

Condensed Title:

Setting of Public Hearing – 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 schedule a Public Hearing on February 25, 2009 to review a decision of the Design Review Board pertaining to DRB File No. 20181, requested by 1100 West Properties, LLC.

Item Summary/Recommendation:

The Administration recommends that the City Commission adopt the Resolution scheduling a Public Hearing on February 25, 2009.

Advisory Board Recommendation:

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

Financial Information:

Source of Funds:		Amount	Account	Approved
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	2			
	3			
	4			
	Total			

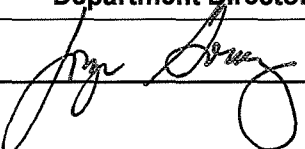

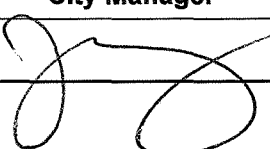
Financial Impact Summary:

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
		





MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: January 28, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PUBLIC HEARING 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.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

Pursuant to City Code Section 118-262, 1100 West Properties, LLC, is requesting a review of the Design Review Board 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 shall find that the Design Review Board did not do one of the following:

- 1) provide procedural due process;
- 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.

CONCLUSION

The Administration recommends setting a public hearing on February 25, 2009 to review a decision of the Design Review Board pertaining to DRB file No. 20181.


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CITY CLERK'S OFFICE Tel: (954) 321-7701 Fax: (954) 791-3024

Law Offices

Nevel & Greenfield, P.A.

6741 Orange Drive,
Davie, Florida 33314

November 26, 2008

The City of Miami Beach
c/o The City Clerk
1700 Convention Center Drive, First Floor
Miami Beach, Florida 33139

RE: 1100 West Avenue – Appeal of Design Review Board Amended Consolidated Order, rendered on November 6, 2008

Dear Mr. Parcher:

We represent 1100 West Properties, LLC (“1100 West”), the owner of the property (the “Property”) having an address of 1100 West Avenue, Miami Beach, Florida. We hereby appeal to the Mayor and City Commission the Amended Consolidated Order of the City of Miami Beach (the “City”) Design Review Board (the “DRB”), rendered on November 6, 2008, regarding the Property. Copies of the Amended Consolidated Order and the Consolidated Order (collectively, the “Orders”) are attached hereto and incorporated herein.

1100 West filed an application (the “Application”) with the DRB for design review approval regarding improvements to the Property. The Planning Department of the City indicated that it would not issue a positive recommendation for the Application unless 1100 West agreed to construct a Baywalk adjacent to the Property and, if permits could not be obtained for a Baywalk, that 1100 West pay for right-of-way improvements, such as a new park (collectively, the “Public Improvements”), at the western terminus of 10th Street on public property. 1100 West estimates that the cost of the Public Improvements will be hundreds of thousands of dollars. The Improvements are not a part of the Property and were never part of the Application to the DRB.

1100 West hereby appeals the provisions of the Orders that require 1100 West to pay hundreds of thousands of dollars in public improvements as a condition of being able to make improvements to its own private Property¹. Pursuant to Section 118-262 of the City Code, a DRB decision must be reversed if the DRB did not observe the essential requirements of law. The powers of the DRB, as set forth in the City Code, do not include the right to force private property owners to spend hundreds of thousands of dollars in public improvements as a condition

¹ 1100 West has no objection to the Orders’ provisions requiring the construction of the Baywalk, since the Baywalk is part of the Property which is the subject of the Application.

of receiving design review approval and being able to renovate their own private property. *See, e.g.,* Code Sections 118-251 and 118-254 (“design review encompasses the examination of architectural drawings...”). Simply put, the DRB is a design board, whose jurisdiction is limited to reviewing the design aspects of the applicant’s property. In reviewing an application, the DRB must confine its review to the design review criteria stated in the Code.

Based on the foregoing, the provisions of the Orders requiring the expenditure of funds by 1100 West for unrelated public improvements are illegal and must be stricken from the Orders.

Very truly yours,

David Nevel

cc: Mr. Jorge Gomez, Planning Director
Mr. Jose Smith, City Attorney
Mr. Thomas Mooney, Design and Preservation Manager
Mr. Gary Held, First Assistant City Attorney

Nevel & Greenfield, P.A.
6741 Orange Drive
Davie, Florida 33314
Telephone: 954-321-7701
Facsimile: 954-791-3024

By:

DAVID H. NEVEL, ESQ
Florida Bar No. 201537

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

MEETING DATE: June 5, 2007

IN RE: The Application for 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.

FILE NO: 20181

PROPERTY: 1100 West Avenue

CONSOLIDATED ORDER

The applicant, 1100 West Properties, L.L.C., filed an application with the City of Miami Beach Planning Department for Design Review Approval.

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:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, the reasons set forth in the Planning Department Staff Report, and the original order issued March 6, 2007 and the conditions stated therein (which order is incorporated herein), the project, as submitted is not consistent with Design Review Criteria 2, 3, 4, 7 & 10 in Section 118-251 of the Miami Beach Code.
- B. The project would be consistent with the criteria and requirements of section 118-251 if the following conditions are met:
 - 1. The applicant has voluntarily offered, proffered and agreed to construct a public bay walk ("Public Baywalk") west of the existing seawall along the rear of the subject site in accord with the following conditions. This proffer and its acceptance are based on a particularized evaluation and assessment of the subject project, the rational nexus between such project and impacts to the local transportation network, and the rational nexus and rough proportionality between the project and impacts to the transportation network and the bay walk proffered. The approval of the subject application is contingent upon such Public Baywalk being constructed in accordance with the following conditions.
 - a. The Public Baywalk shall be designed, permitted and built by the applicant, and may either be attached or detached from the existing seawall. All costs associated with the design, permitting, construction and maintenance of the Public Baywalk, as described herein, shall be borne by the applicant, including, but not limited to, all required environmental mitigation.
 - b. The Public Baywalk shall connect to and commence at the western terminus of Tenth Street and shall continue to the northern property line of 1200 West Avenue.

- c. The Public Baywalk shall be open to the public from 6:00 am to 9:00 pm, 7 days a week. The applicant may install an operable fence, gate or other operable barrier to restrict public access to the Public Baywalk from 10th Street and/or a future connection to the north, subject to the review and approval of staff; such operable fence, gate or barrier shall include some form of automatic timing device, in order to ensure that the Public Baywalk is open between the hours of 6:00 am and 9:00 pm. Access by the public to the Public Baywalk shall only be restricted between the hours of 9:00 pm and 6:00 am, and otherwise, as determined by the Planning Director, in the event of an emergency, dangerous condition or other circumstance that would render usage of the Public Baywalk a safety risk. Any violation of this condition shall be subject to a notice of violation and enforcement by the Special Master or any alternative remedy available to the City.
- 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.
- e. In the event that the applicant elects or is required to locate the Public Baywalk eastward of the seawall, such eastward Public Baywalk shall extend the full length of the property from 1000 through 1200 West Avenue, at a width subject to the review and approval of City staff, not to exceed five (5) feet in width. The construction of such Public Baywalk is 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 applicant shall be responsible for all expenses to design, permit, construct, and maintain the Public Baywalk eastward of the seawall including, but not limited to all accessible connections to 10th Street. The applicant shall use its good faith efforts to attempt to secure the approval and agreement of the condominium associations of 1000

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and 1200 West Avenue necessary for the Baywalk to extend the full length of the property from 1000 through 1200 West Avenue. In the event the Public Baywalk is designed, permitted and constructed eastward of the seawall, the applicant shall be permitted to construct a glass partition wall, including the use of one-way glass, east of the Public Baywalk on the pool deck, subject to all applicable requirements of the City Code.

- 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 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. 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.
- g. The applicant shall be responsible for the maintenance, repair and, if necessary, the replacement, if destroyed in whole or part, of the full Public Baywalk from 1000 to 1200 West Avenue, and shall establish reserves and insurance to accomplish this obligation. However, the preceding sentence shall not apply in the event repair or replacement is necessitated due to damage caused by the City or any employee or independent contractor of the City.
- 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 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

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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.

- j. Prior to the issuance of a building permit for any work approved by the Design Review Board in this application, the applicant shall enter into and record a restrictive covenant, approved by the City Attorney, which runs with the land, confirming the applicant's voluntary proffer to design, permit, construct and maintain a Public Baywalk, and confirming public access in perpetuity to such Public Baywalk, in accordance with these conditions. The restrictive covenant shall be binding on successors and assigns and shall be recorded in the public records, at the expense of the applicant.
 - k. If the applicant sells, leases or otherwise conveys the property, these conditions shall run with the land, and the applicant's successors and assigns shall be obligated to comply with these conditions.
 - 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 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. The Design Review Board (DRB) or the Planning Director shall retain the right to call the owners or operators back before the DRB, at the expense of the owners or operators, to impose and/or modify the hours of operation, and the placement and use on the property of outdoor bar counters, exterior loudspeakers, fixed or portable, should there be valid complaints (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise: A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this approval and subject the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first sentence of this paragraph.
 3. The location, specifications and number of exterior speakers shall be consistent with the acoustic plan submitted by the applicant and subject to the review and approval of staff.
 4. The applicant may remove and replace the existing tiles from the front exterior of the structure, by obtaining a separate permit immediately and prior to the issuance of a Building Permit for the project. In the event the proposed exterior modifications approved herein do not go forward, for any reason, all original tile removed by the applicant shall either be restored or replaced with a similar tile, in a manner to be approved by staff.
 5. 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:

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- a. Final details of all new tile work shall be subject to the review and approval of staff.
 - b. Manufacturers drawings and Dade County product approval numbers for all new windows, doors and glass shall be required.
 - c. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.
 - d. 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.
6. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
- a. The ficus hedge proposed along the eastern perimeter of the property (fronting West Avenue), including those portions of the hedge rounding the corners to a depth of at least ten (10') feet, shall not be permitted; such hedge may be replaced with a hedge or plant material that will not exceed five (5') feet in height and shall be subject to the review and approval of staff.
 - b. Along the eastern perimeter of the property (fronting West Avenue) the smaller green island ficus shall be inverted and shall face the sidewalk, with the slightly large hedge material located behind it.
 - c. All new overhead utilities shall be placed underground, to the extent permitted by FPL.
 - d. Right-of-Way Improvements in front of the property shall be included in the Landscape plans.
 - e. All exterior walkways shall consist of decorative pavers, set in sand or other semi-pervious material, subject to the review and approval of staff.
 - f. All landscape areas abutting driveways and parking areas shall be defined by decorative bollards.
 - g. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
 - h. The utilization of root barriers and/or structural soil, as applicable, shall be clearly delineated on the revised landscape plan.
 - i. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures; such fixtures and devices shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of backflow preventors, siamese pipes or

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other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

- j. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms; such transformers and vault rooms, and all other related devices and fixtures, shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of any exterior transformers, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
 - k. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect for the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
7. All new building signage shall be consistent in type, composed of flush mounted; non-plastic, non-illuminated, individual letters and shall require a separate permit.
 8. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff and shall require a separate permit.
 9. 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.
 10. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).
 11. The applicant may be required to submit a separate analysis for water and sewer requirements, at the discretion of the Public Works Director, or designee. Based on a preliminary review of the proposed project, the following may be required by the Public Works Department:
 - a. A traffic and neighborhood impact study shall be conducted as a means to measure a proposed development's impact on transportation and neighborhoods. The study shall address all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, and if required, shall be submitted prior to the issuance of a Building Permit. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code. The developer shall refer to the most recent City of Miami Beach's Traffic and Neighborhood Impact Methodology as issued by the Public Works Department.
 - b. Remove/replace sidewalks, curbs and gutters on all street frontages, if applicable. Unless otherwise specified, the standard color for city sidewalks is red, and the standard curb and gutter color is gray.
 - c. Mill/resurface asphalt in rear alley along property, if applicable.
 - d. Provide underground utility service connections and on-site transformer location, if necessary.

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- e. Provide back-flow prevention devices on all water services.
 - f. Provide on-site, self-contained storm water drainage for the proposed development.
 - g. Meet water/sewer concurrency requirements including a hydraulic water model analysis and gravity sewer system capacity analysis as determined by the Department and the required upgrades to water and sewer mains servicing this project.
 - h. Payment of City utility impact fees for water meters/services.
 - i. Provide flood barrier ramps to underground parking or minimum slab elevation to be at highest adjacent crown road elevation plus 8".
 - j. Right-of-way permit must be obtained from Public Works.
 - k. All right-of-way encroachments must be removed.
 - l. All planting/landscaping in the public right-of-way must be approved by the Public Works and Parks Departments.
12. 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.
 13. At the time of completion of the project, only a **Final Certificate of Occupancy (CO)** or **Final Certificate of Completion (CC)** may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CO or CC.
 14. 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.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the March 6, 2007 and June 5, 2007 meetings, which are part of the record for this matter and the staff reports and analysis from the March 6, 2007 and June 5, 2007 meetings, which are adopted herein, including the staff recommendations which were amended by the Board, that the Application for Design Review Approval is GRANTED for the above-referenced project subject to those certain consolidated conditions specified in paragraph B of the Findings of Fact hereof (condition nos. 1-14, inclusive), to which the applicant has agreed.

No building permit may be issued unless and until all conditions of approval as set forth herein have been met. The issuance of Design Review approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including zoning approval. If



adequate handicapped access is not provided, this approval does not mean that such handicapped access is not required or that the Board supports an applicant's effort to seek waivers relating to handicapped accessibility requirements.

When requesting a building permit, three (3) sets of plans approved by the Board, modified in accordance with the above conditions, shall be submitted to the Planning Department. If all of the above-specified conditions are satisfactorily addressed, the plans will be reviewed for building permit approval. Two (2) sets will be returned to you for submission for a building permit and one (1) set will be retained for the Design Review Board's file.

This Final Order consolidates all conditions and requirements for Design Review Approval as same are contained herein and in the original Order of March 6, 2007, as amended. Accordingly, this Order shall serve as the Final Order for the project and, in the event of conflict between the provisions hereof and those of the March 6, 2007 Order, the provisions hereof shall control.

In the event a Full Building Permit is not obtained within eighteen (18) months of the March 6, 2007 meeting date, and construction does not commence and continue in accordance with the requirements of the applicable Building Code, the Design Review Approval will expire and become null and void, unless the applicant, prior to expiration of such period, makes application to the Board for an extension of time; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. **In the event a proposed code amendment should render the subject project non-conforming, as more specifically set forth in sections 118-168 and 118-169 of the City Code, then the project shall not be eligible to receive an extension of time for any reason.**

Failure to comply with this Order shall subject the Design Review Approval to Section 118-258, City Code, for revocation or modification of the Design Review Approval.

Dated this 8 day of JUNE, 2007.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: Thomas R. Mooney
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

Approved As To Form: _____
Legal Department: J. Green (6-8-07)

Filed with the Clerk of the Design Review Board on 6/11/07 (cat)

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

MEETING DATE: November 4, 2008

FILE NO: 20181

PROPERTY: 1100 West Avenue

LEGAL: All of 1100 West, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 25780, Page 0498, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for 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.

AMENDED CONSOLIDATED O R D E R

The applicant, 1100 West Properties, L.L.C., filed an application with the City of Miami Beach Planning Department for Design Review Approval.

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:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, the reasons set forth in the Planning Department Staff Report, the original order issued March 6, 2007 and the consolidated order issued June 7, 2007, and the conditions stated therein (which orders are incorporated herein), the project, as submitted is not consistent with Design Review Criteria 2, 3, 4, 7 & 10 in Section 118-251 of the Miami Beach Code.
- B. The project would be consistent with the criteria and requirements of section 118-251 if the following amended conditions are met:
 - 1.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 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.

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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.

2. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
3. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
4. 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.

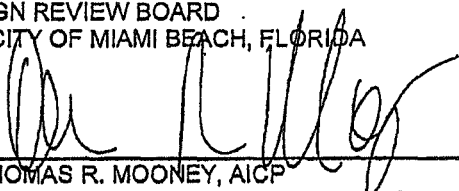
IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the March 6, 2007, June 5, 2007 and November 4, 2008 meetings, which are part of the record for this matter and the staff reports and analysis from the March 6, 2007, June 5, 2007 and November 4, 2008 meetings, which are adopted herein, including the staff recommendations which were amended by the Board, that the Application for an amendment to the original Design Review Approval is GRANTED for the above-referenced project subject to the amended consolidated condition specified in paragraph B of the Findings of Fact hereof (condition nos. 1.1 - 4), to which the applicant has agreed.

No building permit or certificate of completion may be issued unless and until all conditions of approval as set forth herein, and in the Orders of March 6, 2007 and June 5, 2007 have been met. The issuance of Design Review approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including zoning approval. If adequate handicapped access is not provided, this approval does not mean that such handicapped access is not required or that the Board supports an applicant's effort to seek waivers relating to handicapped accessibility requirements.

Failure to comply with this Order shall subject the Design Review Approval to Section 118-258, City Code, for revocation or modification of the Design Review Approval.

Dated this 6 day of November, 2008.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: 
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

Handwritten initials

Approved As To Form:
Legal Department:

J. Kelly (11-6-08)

Filed with the Clerk of the Design Review Board on 11-6-08 (RC)

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J. Kelly

RESOLUTION TO BE SUBMITTED

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