

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: October 02, 2019

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB19-0427
4260 Pine Tree Drive

DRB19-0427, 4260 Pine Tree Drive. An application has been filed requesting Design Review Approval for the construction of a new two-story single-family residence on a vacant parcel including one or more waivers and an understory area, and a variance to exceed the maximum building height.

RECOMMENDATION:

Approval with conditions

Denial of variance

LEGAL DESCRIPTION:

N35.02FT LOT 6 & S40FT LOT 7 of Block 2 of Orchard Subdivision No. 4, according to the Plat thereof, as recorded in Plat Book 25, at Page 30, of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning: RS-4
Future Land Use: RS
Lot Size: 11,850 SF (75x158)
Lot Coverage:
Proposed: 3,222 SF / 27.2%
Maximum: 3,555 SF / 30%
Unit size:
Proposed: 5,902 SF / 49.5%
Maximum: 5,925 SF / 50%
2nd Floor to 1st: 2762/2750 100%*
***DRB WAIVER**

Height:
Maximum: **24'-0"**
Proposed: **27'-0" flat roof***
***VARIANCE REQUIRED**

CMB Grade: 5.87'
Base Flood Elevation: +8.00' NGVD
Difference: +2.13' NGVD
Adjusted Grade: +6.935' NGVD
First Floor Elevation: +16' NGVD
(BFE+5fb+ 3')
Yard Elevations Min: 6.56' Max: 8.370'

SURROUNDING PROPERTIES:

North: Two-story 1946 residence
South: Two-story 1935 residence
West: Two-story 1936 residence
East: MBJCC and one-story 1950 residence

THE PROJECT:

The applicant has submitted plans entitled "Russell Galbut Residence Design Review Board Final Submittal", as designed by **Choeff Levy Fischman architecture + design**, signed, sealed, and dated August 05, 2019.

The applicant is requesting Design Review Approval for the construction of a new two-story residence on a vacant site.

The applicant is requesting the following design waiver(s):

1. A two-story side elevation more than 60'-0" in length in accordance with Section 142-106(2)(d). Both open spaces (open space materiality, ie water). The water area in open space does not comply with the requirements of the open space in regard to finish material, therefore, a waiver is required.
2. The second floor's physical volume exceeds 70% of the first floor in accordance with Section 142-105(b)(4)(c): 100%.
3. All parking, including required parking, shall be provided within the understory area, and shall be clearly delineated by a different surface finish or bollards. No parking or vehicle storage shall be permitted within a required yard, unless approved by the DRB (Sec142-105(b) (4) (e)(5).

The applicant is requesting constructing the residence above allowable 'understory' spaces instead of infilling with berms and tiered site work:

4. Understory area shall be subject to the review and approval of the Design Review Board in accordance with Section 142-105(b)(4)(e).

The applicant is requesting the following variance(s):

1. A variance to exceed by three feet (3'-0") the maximum height of 24'-0" for a two-story residence in order to construct the structure up to 27'-0" within the RS-4 district.

- Variance requested from:

Sec. 142-105. - Development regulations and area requirements

(b)The development regulations for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

(1) Lot area, lot width, lot coverage, unit size, and building height requirements. The lot area, lot width, lot coverage, and building height requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

RS4, Maximum Building Height, which shall not exceed two stories above the base flood elevation, plus freeboard in all districts: 24 feet - flat roofs | 27 feet- sloped roofs.

The height of the proposed structure is 27'-0" as measured from BFE +5, or 13' NGVD. This variance request pertains to an overall three-foot (3'-0") height increase to the top of the main roof for a two-story residence. The applicant is proposing to locate the first floor at 16'-0" NGVD, which is BFE plus eight feet (8'-0"), in order to provide an additional three feet (3'-0") within the understory level, which is not required under the zoning regulations. The abutting properties to the north and the south of the subject site are both two-story, older residences built at grade. As such, in analyzing the surrounding area, the maximum height for the RS-4 district, staff finds that the height increase request is not compatible with its immediate neighbor's heights or the surrounding properties. Further, the added three feet

(3'-0") to the design would further exacerbate the massing in relation to the immediate neighbors. Finally, this is a design related variance that does not meet the practical difficulty or hardship criteria.

Should the Board conclude that the application meets the practical difficulty or hardship criteria, staff would strongly recommend that the Board modify the design and massing to offset the higher portion of the rear of the residence and lower front portion of the architecture that fronts on Pine Tree Drive in order to minimize the impact from the street, and reduce the pronounced architectural presence.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that **DO NOT** do not satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also **DO NOT** indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

- That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
- That the special conditions and circumstances do not result from the action of the applicant;
- That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;
- That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;
- That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and
- That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.
- The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code, in addition to the requested variances:

- Revise unit size calculations. The area exceeding 6'-0" at the second floor is calculated incorrectly. Additional area along the wall shall count in unit size. A-1.0 The covered terrace adjacent to master suite on the second floor exceeds 10'-0' from building walls. Area exceeding 10'-0" to the edge of the roof counts in unit size. Roof plan was supposed to become slatted at 10+ to offset this. Area of covered balcony at the second floor balcony exceeding 6'-0" counts in unit size. The project exceeds the maximum unit size allowed.
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- A-2.0 UNDERSTORY EDGE 142-105(b)(4)(e)(10) relocate pool equipment and outdoor kitchen an additional 5' from setback line.
- Bar, counter sink are not allowable height exceptions at the roof level.
- Garbage area shall not extend into the front yard. See section 90-98(a).
- All allowable decking, gravel, pavers, non-supporting breakaway walls, open-wood lattice work, louvers or similar architectural treatments located in the understory area shall be setback a minimum of five feet from each side of the underneath of the slab of the first habitable floor above, with the exception of driveways and walkways leading to the property, and access walkways and/or steps or ramps for the front and side area.
- Minimum yard elevation: 6.56 Maximum yard elevation 8.37.
- No parking or vehicle storage shall be permitted within a required yard, unless approved by the DRB (Sec142-105(b) (4) (e)(5))
- For two story homes with an overall lot coverage of 25% or greater, the physical volume of the second floor shall not exceed 70% of the first floor of the main home, exclusive of any enclosed required parking area and exception from this provision may be granted **through DRB approval** in accordance with the applicable design review criteria. **The applicant is requesting a 2nd Floor Volume to 1st of 83% with a 29% lot coverage, which will require a waiver from the DRB.**
- Two-story side elevations located parallel to a side property line shall not exceed 50 percent of the lot depth, or 60 feet, whichever is less, without incorporating additional open space, in excess of the minimum required side yard, directly adjacent to the required side yard:
 - a. **The additional open space shall be regular in shape, open to the sky from grade, and at least eight feet in depth, measured perpendicular from the minimum required side setback line.**
 - b. The square footage of the additional open space shall not be less than one

percent of the lot area. The open space provided along a side elevation in accordance with this subsection, whether required or not, shall not be included in the lot coverage calculation provided that the combined depth of the open space, as measured from the required side setback line(s), is less than 30 percent of the maximum developable building width of the property, as measured from the interior setback lines, and the total open space provided does not exceed five percent of the lot area. Any portions of the interior side yard open space in excess of five percent of the lot area shall be included in the total lot coverage calculation.

- c. The elevation (height) of the open space provided shall not exceed the maximum permitted elevation height of the required side yard, and
- d. **At least 75 percent of the required interior open space area shall be sodded or landscaped with pervious open space.**

The intent of this regulation shall be to break up long expanses of uninterrupted two-story volume at or near the required side yard setback line and exception from the minimum requirements of this provision may be granted only through design review board approval in accordance with the applicable design review criteria.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

COMPLIANCE WITH DESIGN REVIEW CRITERIA:

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

- 1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Not Satisfied; the applicant is requesting one variance, four design waivers and review of the understory area from the Board.
- 2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
Not Satisfied; the applicant is requesting one variance, four design waivers and review of the understory area from the Board.
- 3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
Not Satisfied; the applicant is requesting one variance, four design waivers and review of the understory area from the Board.

4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Not Satisfied; the applicant is requesting one variance, four design waivers and review of the understory area from the Board.
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Not Satisfied; the applicant is requesting one variance, four design waivers and review of the understory area from the Board.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Not Satisfied; the applicant is requesting one variance, four design waivers and review of the understory area from the Board.
7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.
Satisfied
8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.
Satisfied
9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.
Not Satisfied
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.
Satisfied
11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.
Satisfied

12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).
Not Satisfied; the applicant is requesting one variance, four design waivers and review of the understory area from the Board.
13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.
Satisfied
14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
Satisfied
15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).
Not Applicable
16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.
Satisfied
17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.
Not Applicable
18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the city Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.
Not Applicable
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.
Not Satisfied; see below

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Not Satisfied
A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department.
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Satisfied
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Satisfied
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.
Satisfied
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.
Satisfied
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
Satisfied
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
Not Applicable
- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.
Satisfied
- (10) Where feasible and appropriate, water retention systems shall be provided.
Not Satisfied; as part of the civil engineering design to be provided at time of permit.

STAFF ANALYSIS:
DESIGN REVIEW

The applicant is proposing to construct a new two-story residence on an interior vacant parcel. The proposal includes a request for four design waivers, one variance, and the review of the activation of the understory portion of the design.

The first design waiver pertains to the second floor to first floor ratio of the home. Since the proposed home has a lot coverage of 27%, any second floor massing is restricted to 70% of the first floor, unless a waiver is approved by the DRB. As designed the second floor of the proposed home is nearly coterminous with the ground floor, containing approximately 100% of the volume of the first floor. Continuing with the outdoor and elevated nature of the design, the architect has expressed a desire for large cantilevering volumes that provide shaded outdoor living spaces on the first floor and second floor—expansive balconies and terraces wrap around on all four façades. When reviewing the second-floor volume rule, staff believes that the request is commensurate with the elevated design. Additionally, the architect proposed a residence with great movement and visual interest on all four elevations. Finally, the architect has provided the required open recesses along the north and south side elevation to break up the massing. Staff's sole concern is that the design could benefit from a slight increase in front setback since the architectural features straddle the property from setback to setback line. Otherwise, staff is supportive of this requested waiver.

The applicant is also requesting a waiver of the open space requirement for two-story elevations that exceed 60'-0" in length without incorporating additional open space. The geometric side elevations proposed contain multiple rectilinear frames at varying planes accentuated by variable finishes. The portion of the north (side) elevation spans 86'-2" in length and is broken up with an approximately 9'-0" wide and 5'-0" deep recess. As this is an elevated house featuring active understory areas, the ground plane is set at the minimum yard elevation of 6.56' NGVD is configured with a passive reflecting water feature. As designed, the proposed elevation does not meet the open space requirements as it is not "at least 75 percent landscaped" and is not "at least eight feet in depth from the ground up, yet is surrounded on three sides. Similarly, the portion of the south (side) elevation spans 85'-2" in length and is broken up with an approximately 9'-0" wide and approximately 15'-0" deep recess. Again, the ground plane is set at the minimum yard elevation of 6.56' NGVD, and is configured with a passive reflecting water feature designed to passively cool the understory area. The proposed open space does not meet the open space requirements as it is not "at least 75 percent landscaped" and is not "at least eight feet in depth from the ground up", yet is surrounded on three sides. Both resulting open spaces satisfy most of the regulation's criteria and address the intent of the ordinance by successfully breaking up the massing of the two-story elevation. Staff is supportive of both of the side open space design waivers along the north and south side elevation.

Now that single family home height is measured from BFE plus up to 5 feet of additional freeboard, there have been increasing instances where one and two story homes are being located above allowable 'non air-conditioned space'. In this regard, factors such as the future raising of roads and sidewalks, the relationship of allowable non air-conditioned space to elevated yards and the need to provide tangible transition spaces in order to access the main level of a home, have been taken into consideration. One of the most basic functional options for programmatic usage of the understory is for the covered storage of automobiles and the "elimination" of front loading, detached and attached garages. As such, the ordinance is designed to encourage residential architecture that contains all vehicles under the main residence and outside of required yards, specifically the front yard. In this scheme, within the required front yard (30'-0") the architect has provided some back-up and turn around space that is parallel to the street, and which extends approximately 7'-0" from outside of the building envelope and serves as a turning connection to the driveway. The code requires that all parking be provided within the understory area, unless approved by

the DRB. In this configuration, staff has no objection to the waiver.

The new two-story residence is designed in a contemporary 'pilotis' style architecture, raised to an elevation of 16', which is three feet (3'-0") above BFE + 5' (five feet) freeboard and is seeking a variance. The overall design of the home juxtaposes materiality, porosity and massing of its horizontal volumes to arrive at a well-balanced composition. Shifted masses of the first and second levels float above an understory of structural columns and a glass entry enclosure. The first habitable floor is predominately clad in vertical wood siding that intersects the smooth stucco finish of the second floor. Framed recessed balconies provide movement and relief along each façade. Staff is impressed with the overall design and recommends approval as proposed with the exception of the variance requests. It should also be noted that the proposed residence does an outstanding job of incorporating the recently adopted understory ordinance, including the requested waiver and the use of the understory area.

VARIANCE ANALYSIS:

As noted in the 'Project' section of the report, staff is not supportive of the variance request as it is related to the specific design of the home and fails to satisfy the criteria for a hardship, or practical difficulty.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the design inclusive of all of the waivers and **denial** of the variance, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review criteria, Sea Level Rise criteria and Practical Difficulty and Hardship criteria.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: October 02, 2019

FILE NO: DRB19-0427

PROPERTY: **4260 Pine Tree Drive**

APPLICANT: Ronruss Pinetree LLC

LEGAL: Lot 6, less the southerly 30 feet thereof, and Lot 7, less the northerly 25 feet thereof, Block 2 of Orchard Subdivision No. 4, according to the Plat thereof, as recorded in Plat Book 25, at Page 30, of the Public Records of Miami-Dade County, Florida.

IN RE: The application has been filed requesting Design Review Approval for the construction of a new two-story single-family residence on a vacant parcel including one or more waivers and an understory area, and a variance to exceed the maximum building height.

ORDER

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:

I. Design Review

- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not an individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Design Review Criteria 1, 2, 3, 4, 5, 6, 9, 12, and 19 in Section 118-251 of the Miami Beach Code.
- C. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Sea Level Rise Criteria 1, 10, 11 and 12 in Section 133-50(a) of the Miami Beach Code.
- D. The project would be consistent with the criteria and requirements of Section 118-251 and/ or Section 133-50(a) if the following conditions are met:
 - 1. Revised elevation, site plan, and floor plan drawings for the proposed new home at 4260 Pine Tree Drive shall be submitted, at a minimum, such drawings shall incorporate the following:
 - a. The front setback shall be increased by 5'-0", resulting in the entire house shifting westerly five additional feet to the rear.

- b. The maximum height of the two-story structure shall be 24'-0" when measured from BFE + 5'-0" freeboard.
 - c. The required 70% limitation for the second floor volume shall be waived as proposed and shall not be increased at time of permitting, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - d. The proposed (north and south) side open space requirements shall be waived as proposed.
 - e. The proposed parking in the required front yard shall be waived as proposed.
 - f. The heights of fences shall be measured from Grade.
 - g. A-1.0 The covered terrace adjacent to master suite on the second floor exceeds 10'-0' from building walls. Area exceeding 10'-0" to the edge of the roof counts in unit size. Roof plan was supposed to become slatted at 10+ to offset this.
 - h. A-2.0 UNDERSTORY EDGE 142-105(b)(4)(e)(10) relocate pool equipment and outdoor kitchen an additional 5' from setback line.
 - i. Bar, counter sink are not allowable height exceptions at the roof level.
 - j. All allowable decking, gravel, pavers, non-supporting breakaway walls, open-wood lattice work, louvers or similar architectural treatments located in the understory area shall be setback a minimum of five feet from each side of the underneath of the slab of the first habitable floor above, with the exception of driveways and walkways leading to the property, and access walkways and/or steps or ramps for the front and side area.
 - k. The final design details and color selection of the "stained IPE wood siding" proposed at both portions of the façades shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - l. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
 - m. 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.
2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding plans 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 plans shall comply with Chapter 26-Landscape Requirements of the Miami Beach Code and shall incorporate the following:

- a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
- b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
- c. Prior to any site demolition work, a tree protection fence following the City standard shall be installed for trees scheduled to remain subject to the review and approval of the City Urban Forester.
- d. Any necessary root and tree branch pruning with a diameter at breast height (DBH) of 2" or greater shall be approved by the City Urban Forester prior to any tree work.
- e. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.
- f. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.
- g. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.
- h. Street trees shall be required within the swale at the front of the property if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.
- i. Any proposed new street trees shall be of a planting species consistent or similar with existing street trees in the immediate area or consistent with

any master street tree plan for the area, subject to the review and approval of the City Urban Forester.

- j. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- k. 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.
- l. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- m. 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. The location of backflow preventors, Siamese pipes or 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.
- n. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. 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.
- o. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or 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.

In accordance with Section 118-262, the applicant, or the city manager on behalf of the City Administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for rehearing shall not be reviewed by the Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s) which were either approved by the Board with modifications, or denied:

The following variance was **denied** by the Board:

- 1. A variance to exceed by three feet (3'-0") the maximum height of 24'-0" for a two-story residence in order to construct the structure up to 27'-0" within the RS-4 district.

- B. The The applicant has submitted plans and documents with the application that **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also **DO NOT** indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

- C. The Board hereby **Denies** the Variance request(s), and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
2. The proposed residence shall be reduced in height to no greater than 24'-0" to the top of the main roofline when measured from BFE+ 5'.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

III. General Terms and Conditions applying to both 'I. Design Review Approval and 'II. Variances' noted above.

- A. Where one or more parcels are unified for a single development, the property owner shall execute and record an unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- B. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board, and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.
- C. During construction work, the applicant will maintain gravel at the front of the construction site within the first 15'-0" of the required front yard to mitigate disturbance of soil and mud by related personal vehicles exiting and entering the site, and with an 8'-0" high fence with a wind resistant green mesh material along the front property line. All construction materials, including dumpsters and portable toilets, shall be located behind the construction fence and not visible from the right-of-way. All construction vehicles shall either park on the private property or at alternate overflow parking sites with a shuttle service to and from the property. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.
- D. If applicable, a Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- E. A recycling/salvage plan shall be provided as part of the submittal for a demolition/building permit, in a manner to be reviewed and approved by staff.
- F. All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street.
- G. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
- H. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- I. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or

Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.

- J. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
- K. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- L. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the **application** is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Finding of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "Russell Galbut Residence Design Review Board Final Submittal", as designed by **Choeff Levy Fischman architecture + design**, signed, sealed, and dated August 05, 2019, and as approved by the Design Review Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board approved plans, this approval does not mean that such handicapped access is not required. When requesting Building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code, the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project shall expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of

Filed with the Clerk of the Design Review Board on _____ ()