, Inc., dated March 16, 2023.

COMPLIANCE WITH ZONING CODE

The application as proposed, with the exception of the variance requested herein, appears to be consistent with the Miami Beach Resiliency 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 Planning Department prior to the issuance of a Building Permit.

CONSISTENCY WITH 2040 COMPREHENSIVE PLAN

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

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4(a)(i) of the Miami Beach Resiliency Code establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Not Applicable
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Not Applicable
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Not Applicable
- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 4 of the Miami Beach Resiliency Code.
Not Applicable
- (5) The project applicant shall consider the adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.
Not Applicable
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.
Not Applicable
- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.
Not Applicable
- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.
Not Applicable
- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 in General Ordinances.

Not Applicable

- (10) In all new projects, water retention systems shall be provided.

Not Applicable

- (11) Cool pavement materials or porous pavement materials shall be utilized.

Not Applicable

- (12) The project design shall minimize the potential for a project causing a heat island effect on site.

Not Applicable

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 indicate the following, as they relate to the requirements of Section 2.8.3(a) of the Miami Beach Resiliency Code:

- i. 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.
- ii. That the special conditions and circumstances do not result from the action of the applicant.
- iii. That granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district.
- iv. That literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant.
- v. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
- vi. That the granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- vii. 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.
- viii. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

VARIANCE ANALYSIS

The subject structure, designed by B. Kingston Hall, was constructed in 1936 as a 1-story mixed-use building with three retail stores and seven apartment units. In 1940, a second story was constructed containing nine additional apartment units. The commercial portion of the building is located at the southern end at the ground level and originally consisted of one large store and two smaller retail bays. In 2012, the retail spaces were combined into one restaurant. Additionally, in 2014, the Board approved modifications to the west and south façades of the building as part of an expansion of the restaurant. Further, in 2022, the Board approved a variance in order to construct a stair landing projection within the required rear setback as part of the renovation of the residential portion of the building to comply with life safety and accessibility requirements.

The currently requested unit size variances are related to the renovation project in which the configuration of several units is proposed to be modified in response to life safety and accessibility requirements. As a result, the applicant is requesting approval for the following variances:

- A variance to reduce by up to 69 sq. ft. the minimum required apartment unit size of 400 sq. ft. for rehabilitated buildings in order to provide apartment unit sizes with a minimum of 331 sq. ft.
- A variance to reduce by up to 156 sq. ft. the minimum average required apartment unit size of 550 sq. ft. for rehabilitated buildings in order to provide a minimum average apartment unit size of 394 sq. ft. Variances requested from:

Section 7.2.15.3(f). Commercial Performance Standard Area Requirements (C-PS).

Development Regulations Table (C-PS)

Minimum Unit Sizes (Square Feet); C-PS1; Rehabilitated Buildings: 400 Sq. Ft.

Minimum Average Unit Sizes (Square Feet); C-PS1; Rehabilitated Buildings: 550 Sq. Ft.

As previously indicated, the residential portion of the building is proposed to be renovated to comply with modern life safety and accessibility requirements including the introduction of a new elevator and the enlargement of the existing north stairway. Additionally, the apartment units are proposed to be renovated to incorporate accessible components. These code requirements result in the need to reconfigure the existing units including the relocation of partition walls.

The C-PS1 zoning district requires a minimum apartment unit size of 400 sq. ft. and a minimum average apartment unit size of 550 sq. ft. for rehabilitated buildings. The building currently consists of 12 apartment units with a minimum size of 331 sq. ft. and an average size of 403 sq. ft. In order to accommodate all of the necessary upgrades, the applicant is proposed to reduce the number of units by one, resulting in eleven units total with a minimum size of 337 sq. ft. and a minimum average size of 394 sq. ft.

Staff would note that when buildings are repaired or rehabilitated by 50% or less of the building value, any existing nonconforming unit size may be maintained. As such, Unit #4 may maintain the existing unit size of 359 sq. ft. Units #2, 9, 10, 14 & 15 are proposed to be reconfigured with a unit size that is less than 400 sq. ft. The remainder of the units are at least 400 sq. ft. and comply with the minimum unit size. Additionally, since some of the units are proposed to be reduced in area, the entire building is required to comply with the average unit size requirements. Finally, it

should be noted that the proposed layout does not require the alteration of any existing window openings.

Staff would note that as of June 1, when the adopted Miami Beach Resiliency Code becomes effective, the variance requested for the minimum average unit size requirement would not be required if the applicant agrees to certain conditions. Per section 7.1.5.2(4) of the new code, developments located in zoning districts that do not prohibit the short-term rental of residential apartment units shall be eligible for an exemption from the average unit size requirements, subject to the following conditions:

- **Density.** The development shall not be permitted to exceed the maximum residential density established in the Comprehensive Plan or Land Development Regulations.
- **Minimum Unit Size.** This incentive shall not be construed to permit any unit that is smaller than the minimum allowable unit size for the type of unit being proposed.
- **Covenant.** In order to be eligible for this voluntary average unit size incentive, the property owner, at the owner's sole discretion, shall voluntarily execute a restrictive covenant running with the land, in a form approved by the City Attorney, affirming that in perpetuity no residential units on the property shall be leased or rented for a period of less than six months and one day.

Based upon the conditions noted above, it seems likely that the project would be eligible for an exemption, provided the applicant agrees to these conditions.

In conclusion, staff finds that special conditions exist in relation to the retention and renovation of the Contributing building which includes the incorporation of required life safety and accessibility requirements, and the maintenance of original openings. These special conditions warrant the granting of the requested variances.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application for variances be **approved**, subject to the conditions enumerated in the attached draft Order.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: June 13, 2023

PROPERTY/FOLIO: 239 1st Street / 02-4203-003-1170

FILE NO: HPB23-0573

APPLICANT: 101 Washington Ave Realty LLC

IN RE: An application has been filed requesting variances from the minimum and average unit size requirements.

LEGAL: The west 50 feet of Lots 9 & 10, Block 9, Ocean Beach Subdivision, according to the Plat thereof, as recorded in Plat Book 2, Page 38 of the Public Records of Miami-Dade County, Florida.

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. An application for a Certificate of Appropriateness has not been filed as part of this application.

In accordance with section 2.2.4.8(c) of the Miami Beach Resiliency Code, the original applicant, 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 magistrate 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 up to 69 sq. ft. the minimum required apartment unit size of 400 sq. ft. for rehabilitated buildings in order to provide apartment unit sizes with a minimum of 331 sq. ft.
 2. A variance to reduce by up to 156 sq. ft. the minimum average required apartment unit size of 550 sq. ft. for rehabilitated buildings in order to provide a minimum average apartment unit size of 394 sq. ft.
- 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 indicate the following, as they relate to the requirements of section 2.8.3(a) of Miami Beach Resiliency 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 these land development regulations to other lands, buildings, or structures in the same zoning district.

That literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations 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 these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

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.

The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

C. The Board hereby **approves** the requested variances, as noted and imposes the following condition based on its authority in section 2.8.4 of the Miami Beach Resiliency 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. The applicant agrees and shall be required to provide access to areas subject to this approval (not including private residences or hotel rooms) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the plans approved by the Board and conditions of this order.
- B. The issuance of a building permit is contingent upon meeting Public School Concurrency requirements, if applicable. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed. No building permit may be issued unless and until the applicant obtains a written finding from Miami-Dade County Public Schools that the applicant has satisfied school concurrency.
- C. The relocation of any tree shall be subject to the approval of the Environment & Sustainability Director and/or Urban Forester, as applicable.
- D. The applicant shall comply with the electric vehicle parking requirements, pursuant to section 5.1.13 of the land development regulations, as applicable.
- E. 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.
- F. All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street.
- G. 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.
- H. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- I. 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.
- J. 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.

- K. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- L. 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.
- M. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.

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 **"Renovations to Existing Apartments", as prepared by Village Architects of Key Biscayne, Inc., dated March 16, 2023.**, 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 section 2.13.7 of the Miami Beach Resiliency 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 2 of the Miami Beach Resiliency 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. Failure to comply with this Order shall subject the application to chapter 2 of the Miami Beach Resiliency 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
HISTORIC PRESERVATION & ARCHITECTURE OFFICER
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, Historic Preservation & Architecture Officer, 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 _____ ()