



# MIAMI BEACH

## PLANNING DEPARTMENT

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### DESIGN REVIEW BOARD STAFF REPORT

TO: DESIGN REVIEW BOARD

FROM: Richard G. Lorber, AICP, LEED AP *OK for RGL*  
Acting Planning Director

DATE: March 6, 2012 Meeting

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

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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 landscaping, alterations to exterior elevations, and the construction of new 2-story cabanas at the rear of the site. Specifically, the applicant is proposing to modify the conditions relating to the amount of money held in escrow for completion of the public bay walk, in accordance with a settlement with the City over pending litigation.

#### HISTORY/REQUEST:

On June 5, 2007, the applicant received approval for a series of exterior modifications to an existing multi-family residential structure in conjunction with the conversion to a hotel use; such approval included a comprehensive public bay walk condition. On November 4, 2008, at the applicant's request, the DRB approved modifications to Condition 1.i of the June 5, 2007 Final Order relating to the completion and bonding of construction of the public bay walk.

More specifically, the following is a comparison of Condition 1.i, as approved by the DRB on June 5, 2007, and as modified on November 4, 2008:

#### Approved in the June 5, 2007 Final Order

*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 for any work approved by the Design Review Board in this application, the applicant shall 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 providing of the LOC shall not substitute for the applicant's obligation to design, permit and construct the Public Baywalk, 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.*

As modified on November 4, 2008:

*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 for any work approved by the Design Review Board in this application, the applicant shall post a Letter of Credit, Performance Bond or similar instrument (LOC), in a form acceptable to the City Attorney, **in the amount of \$800,000**, to ensure the design, permitting, construction and completion of the Public Baywalk. The providing of the LOC shall not substitute for the applicant's obligation to design, permit and construct the Public Baywalk, 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.*

Basically the DRB lowered the required bond to ensure construction of the public bay walk from roughly 1.4 million dollars to \$800,000.00, which is the amount currently held in escrow.

On April 20, 2010, the applicant requested additional modifications to the June 5, 2007 and November 4, 2008 Orders, including a return of the money held in escrow, as well as the removal of the obligation to fund the improvements along 10<sup>th</sup> Street. This request was subsequently withdrawn by the applicant.

**STAFF ANALYSIS:**

At the time of approval in June 2007, both staff and the Board, as well as the applicant, were cognizant of the fact that the Mondrian Hotel project at 1100 West Avenue 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, which were proffered and agreed to by the applicant, in order to ensure either the permitting and construction of the public bay walk, or a public amenity of equal value.

In November, 2008, the applicant placed \$800,000.00 in escrow and entered into an Escrow Agreement with the City (see attached), confirming its agreement with the conditions of the Board Orders and governing the holding and disposition of the escrowed funds. Thereafter, following completion of the construction associated with the conversion of the existing structure to the Mondrian Hotel, the applicant obtained all required Certificates of Occupancy and Certificates of Completion, as provided in the Board Orders.

The applicant and the City have submitted a joint application to the Florida Department of Environmental Protection (DEP) for an overwater public baywalk behind the properties from 1000 – 1200 West Avenue. The City's environmental consultant continues to be in contact with the appropriate officials at the DEP and believes that progress is being made toward obtaining approval for the overwater baywalk option.

As part of a separate 'Mediation Settlement Agreement' pertaining to building permit fees assessed to the Mondrian Hotel (see attached), the City Commission adopted a Resolution agreeing to the proposed settlement (see attached). Under the terms of the settlement agreement, the City will release \$350,000.00 of the \$800,000 held in escrow to the applicant. The release of these funds is subject to the modification of the development order by the DRB.

Additionally, the City Commission has requested, and the Mondrian has agreed, through its counsel David Nevel, to the following two additional settlement provisions:

1. 1100 West Properties, LLC, agrees to move diligently to obtain the State DEP baywalk permits, in cooperation with the City; and
2. 1100 West Properties, LLC, agrees it will not file any further challenges to the City's use of all or a portion of the balance of \$450,000 in escrowed funds as is reasonable and necessary for the 10<sup>th</sup> Street improvements, if 1100 West does not timely obtain the baywalk permits, and the balance of the unused escrowed funds, if any, shall thereafter be released to 1100 West Properties, LLC.

In light of the progress being made on the permitting of the proposed baywalk, staff believes that the release of the escrow funds, in accordance with the City Commission approved agreement and Resolution, would be appropriate and justified.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application be approved, subject to the following conditions:

1. Condition 1 of the June 5, 2007 and November 4, 2008 Final Orders for DRB File No. 20181 is hereby amended with the following revised conditions. In the event of a conflict with the conditions of the June 5, 2007 and November 4, 2008 orders for the project, the following shall control. Conditions in such orders not in conflict with the following shall remain in effect.
  - a. \$350,000.00 shall be released to the applicant from the \$800,000.00 currently held in escrow, in accordance with the 'Mediation Settlement Agreement dated January 26, 2012 and City Commission Resolution No. 2012-27848.
  - b. The remaining \$450,000 shall continue to be held in escrow, in accordance with the June 5, 2007 and November 4, 2008 Final Orders and the executed Escrow Agreement for the project.