

September 15, 2020

Ms. Lynn Gelin, City Attorney  
City of Delray Beach  
City Attorney's Office  
200 N.W. 1st Avenue  
Delray Beach, FL 33444

**RE: Evaluation of COA Approval  
212 Seabreeze Avenue, Delray Beach, FL 33483  
RJHA Project No. 20-3494**

Dear Ms. Gelin,

Thank you for asking me to serve as your expert in connection with historic preservation matters involving the property located at 212 Seabreeze Avenue, Delray Beach, Florida. It is a most interesting assignment on an important historic property.

I have read the historic designation report and I understand the property was constructed in 1955 and that it was originally designed by architect Paul Rudolph, one of the fathers of what became known as the Sarasota School of Architecture, and later, Dean of the School of Architecture at Yale University. It is currently individually listed in the Delray Beach Local Register of Historic Places as The Sewell C. Biggs House in honor of the original owner and is presently undergoing extensive renovation with a new addition. The property Owners are Michael and Antonina Marco, 1036 Bucida Road, Delray Beach and the General Contractor is GLM Builders, Inc., 80 NE 4<sup>th</sup> Avenue, Suite 26, Delray Beach.

The property has been "Red Tagged" and construction halted by the Building Official pending further investigation into work done on the structure that may have exceeded what was authorized by the Historic Preservation Board in Certificates of Appropriateness No. 1 (City of Delray Beach File No. 2018-076) and No. 2 (City of Delray Beach File No. 2018-191). Additionally, the City wants to understand the effect that any unauthorized work may have had on the status of the property's local historic designation.

In order to adequately familiarize myself with all that has transpired since the Biggs House was first constructed, in addition to reading the historic designation report, I have reviewed all of the documentation made available by the City from its record files. This material includes, but is not limited to, the Applicant's Certificate of Appropriateness Application No. 1 and the Applicant's Certificate of Appropriateness No. 2, corresponding justification statements prepared by the applicant, all drawings, photographs, staff reports and attachments, and approval letters.

Additionally, by way of viewing public hearing videos of both the Historic Preservation Board Meeting of July 18, 2018 (COA No. 1) and the Historic Preservation Board Meeting of January 23, 2019 (COA No. 2), I have heard the testimony of all participating parties including the Historic Preservation Officer,

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Architect, Owner and the various Board Members who participated in those meetings.

I also visited the site on August 27, 2020 along with the Chief Building Official Steve Tobias, Principal Planner - Historic Preservation Michelle Hoyland and Development Services Director Anthea Giannotes, AICP. The results of that observation will follow below.

## **REVIEW SUMMARY AND RECOMMENDATIONS**

### **History of the Property and Reasons for Historic Designation:**

The Sewell C. Biggs House received local historic designation on June 15, 2005 when the Historic Preservation Board unanimously recommended approval to the City Commission.

It received historic designation because it was deemed to meet both the architectural and cultural significance criteria including the following:

1. It is associated in a significant way with the life or activities of a major person important in the city, state, or national history.
2. It embodies those distinguishing characteristics of an architectural style, period, or method of construction.
3. It is a historic or outstanding work of a prominent architect, designer, landscape architect, or builder.
4. It contains elements of design, detail, material, or craftsmanship of outstanding quality or which represented, in its time, a significant innovation or adaptation to the South Florida environment.

The Home received a Merit Award from House and Home magazine in June 1959.



**Figure 1.** Biggs Residence, Delray Beach, FL – Seabreeze Ave. - Paul Rudolph 1956



**Figure 2.** Biggs Residence, Delray Beach, FL – Vista Del Mar Dr. South - Paul Rudolph 1956



**Figure 3.** Biggs Residence, Delray Beach, FL – Outdoor Living Area - Paul Rudolph 1956

Biggs sold the house in 1970 to Richard & Alice McAvoy.

Virginia & Ereskine Courtenay bought the house in 1973.

In 1980, Paul Rudolph drew a plan for an addition to the house that was never built.

Architect Robert Currie, FAIA designed a 1,156 SF ground level addition that was constructed in 1980-81. At that time, the house is said to have been lifted approximately four feet for flood prevention purposes. In 2007 Currie added a two-story addition of 1,936 SF. Neither of the additions were considered to have gained historic significance over time.



**Figure 4.** Biggs Residence - Robert Currie Additions 1980 and 1907

## **CERTIFICATE OF APPROPRIATENESS APPLICATION # 1**

### **HPB Public Hearing Held July 18, 2018**

1. Certificate of Appropriateness for Demolition of Two Non-Contributing Additions to the Original Home. (Currie additions 1980-81 and 2007)
2. Recommend revocation of tax abatement to the City Commission

#### **Staff Conditions:**

1. North Addition to be retained until new building permit for kitchen is obtained. (This condition was later stricken from the board approved motion.)
2. That the property owner provide documentation that the taxes associated with the Historic Property Ad Valorem Tax Exemption have been repayed to Palm Beach County.

#### **Architect – Jeffrey Silberstein addresses the Board:**

“Bring it back to the way it should look.”

“Field reports show photos of conditions that need to be fixed.”

“Current conditions, steel that needs to be repaired.”

“Back to the original structure.”

“Remove all rotten wood that needs to be removed.”

“Bring it back to the original layout and then assess what their next step will be.”

The original 1956 home was only 1,594 SF.

1981 Addition #1 – 1,156 SF, 2008 Addition #2 – 1,936 SF

Seeks to reestablish Vista Del Mar as the Front of House (North).

**Owner Michael Marco addresses the Board:**

Their intention is to “Remove the non-historic elements to reveal the original painting.”

**Historic Preservation Board Discussion**

Board member Bright addresses the Board and asks the following questions:

Question #1 “They can’t come in two months and say it was so rotten they had to knock it down?”

Ms. Hoyland replies, “the Applicant would need to file a COA for demolition.”

Question #2 “Can we require a bond to the COA in case removal of the wings causes the (historic) building to collapse?”

Ms. Hoyland replies, “yes you can.” The City Attorney also comments.

Ms. Hoyland suggests that the board may request that the Owner also be required to provide a “demolition plan” to illustrate the demolition process as a Condition of Board Approval.

Michael Marco responds: “The value of this property is the original house.” “There is 0% chance of us knocking it down.” He does not think there is need for a demolition plan.

Board members praise Marco’s past project performance and generally take the position that a bond and a demolition plan are not necessary. No additional conditions were added to the motion. A COA for demolition of the two non-historic Robert Currie additions was approved with the only condition being that property taxes be repaid to Palm Beach County as part of the revocation of tax abatement.





**Figure 5.** Vista Del Mar South View Following Demolition of additions, 2019

## **CERTIFICATE OF APPROPRIATENESS APPLICATION # 2**

### **Justification Statement: Revised January 23, 2020**

**Our approach:** The original House will be **rehabilitated and restored** as Paul Rudolph originally designed it with a compatible addition that complies with the LDR Development Standards and the LDR Visual Compatibility Standards.

#### Summary:

1. Remove non historic additions. (COA #1)
2. Reestablish Vista del Mar as the “front”
3. Enclose the open ground floor living area in glass.
4. Build a compatible addition connected by a bridge.
5. Request a variance to retain the existing finish floor elevation.
6. Request a variance to put a pool in the front setback.
7. Request a waiver to allow the addition to be higher than the historic house.

**Guided by the Paul Rudolph plans and photos taken when the house was built in 1956, “we propose to restore, rehabilitate and reestablish the original historic building with minimal changes in order to comply with LRD 4.5.1 (E) (8) Visual Compatibility Standards:**

#### **Development Standard:**

1. The proposed work retains the original historic purpose. Minimal changes to the defining characteristics of the historic building and site. The proposed work **“preserves and restores the original defining characteristics of the house.”**

(Based upon my site observations, this was an incorrect statement or a statement that has been violated. The steel frame and the second-floor

framing are the only feature being preserved and restored. With those exceptions, everything else is being replicated. Please See the Site Observation Section that follows.)

“The proposed work **does not involve any removal of any characteristic features of the original house**, such as the previously proposed plan to remove the 2<sup>nd</sup> floor and the galley kitchen, both of which will stay intact.”

(This is an incorrect statement or a statement that has been violated. The work performed most definitely involved removal of characteristic features. The entirety of the perimeter walls, siding and roof framing have been removed. The galley kitchen has also been removed.)

2. The proposed work does not add new features or elements from other buildings.

(The Applicant’s plan does add new features.)

3. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved. “We propose to restore the original historic house as designed by Paul Rudolph in 1955 with minimal changes.”

(True, there were no changes over time that had acquired historic significance, however, what the Applicant proposes are by no means minimal changes.)

4. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved. “The characteristic elevated steel columns and steel beam structure will be structurally rehabilitated, but otherwise preserved as is with respect to its original design.

(The steel column and beam structure are the only element of the original structure being preserved. All else, wall framing, roof framing, windows, doors and siding are all being replaced and replicated.)

“The addition does not change or effect any of the distinctive features, finishes or construction techniques of the historic house. The house is being preserved and restored as originally designed by Paul Rudolph without any compromise arising out of the addition proposal, except for the connector at the rear, least public view.”

(In my professional opinion this is a false statement.)

5. “Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and, where possible materials.” The existing steel structure will be repaired and rehabilitated not replaced. The

characteristic features of the historic house such as the grooved wood siding, will be restored and replaced, and if damaged beyond restoration, will be replaced with matching materials.”

(None of the grooved wood siding or exterior wall studs were saved or restored, everything was replaced without providing any notification to HPB of the need for or extent demolition.)

The applicant goes on to state that “the existing glass and louvers do not meet code and is in varying color and quality, will be replaced with clear, impact glass and louvers consistent with the original design of the house with respect to specification, size and proportions.”

### **HPB Public Hearing Held May 17, 2019**

May 17, 2019 and Additional Nov. 5, 2019 Submittal Plans are Schematic only and lack any clarity on what demolition will be required in order to accomplish scope of work. No demolition is called for and no structural conditions are shown.

**Michael Marco** presents the project to the Board first. Explains that Architect Silberstein was out of the country, however one of his associates is in attendance.

Board is shown historic photographs of the house and is given a discussion of its architectural significance and of Paul Rudolph. Mr. Marco notes that the house “lacks modern features.”

Marco also shows photos of architect Paul Rodolph’s beautifully restored “Umbrella House” in Sarasota, FL. He remarks that while it is beautifully restored, it is “uninhabitable (not lived in) because it doesn’t meet code.” “Something I would like to avoid on our project.”

“I would like to, our intention is to faithfully restore the house back to what Paul Rudolph designed.” He further states that their intention is to make “minimal changes to allow it to be used as a fulltime residence.”

He presents numerous proposed renderings in Power Point that are inaccurate and not consistent with the final design drawings that are being shown on boards in the Commission Chamber. Indicating that Michelle Hoyland has convinced them to do it the right way, which is why things have been changed.

Mr. Marco makes the following points:

1. Original house had louvered openings and was un-airconditioned.
2. Living room was outdoors and on grade under the house.
3. 1980 addition raised the entire house 3’- 4’, requiring steps to get in.
4. Then came the 2007-2008 Addition.
5. Steel structure is structurally sound.
6. Intention is to get back to viewing the house from Vista Del Mar.
7. T & G wood siding, we are going to restore everything back to that.
8. Got the idea for the glass ground floor from Paul Rudolph plan to enclose the ground floor.



9. Zoning R1-AA
10. You do not have to raise the house” to current FEMA Flood criteria “as long as the house stays historic when you are done.”

No mention is made of any demolition on the historic home, only the previously removed additions are discussed.

A Board member has a question: “Is there a code problem with the pool not having a fence?” Marco explains the grading and that there is no code problem.

Board praises the project as being “light years ahead.”

**Staff Presentation is made by Michelle Hoyland**

The applicant is requesting:

1. Certificate of Appropriateness.
2. Variance #1 pool setback to reduce the front setback from the required 30’ to 13’-0”.
3. Variance #2 from the FBC to retain the 6’ finish floor elevation.
4. Waiver for the addition not to be subordinate to the historic structure.

Ms. Hoyland points out that the house is an excellent example of 20<sup>th</sup> Century Regional Modernism and that Rudolph was Harvard educated under Walter Gropius.

Praises Virginia Courtney, the previous owner who requested the historic designation.

Explains the addition is designed so that it can be removed.

Explains that the findings required for COA, the variances and the waiver had been met.

Boards votes unanimously to approve the COA, variances and waivers.



**Figure 6.** Vista Del Mar South Rendering - Silberstein Architecture 2019



**Figure 7.** Seabreeze Ave – Silberstein Architecture 2019

## **PERMIT PLAN REVIEW**

### **Construction Documents Dated 9-23-19**

The construction drawings do not show existing conditions, selective demolition plans, and proposed new construction, which is customary on historic preservation projects. These plans only show what is proposed. This results in a lack of clarity as to what is to be demolished and what is to be constructed new.

Architectural plan drawing A-1.3 gives no indication of existing to be removed, rather it shows all exterior walls by a wall type symbol. (2" x 6" wood studs @ 16" O.C.)

Elevation drawings A-3.0 West Elevation, A-3.1 East Elevation & South Elevation, A-4.0, A-4.1, A-4.2 and Sections A-4.3 are all marked "Top of Second Floor (Existing)" and "Top of Existing Roof" at all Elevation and Building Sections. Nowhere does it indicate on these drawings that it was their intention to demolish the entire existing roof and build it new. Nowhere does it indicate on these drawings that it was their intention to demolish the entire existing exterior wall and build it new.

Structural Floor Framing Plan Drawing S-2 shows "Existing Steel Beams To Remain" and "Existing Wood Joists To Remain." Structural Roof Framing Plan sheet S-3 shows "EXISTING" at the north, east and west perimeter walls of the historic building, thereby leading one to believe that the roof framing and sidewalls are to remain and be enhanced with additional blocking and new decking.

It is not until you see Note 3 that you see these are "(2) 2 x 10's @ 24" O.C. Max. New Roof Rafters." Nowhere on this sheet does it say that they intended to demolish and remove all existing roof framing and rebuild it per the note above.

Finally, at the end of the drawing set, Sheets S-6, S-7, and S-8 Structural Sections provide the missing clarity by calling out "Existing Floor Joists and Existing Floor Rim Joists." For exterior walls, these Sections refer to "New 2 x 6 Base Plate", "New 2 x 6 Top Plate." For the roof, these Sections refer to "New Roof Framing."

**This level of demolition and removal was never presented or discussed in the HPB Hearing and was not discussed anywhere in the Justification that was submitted by the applicant.**

## **CITY OF DELRAY BEACH LAND DEVELOPMENT REGULATIONS**

### **LDR Sec 4.5.1 (F) Demolitions, requires the following under par 5:**

"A Certificate of Appropriateness for demolition of 25% or more of contributing or individually designated structure shall be subject to the following requirements:

- a. A demolition plan shall accompany the application for a Certificate of Appropriateness for demolition. The plan shall illustrate all portions of the existing structure that will be removed or altered.

- b. The Certificate of Appropriateness for demolition and the Certificate of Appropriateness for alteration or redevelopment shall meet the “Additional Public Notice” requirements of LDR Sec 2.4.2 (B)(1)(i).”

**The code also requires:**

“(10) A justification statement shall accompany the Application for Certificate of Appropriateness for demolition of any contributing structure in a historic district or individually designated historic structure.”

(Beyond COA#1, no request for Application for Certificate of Appropriateness for demolition was ever made, no demolition plans were ever submitted and no Justification Statement for demolition was ever provided in COA #2.)

**CURRENT SITE OBSERVATIONS**

Fig. 5 above depicts the condition of the property following completion of the approved COA No. 1 demolition of non-historic additions. This is the same photograph that was used by the Applicant in the COA No. 2 presentation.

Fig. 8 and Fig. 9 below illustrate the condition of the house at the time of my site visit on August 27, 2020.



**Figure 8.** Looking South from Vista Del Mar South Following Roof Demolition





**Figure 9.** Looking South West from Vista Del Mar South Following Wall Demolition

Mr. Marco, one of the owners of the house was present during our visit. When I questioned him about the extensive demolition, the fact that it exceeds 25% of the building area and was not referenced in his COA No. 2 request, he stated that the 4" stud side walls did not meet current code requirements and that roof was going to require hurricane anchor straps. I suggested that additional wall studs and roof joists could have been sistered to the existing studs and roof joists and hurricane anchor straps added. He gave no reason why he and the contractor proceeded to do this level demolition without advising the city historic preservation staff and without requesting an amendment to the existing COA and Building Permit. He stated that he intended to file amended construction documents when all the changes to the work were completed.

**The existing COA does not comply with the requirements for demolition of a historic structures as called for in LDR Sec 4.5.1 (F) outlined above and no demolition was authorized. Under the circumstances, I recommend that the owner be required to submit a Certificate of Appropriateness Application for after the fact demolition in accordance with the requirements of LDR Sec 4.5.1 (F) and that it include demolition drawings and new justification statement.**

Continuing our site discussion, Mr. Marco explained that they had also decided to raise the finish floor 18". He explained that as they started the work, they checked the existing ground floor elevation of the historic house and found that it was set at El +5'-6", not at EL. +6'-0" that it was thought to have been. Since they would



have to raise the house 6" anyway, they decided instead to raise the house a full 18" instead, therefore placing the ground finish floor at EL +7'-0" (7.12' is required by FEMA Flood Criteria.) See also form board survey attached.

**The owner raised the structure in violation of the approved COA and without advising the Building Department or the Historic Preservation staff of this change. Staff were only advised of this elevation change during our site visit and only when I requested clarification.**

**Note that raising the finish floor elevation of a historic property is a serious matter, it changes the perspective from which the historic property has been viewed since it was constructed. Raising the finish floor elevation beyond what was approved in the COA Application will require a new after the fact COA to raise the house and change the finish floor elevation.**

**In this case, since the house was raised significantly by previous owners and since the clearance from the adjoining grade and finish floor to the underside of the perimeter steel beam will remain the same as before, 7'-7" clear from finish floor to underside of perimeter beam, the visual optics and proportions of the original home floating above the ground will remain as it originally was, I would suggest that staff recommend board approval of raising the home to EL. + 7'.**



Figure 10. Spliced Steel Column



Figure 11. Finish Floor Elevated 18"

## **CONCLUSION AND RECOMENDATIONS**

1. Upon review and evaluation of all materials submitted to the City by the Owner in support of their Certificate of Appropriateness Application No. 2 and Building Permit Application, and as a result of my on-site inspection of the property to access its current condition, I have concluded that the owner and his general contractor have gone well beyond what was

authorized in the COA and what was authorized on the approved Building Department Permit Plans.

2. The extent of demolition could not have been anticipated under the approved COA submittal documents or under the proposed Construction Documents. The existing COA does not comply with the requirements for demolition of a historic structure as called for in LDR Sec 4.5.1 (F) outlined above and beyond window and door replacement, no specific demolition was authorized.
3. In addition to non-compliance with the LDR requirements for demolition of more than 25% of a historic structure, the owner raised the structure in violation of the approved COA and without advising and receiving permission to do so from the Building Department and the HPB.
4. In order to properly resolve the above deficiencies, I recommend that the owner be required to submit a revised Certificate of Appropriateness Application for after the fact demolition in accordance with the requirements of LDR Sec 4.5.1 (F) and that this Application include demolition drawings, a new justification statement and that it meet the public notification requirements of the statute. In addition to addressing the extensive demolition, the revised Certificate of Appropriateness should also seek after the fact HPB Approval for elevating the first finish floor elevation to +7.0' NAVD in order to meet FEMA Flood Criteria.

Should there be any other substantive changes in the owner's plans for the structure, those should be included in the revised COA Application and also included on revised Construction Documents and submitted to the Building Department for approval as plan revisions.

### **CONTINUED LISTING ON THE DELRAY BEACH LOCAL REGISTER OF HISTORIC PLACES**

With regards to the structure's continued listing as a historic resource on the Delray Beach Local Register of Historic Places, and considering the extensive unauthorized demolition and loss of characteristic finishes and features, I offer the following commentary and recommendation.

There is little doubt that a significant amount of the structure's distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize this property have been lost due to the extensive unauthorized demolition. Unauthorized as it may have been, the owner will argue that the deteriorated condition of distinctive features such as the wood wall framing members and T1-11 plywood siding necessitated its replacement. This siding material was commonly known to deteriorate and rot rather quickly. Moreover, the home's most characteristic features, the exposed steel column and beam structure remain intact and will be rehabilitated. Nonetheless, the characteristic exterior walls will need to be reconstructed.

The U.S. Department of the Interior provides us with guidance in this matter through the Secretary of the Interior's Standards for Reconstruction and Guidelines for Reconstructing Historic Buildings.

The Guidelines define "**Reconstruction** as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location."

### **Standards for Reconstruction**

"The Standards will be applied taking into consideration the economic and technical feasibility of each project.

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.
2. Not applicable to this matter.
3. Reconstruction will include measures to preserve any remaining historic materials, features and spatial relationships.
4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed."

### **Reconstruction as a Treatment**

"When a contemporary depiction is required to understand and interpret a property's historic value (including the re-creation of missing components in a historic district or site); when no other property with the same associative value has survived; and when sufficient historical documentation exists to ensure an accurate reproduction, Reconstruction may be considered as a treatment."

The operative words that allow reconstruction as an acceptable treatment for the missing characteristic features of the Biggs House, the siding, windows, doors and louvers, is the existence of physical evidence to permit accurate reconstruction with minimal conjecture. Moreover, such reconstruction is essential for the public understanding of the property.

### **Continued Historic Designation**

In my professional opinion when completed, the properly executed rehabilitation and partial reconstruction can continue to be listed as a historic resource on the Delray Beach Local Register of Historic Places.

Should you have any questions or need further clarification of my analysis and recommendations please feel free to contact me.

Thank you for the opportunity to be of service.

Sincerely yours,

R.J. HEISENBOTTLE ARCHITECTS, P.A.

Richard J. Heisenbottle, FAIA  
President