Condensed Title:

Pursuant to Miami Beach City Code Section 118-262, to review a Design Review Board decision (DRB File No. 20181) rendered on November 6, 2008, requested by 1100 West Properties, LLC.

Key Intended Outcome Supported:

Not Applicable

Issue:

Pursuant to Miami Beach City Code Section 118-262, the Administration is requesting that the Mayor and City Commission review a decision of the Design Review Board pertaining to DRB File No. 20181, requested by 1100 West Properties, LLC.

Item Summary/Recommendation:

PUBLIC HEARING
The Administration recommends that City Commission open and continue the item to a date certain of April 22, 2009.

Advisory Board Recommendation:

The Design Review Board approved the subject application on November 4, 2008.

Financial Information:

Source of Funds:

OBPI

	Amount	Account	Approved
1			
2			
3			
4			
Total			

Financial Impact Summary:
The proposed Resolution is not expected to have any fiscal impact.

City Clerk's Office Legislative Tracking:

Jorge Gomez or Tom Mooney

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM R7B
DATE 2-25-09

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City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: February 25, 2009 **PUBLIC HEARING**

SUBJECT: **A REQUEST BY 1100 WEST PROPERTIES, LLC TO REVIEW A DESIGN REVIEW BOARD DECISION PERTAINING TO DRB FILE NO. 20181.**

ADMINISTRATION RECOMMENDATION

Open and continue the item.

BACKGROUND

Pursuant to City Code Section 118-262, 1100 West Properties, LLC, is requesting a review of the Design Review Board (DRB) decision rendered on November 6, 2008 (DRB File No. 20181) pertaining to a modification to the Consolidated Final Order for the development project at 1100 West Avenue.

The Design Review Section of the Miami Beach Code allows the applicant, or the City Manager on behalf of the City administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust to seek a review of any Design Review Board Order by the City Commission. For purposes of this section, "affected person" shall mean either (i) a person owning property within 375 feet of the applicant's project reviewed by the board, or (ii) a person that appeared before the Design Review Board (directly or represented by counsel), and whose appearance is confirmed in the record of the Design Review Board's public hearing(s) for such project.

Pursuant to Section 118-262 of the Miami Beach Code, the review by the City Commission is not a "de novo" hearing. It must be based upon the record of the hearing before the Design Review Board. Furthermore, Section 118-262 (b) states the following:

In order to reverse, or remand for amendment, modification or rehearing any decision of the Design Review Board, the City Commission must find that the Design Review Board failed to:

1) provide procedural due process; or
2) observe essential requirements of law; or
3) base its decision upon substantial, competent evidence.

In order to reverse or remand a decision of the DRB, a 5/7th vote of the City Commission is required.

Section 118-262(a) requires the appellant to file with the City Clerk a written transcript of the hearing before the Design Review Board two weeks before the scheduled public hearing on

the appeal. To date, the transcript and associated material have not been transmitted to the Mayor and City Commission.

ANALYSIS

On June 5, 2007, the applicant received final approval for a series of exterior modifications to an existing multi-family residential structure in conjunction with the conversion to a hotel use, including a comprehensive public bay walk condition. The public bay walk was voluntarily proffered by the applicant, in conjunction with a proposed dock expansion. Through discussions with City staff, the applicant agreed to alternatives to the bay walk as part of the dock expansion, if the dock expansion was not approved. These alternatives included a public baywalk immediately east of the property's seawall, and if that were not possible, improvements to the immediately adjacent 10th Street street end. This comprehensive public baywalk condition, and the alternatives, were confirmed in a recorded covenant, signed by the property owner and related parties, on November 29, 2007.

The project was issued permits in accordance with the June 5, 2007 Order of the Board and construction commenced. On November 4, 2008, the DRB considered a request by the applicant to amend its obligation to post a letter of credit, performance bond or similar instrument if it had not completed the public baywalk by the time it was ready for a TCO, partial CO or final CO for any work approved by the Board. The Board approved the reduction of the bond from 1 ½ times the cost of the public baywalk, plus design and permitting costs, to $800,000, which was also allowed to be posted into escrow with counsel for the applicant. This November 4, 2008 hearing solely considered this request to reduce or eliminate the bond requirement from the June 5, 2007 Order (See attached DRB staff report). These funds were posted pursuant to an escrow agreement executed November 24, 2008, in which the original DRB approval, as well as the applicant's agreement and obligation in the comprehensive baywalk condition, were reaffirmed.

The appellant now seeks to challenge the portion of the original baywalk condition approved June 5, 2007, obligating it to fund improvements to the 10th Street street end if both the baywalk as part of the dock expansion, and the baywalk immediately east of the seawall are not built.

A review of the transcripts for the November 4, 2008 Design Review Board hearing on this matter indicates that the DRB observed the essential requirements of law, made its determinations based on substantial and competent evidence, and afforded all parties involved due process.

The DRB's review of the original project and amendment were based upon the information and voluntary proffer submitted by the applicant, and the Board had before it the recommendations for approval with proposed conditions presented by its professional staff in the form of a comprehensive staff report.

Finally, the Board held public hearings during which members of the public were afforded the opportunity to testify and present evidence. Based upon all of the evidence submitted, the Board determined that the proposed amendment, as revised by the Board, would continue to meet the Criteria for Design Review Approval, if the conditions enumerated in the original Final Order are met and, therefore, approved the request for a modification to the original Consolidated Final Order.

In light of personal and professional scheduling conflicts encountered by counsel for the appellant, the Administration has agreed to have the item open and continued to a future

date.

CONCLUSION

The Administration recommends that the Mayor and City Commission open and continue the item to a date certain of April 22, 2009.

Attachment

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PLANNING DEPARTMENT

DESIGN REVIEW BOARD
STAFF REPORT

TO: **DESIGN REVIEW BOARD**

FROM: Jorge G. Gomez, Director
Planning Department

TPM for JGG

DATE: November 4, 2008 Meeting

RE: Design Review File No. 20181
1100 West Avenue – **Mondrian South Beach a.k.a. Mirador**

The applicant, 1100 West Properties, L.L.C., is requesting modifications to conditions of the Final Order for a previously issued Design Review Approval for a new landscape plan for the entire site, as well as for alterations to the existing exterior elevations, including modifications to the windows, doors, and porte-cochere, and the construction of new 2-story cabanas at the rear of the site. Specifically, the applicant is proposing to modify the conditions of the Final Order relating to the completion of the public baywalk

HISTORY/REQUEST:
On June 5, 2007, the applicant received final approval for a series of exterior modifications to an existing multi-family residential structure in conjunction with the conversion to a hotel use, inclusive of a comprehensive public bay walk condition.

STAFF ANALYSIS:
As indicated in the previous staff reports for the project, a number of concerns were raised with regard to the proposed modifications to the exterior façade and pool area of the subject property. In this regard, the applicant was proposing to substantially modify the architectural identity of the 1100 building, which would create a design anomaly vis-à-vis the structures at 1000 and 1200 West Avenue.

However, staff was supportive of the proposed exterior modifications, based, in part, upon a proffer by the applicant to design and construct a public bay walk along the entire west side of the property. This was a very significant and noteworthy gesture on the part of the applicant that would provide a substantial public amenity and could lead to further connections along the bay, between 5th and 14th streets. At the time of this proffer, it was fully known to both staff and the applicant that the permitting process for such a public bay walk would be very lengthy and would be subject to the approval of a number of County, State and Federal agencies.

Additionally, based upon this lengthy regulatory process, both staff, the Board and the applicant were cognizant of the fact that the project would be ready for a Final CO well before the completion of a public bay walk. Accordingly, a number of conditions and safeguards were included in the Final Order for the project, and agreed to by the applicant, in order to ensure either the construction of the public bay walk or a public amenity of equal value.

Specifically, the Final Order contemplated that a public bay walk may not be able to be permitted within the timeframes of the construction on site, it at all, and that the bay walk might not be able to constructed in the foreseeable future. In order to mitigate this scenario, the Final Order included provisions for a public bay walk east (landward) of the seawall. This particular option, however, was contingent upon the express approval of the 1000 and 1200 West Avenue master condo associations which, apparently, will not be forthcoming.

As a measure of good faith, and in order to provide a tangible public amenity, the applicant agreed to contribute to the public right-of-way improvements proposed for 10th Street, west of West Avenue, including a public park at the western terminus of 10th Street. The proposal to participate in the right-of-way improvements along Tenth Street, westward of West Avenue, was anticipated to occur only if the public bay walk was not able to timely be permitted and constructed.

The applicant is now proposing to amend the Consolidated Final Order for the project, as the public bay walk will not be completed prior to the issuance of a CO for the project, nor is it likely, based upon preliminary comments from the relevant Federal, State and County regulatory agencies, that it will be permitted in the near future. Specifically, the applicant is seeking to (i.) modify the requirement that the public bay walk be permitted within two (2) years of the approval of the project and (ii.) remove the requirement that a Letter of Credit, to cover the cost of the public bay walk, be posted prior to the issuance of a CO.

In light of the plethora of issues raised at the County, State and Federal levels pertaining to the permitting of a bay walk within the Biscayne Bay Aquatic Preserve, virtually all of which are outside the control of both the applicant and the City, staff does not have an objection to amending the requirement that a permit for the public bay walk be issued within two (2) years. However, staff has very serious concerns with regard to the proposed unilateral removal of the requirement for the posting of a Letter of Credit to cover the costs of a bay walk.

In this regard, the applicant is contending that due to the global credit and financial crisis, the Letter of Credit required by the Final Order simply cannot be posted. The applicant has instead offered a written 'Guaranty' that fully commits to the construction of a public bay walk, should it be permitted at a future date. However, such 'Guaranty' does not contain a tangible monetary contribution that would otherwise ensure the completion of the work and is not acceptable to staff or the City Attorney's office.

Staff has met with the applicant regarding this issue and, while understanding of the obstacles faced during the current credit crunch, cannot recommend the simple unilateral removal of a key financial committment for an extremely important public amenity. The funding of the bay walk was made known to and agreed to by the applicant well in advance of the permitting of this project. A considerable amount of funding (well in excess of what would be required to construct the public bay walk) has been invested in the design and amenities for this hotel project. At some point the applicant should have taken the responsibility of ensuring that enough capital was left to cover the cost of the public bay walk, which was an explicit, and agreed to, condition of the Final Order.

Neither staff, nor the Board, can control the permitting of a public bay walk within the Biscayne Bay Aquatic Preserve, nor the ability of the applicant to obtain a Letter of Credit. As such, staff believes that it would be in the best interest of all parties, at this time, for the applicant to fully

fund or construct the approved 10th Street right-of-way plan, including a public park at the western terminus of 10th Street. This work was explicitly contemplated in the Final Order, and agreed to by the applicant, in the event that the permitting of the bay walk on a timely basis was determined to be unfeasible.

Although the actual permitting of the public bay walk may end up being a reality at some point in the future, the inability of the applicant to post a Letter of Credit, as required in the Final Order, as well as the initial responses from the pertinent regulatory agencies, calls into question whether or not the work will be able to be done in the near term. At present, it appears that a public bay walk will only be a reality through an action of the State Legislature, or if a water dependent use, such as a marina, is approved for the property.

In light of these significant obstacles, as well as the current state of the credit market, staff is reluctantly recommending that the Consolidated Final Order for the project be modified, in order to allow the issuance of a Certificate of Occupancy for the hotel, without posting a letter of credit for the public bay walk. However, that portion of the Order requiring improvements to the 10th Street right-of-way, which is a significantly less costly endeavor than the Line of Credit or the public bay walk, should be executed immediately.

RECOMMENDATION:
In view of the foregoing analysis, staff recommends the application be approved, subject to the following conditions, which shall become part of an Amended 'Consolidated' Final Order for the project:

1. Conditions B(1)(d), B(1)(f), B(1)(h) and B(1)(i) of the June 5, 2007 'Consolidated' Final Order shall be revised as follows:

   d. The Public Baywalk shall be at least fifteen (15) feet in width and located westward of the seawall; the method of construction and connection shall be subject to the review and approval of staff. In the event any permitting authority does not permit the Public Baywalk to be 15 ft. in width, the applicant may reduce the width of the Public Baywalk, to the degree and in a manner to be approved by City Planning Department staff. The City shall use its best efforts to assist the applicant in securing permits for the Public Baywalk westward of the seawall to the extent City's consent or approval is required for the approval or processing of permits. The applicant may elect to locate the Public Baywalk eastward of the seawall, subject to the review and approval of staff. If the applicant is unable to secure permits for the Public Baywalk westward of the seawall ~~within two (2) years of this approval~~, the applicant shall design, permit and construct the Public Baywalk eastward of the seawall, subject to and contingent upon the agreement and approval of the condominium associations of 1000 and 1200 West Avenue to extend the Public Baywalk in the rear yards, eastward of the seawall, of the 1000 and 1200 West Avenue properties. The Design Review Board may, at its discretion, extend the period of time to obtain the required permits for the Public Baywalk westward of the seawall. The applicant shall work diligently while securing permits for the Public Baywalk westward of the seawall and during such time shall provide progress reports on the design, permitting and construction of the Public Baywalk to the Planning Director approximately every six (6) months. The Planning Director may refer the matter to the Design Review Board and/or request a progress report at any time, at the expense of the applicant, and the Design Review Board shall retain jurisdiction on the matter.

f. In the event consent from the condominium associations at 1000 and 1200 West Avenue cannot be obtained for a Public Baywalk eastward of the seawall in the rear yards of the 1000 and 1200 West Avenue properties or for an attached Public Baywalk westward of the seawall, or a permit is not granted for a detached Public Baywalk westward of the seawall, regardless of any connection to a future marina, the applicant has voluntarily proffered to fund ~~make a monetary contribution toward~~ right-of-way improvements on 10th Street, westward of West Avenue, including the construction of a new park at the western terminus of 10th Street, as more specifically defined in condition 1.B(i) below. The applicant shall have the right to name the park, subject to City laws on naming rights. ~~The amount of this monetary contribution shall be the average of three (3) certified construction estimates, to be verified and approved by the City, for the total hard construction costs (The "Public Baywalk Cost") of a detached Public Baywalk westward of the seawall behind 1000, 1100 and 1200 West Avenue.~~ The foregoing shall not preclude the City in the future from seeking the approval and cooperation of the owners of the 1000, 1100 and 1200 West Avenue properties for the location of a Public Baywalk eastward of the seawall upon terms and conditions to be determined at that time.

h. The applicant shall complete all design development and permit drawings for the proposed Public Baywalk westward of the seawall prior to the issuance of any building permit for any work approved by the Design Review Board in this application. Such drawings shall be reviewed by City staff for sufficiency and submitted by the applicant to the appropriate regulatory authorities for permitting; the design development drawings shall be deemed complete to the extent they are ready for submission to the appropriate agencies for the initial level of review. ~~The Public Baywalk shall be permitted and substantially completed prior to the issuance of any TCO, Partial CO or Final CO for any work approved by the Design Review Board in this application.~~

i. In the event that the Public Baywalk is not permitted or substantially completed at the time a request is made for a TCO, Partial CO, ~~or~~ Final CO or Certificate of Completion for any work approved by the Design Review Board in this application, the applicant shall fully fund or construct the approved plans for right-of-way improvements on 10th Street, westward of West Avenue, including the construction of a new park at the western terminus of 10th Street, in a manner to be approved by staff. The applicant's funding or construction of this streetscape project shall be exclusive of any dedicated city funds and shall not exceed $800,000.00. The funding or construction of this streetscape project shall be subject to a development agreement, which shall be approved by the City Attorney, executed and recorded prior to the issuance of any Certificate of Occupancy or Certificate of Completion for the Hotel project. ~~post a Letter of Credit, Performance Bond or similar instrument (LOC), in a form acceptable to the City Attorney, in the amount of one and one-half (1-1/2) times the Public Baywalk Cost plus design and permitting costs attributable thereto, to ensure the design, permitting, construction and completion of the Public Baywalk.~~ The decision by the applicant to fund or construct the aforementioned improvements to 10th Street ~~providing of the LOC~~ shall not substitute for the applicant's obligation to design, permit and construct the Public Baywalk at a future time, in accordance with the conditions herein ~~and if the costs of doing so exceeds the LOC, the applicant shall be responsible for the balance of such costs. The LOC may only be released in writing~~

~~by the Planning Director, and shall not be released until the Public Baywalk is completed and open to the public. Subsequent to the permitting and commencement of construction of the Public Baywalk, the Planning Director may reduce or increase the total amount of the LOC, based upon the progress of and revised estimates of the cost of the construction.~~

l. Notwithstanding the foregoing, if any marina should be constructed westward of the seawall at 1000, 1100 or 1200 West Avenue in the future, at any time, the applicant has proffered that, and therefore shall, in connection with such marina, ~~it will~~ design, construct and maintain at its cost and expense a Public Baywalk, westward of the seawall, running the entire length of the rear of the properties at 1000, 1100 and 1200 West Avenue, including a direct connection to the western terminus of Tenth Street.

2. This Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Final Certificate of Occupancy or Final Certificate of Completion for the property.

3. This 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.

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CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY given that a public hearing will be held by the City Commission of the City of Miami Beach, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, February 25, 2009 at 10:30 A.M.**, Pursuant To Miami Beach City Code Section 118-262, To Review A Design Review Board Decision Requested By 1100 West Properties, LLC, Pertaining To DRB File No. 20181 For The Property Located At 1100 West Avenue.

Inquiries may be directed to the Planning Department at (305) 673-7550.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting may be opened and continued and, under such circumstances additional legal notice would not be provided.

Robert E. Parcher
City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305) 673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #522