

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members  
Planning Board

DATE: June 4, 2021

FROM: Thomas R. Mooney, AICP  
Planning Director

SUBJECT: **ZBA21-0126**  
**23 Star Island Drive – Single-Family Home**

An application has been filed requesting variances associated with the construction of new single-family home, including variances to exceed the maximum allowable building height and the maximum allowable height exceptions, variances to reduce the minimum required setbacks, and a variance to exceed the maximum allowable height of a perimeter wall.

#### **RECOMMENDATION**

- **Variance No. 1 – Approval** of the requested variance.
- **Variance No. 2 – Approval** of the requested variance.
- **Variance No. 3 – Denial** of the requested variance.
- **Variance No. 4 – Denial** of the requested variance.
- **Variance No. 5 – Approval** of the requested variance.
- **Variance No. 6 – Approval** of the requested variance.

#### **ZONING/SITE DATA**

Address:	23 Star Island Drive
Folio:	02-4204-001-0200
Legal Description:	LOTS 23 AND THE NORTHERLY HALF OF LOT 24, PLAT OF STAR ISLAND IN BISCAYNE BAY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, AT PAGE 52 AS AFFECTED BY CORRECTED PLAT STAR ISLAND IN BISCAYNE BAY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 31, PAGE 60 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.
Zoning:	RS-1, Single-Family Residential Zoning District
Future Land Use Designation:	RS, Single-Family Residential
Lot Size:	80,784 square feet
Year Constructed:	Under Construction
Building Use:	Residential, Single-Family
Surrounding Uses:	North: Residential, Single-Family West: Residential, Single-Family South: Residential, Single-Family East: Biscayne Bay

## **THE PROJECT**

The applicant, Florida Property Holdco, LLC., has submitted the following plans and documents:

- Letter of Intent, dated February 12, 2021
- Architectural Plans, entitled 23 Star Island, by Choeff Levy Fischman Architecture & Design, dated February 8, 2021.
- Landscape Plans, entitled 23 Star Island, by CLAD Landscape Architecture and Design, dated February 8, 2021.
- Boundary Survey, by Schwebke-Shiskin & Associates, Inc., dated January 18, 2021.
- Gymnasium Equipment – Court Design & Rules, by Draper Inc., © 2016.
- Letter, Elevator Overhead Requirements, by Graham Huntington of Jenkins & Huntington Inc. Horizontal-Vertical Transportation Consultants, dated February 5, 2021.

The applicant is requesting variances associated with the construction of a new two-story single-family home. Specifically, the applicant is requesting the following variances:

1. **A variance to exceed by 3'-0", the maximum building height of 28'-0" for a flat roof single-family home, to allow a portion of the single-family home to have a maximum height of 31'-0".**

- 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:*

<i>Zoning District</i>	<i>Maximum Building Height, which shall not exceed two stories above the base flood elevation, plus freeboard in all districts***</i>
<i><u>RS-1</u></i>	<i><u>28 feet - flat roofs.</u></i> <i>31 feet - sloped roofs.</i>
<i>RS-2</i>	

The requested variance is related to the proposed indoor basketball court. The balance of the home complies with the 28'-0" height limitation.

2. **A variance to exceed by 3'-0", the maximum permitted height of an elevator bulkhead located above the main roofline of 10'-0", to allow a elevator bulkhead at 13'-0" above the main roof line of a two-story single-family home.**

- 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:*

- \* \* \*
- (7) *Height exceptions. The height regulation exceptions contained in section 142-1161 shall not apply to the RS-1, RS-2, RS-3 and RS-4 zoning districts. In general, height exceptions that are not integral to the design intent of a structure shall be located in a manner to minimize visual impacts on predominant neighborhood view corridors as viewed from public rights-of-way and waterways. The following height exceptions shall apply, and unless otherwise specified, shall not exceed ten feet above the roofline of the structure:*

- \* \* \*
- f. *Elevator bulkheads shall be located as close to the center of the roof as possible and be visually recessive such that they do not become vertical extensions of exterior building elevations.*

The proposed elevator bulkhead provides access to a roof deck above the second floor and extends 13'-0" above the main roof line, where a maximum of 10'-0" is permitted.

3. **A variance to exceed by 5'-2", the maximum projection of an exterior unenclosed private balcony in into the required rear yard of 6'-0", to allow a private unenclosed balcony to project into the required rear yard a distance of 11'-2".**

- Variance requested from:

**Sec. 142-106. - Setback requirements for a single-family detached dwelling.**

- \* \* \*
- (b) *Allowable encroachments within required yards.*

\* \* \*

- (13) *Projections. Every part of a required yard shall be open to the sky, except as authorized by these land development regulations. The following may project into a required yard for a distance not to exceed 25 percent of the required yard up to a maximum projection of six feet, unless otherwise noted.*

\* \* \*

d. Exterior unenclosed private balconies.

The City's Land Development Regulations allow unenclosed private balconies to project into a required setback up to 25% of the setback, not to exceed 6'-0". The proposed balcony, located off the master bedroom, projects into the required rear yard setback a distance of 11'-2". As the required rear yard is 50'-0", this projection does not exceed the 25%, however, it does exceed the 6'-0" maximum.

4. **A variance to exceed by 3'-0", the maximum height of 7'-0" for a perimeter wall when located 4'-0" from the front property line, to construct a 10'-0" tall perimeter wall at a 4'-0" setback from the front property line.**

- Variance requested from:

**Sec. 142-106. - Setback requirements for a single-family detached dwelling.**

\* \* \*

- (b) *Allowable encroachments within required yards.*

\* \* \*

- (7) *Fences, walls, and gates. Regulations pertaining to materials and heights for fences, walls and gates are as follows:*

- a. *Within the required front yard, fences, walls and gates shall not exceed five feet, as measured from grade. The height may be increased up to a maximum total height of seven feet if the fence, wall or gate is set back from the front property line. Height may be increased one foot for every two feet of setback.*

The proposed 10'-0" privacy wall, located along the front of the property, is setback from the front property line a distance of 4'-0" at its closest point.

5. **A variance to reduce by 15'-6", the minimum interior side yard setback of 20'-6", to allow a Florida Power and Light (FPL) transformer to be located within 5'-0" on the northwestern interior side yard setback.**

- Variance requested from:

**Sec. 142-106. - Setback requirements for a single-family detached dwelling.**

- \* \* \*
- (a) *The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

\* \* \*

- c. *Interior sides.*

1. *For lots greater than 60 feet in width each interior side yard shall have a minimum of ten percent of the lot width or ten feet, whichever is greater.*

Section 142-106(b)(13)m of the City's Land Development Regulations allows FPL transformers and associated concrete pads to be located at a zero setback from the front property line of single-family zoned properties. However, this section does not provide any relief for the required interior side yard setbacks. These structures must follow the required interior side yard setbacks for the main home.

- 6. A variance to reduce by 10'-0" the minimum required setback of 10'-0" from the exterior outer walls below a roof deck, to allow a roof deck with a 0'-0" setback front the exterior outer walls of the floor below.**

- 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:*

\* \* \*

- (6) *Roof decks. Roof decks shall not exceed six inches above the main roofline and shall not exceed a combined deck area of 25 percent of the enclosed floor area immediately one floor below, regardless of deck height. Roof decks shall be setback a minimum of ten feet from each side of the exterior outer walls, when located along a front or side elevation, and from the rear elevation for non-waterfront lots. Built in planters, gardens or similar landscaping areas, not to exceed three and one-half feet above the finished roof deck height, may be permitted immediately abutting the roof deck area. All landscape material shall be appropriately secured. The DRB or HPB may forego the required*

*rear deck setback, in accordance with the applicable design review or appropriateness criteria.*

The project proposes a roof deck, located above the master bedroom, on the southeastern portion of the building with no setback provided.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

Based on the plans and documents submitted with the application, and the reasons set forth in the analysis, staff has concluded that the requested variances 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.

Additionally, staff has concluded that the plans and documents with the application indicate the following, as they relate to the hardship criteria requirements of Section 118-353(d), Miami Beach City Code:

1. 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.  
**Partially Satisfied**
2. That the special conditions and circumstances do not result from the action of the applicant.  
**Partially Satisfied**
3. 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.  
**Partially Satisfied**
4. 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.  
**Partially Satisfied**
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.  
**Partially Satisfied**
6. 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.  
**Partially Satisfied**
7. 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.  
**Satisfied**

**COMPLIANCE WITH ZONING CODE:**

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variances requested herein. This 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 SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development Regulations establishes the following criteria for sea level rise and resiliency that must be considered as part of the review process for development 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 Applicable**
- (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) Resilient landscaping (salt tolerant, highly water-absorbent, native, or Florida-friendly plants) shall be provided, in accordance with chapter 126 of the city Code.  
**Satisfied**
- (5) The project applicant shall consider the 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. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.  
**Satisfied**
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-way and adjacent land, and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three additional feet in height.  
**Satisfied**
- (7) As applicable to all new construction, all critical mechanical and electrical systems shall be located above base flood elevation. All redevelopment projects shall, whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood elevation.  
**Satisfied**
- (8) Existing buildings shall, wherever reasonably feasible and economically appropriate, be elevated up to base flood elevation, plus City of Miami Beach Freeboard.  
**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 54 of the city Code.

**Not applicable**

- (10) As applicable to all new construction, stormwater retention systems shall be provided.

**Satisfied**

- (11) Cool pavement materials or porous pavement materials shall be utilized.

**Satisfied**

- (12) The design of each project shall minimize the potential for heat island effects on-site.

**Satisfied**

### **ANALYSIS**

The subject property is a pie shaped waterfront lot on Star Island. The property previously contained a 10,000+ square foot single family home, which was constructed in 1973. That home has been demolished and building permit BR2004173 was issued on January 24, 2021 for the construction of the proposed two-story single-family home. The building permit was issued without the inclusion of the variances requested herein, with the exception of variance No. 6 for the roof deck.

- **Variance No. 1 – Building Height**

The proposed home includes a full-size indoor basketball court. The applicant has submitted documentation regarding court design rules for college basketball courts, which substantiates the need for an increased floor to ceiling height.

The proposed variance is limited to the area containing the indoor basketball court and all other portions of the house will comply with the 28'-0" maximum height requirement. An indoor basketball court is a special condition that is specific to the proposed building and is not applicable to other buildings in the same zoning district. Additionally, the increased height for this portion of the building will not be perceived from the street due to a large front setback. Likewise, it is not likely to be perceived from the water, as this basketball court has a 141'+ rear yard setback. As such, staff is supportive of the requested variance.

- **Variance No. 2 – Elevator Height**

The City code permits elevator bulkheads and lobbies to extend 10'-0" beyond the maximum height of a two-story single-family home. The proposed elevator, as shown on sheet A-34, extends 13'-0" above the roof slab with an additional (non-dimensioned) roof curb.

The applicant has requested a height variance to accommodate the additional 3'-0". A letter from Graham Huntington, Vice President of Jenkins & Huntington, Inc., the applicant's vertical transportation consultant, has been submitted to substantiate the need for the additional height to properly install the proposed elevator. However, this letter is not consistent with the variance request, as the letter states the minimum height required for the elevator is 10'-10".



Staff recognizes that the limited height for the elevator may represent a practical difficulty, depending on the elevator selected for the project. As such, staff is supportive of the requested 3'-0" height variances. However, Article I, Section 2, of the Related Special Acts of the City Charter explicitly limits height variances to 3'-0". Consequently, the elevator may not exceed 13'-0" above the roof line and the curb must be eliminated from the design.

- **Variance No. 3 – Balcony Encroachment**

The proposed home includes an unenclosed balcony at the rear of the property, off the master bedroom. The balcony has a total projection of 11'-2' from the exterior wall of the home. 5'-2" of this balcony projects into the required rear yard setback, where the code only permits a 6'-0" encroachment.

The applicant has not substantiated a hardship or practical difficulty to justify the requested variance. As such staff is not supportive of this variance and recommends that the balcony be reduced by 5'-2". This would create a balcony with an overall projection of 6'-0", which complies with the City Code.

- **Variance No. 4 – Front Perimeter Wall**

The project includes a 10'-0" tall perimeter wall and gate at the front of the property. The proposed wall is setback 4'-0" from the front property line. The City Code permits walls at the front of the property to be a maximum height of 7'-0", when setback from the front property line a minimum distance of 4'-0".

The applicant has not substantiated a hardship or practical difficulty to justify the requested variance. As such staff is not supportive of this variance and recommends that the wall be reduced to 7'-0" to comply with the Code. Alternatively, a 10'-0" wall could be permitted with a front yard setback of 20'-0". Additionally, increased privacy can be achieved with the use of landscaping, as the code does not limit the height of hedges or other landscape materials.

- **Variance No. 5 – FPL Transformer**

The City Code permits FPL transformers and associated concrete pads to be located up to the front property line of single-family zoned properties. However, the code does not provide any relief from interior side yard setbacks. FPL transformers must follow the required interior side yard setbacks for the main home, in this case the required setback is 20'-6".

The property's geometry, being pie shaped with relatively narrow frontage on Star Island Drive, is a special condition which is specific to the land. The requested 5'-0" variance is consistent with the interior side yard setback allowed for other pieces of mechanical equipment which are listed as allowable interior side yard encroachments, such as generators. As such, staff is supportive of the requested variance.

- **Variance No. 6 – Roof Deck**

As noted in the applicant's letter of intent, the roof deck was approved pursuant to permit BR2004173. However, as designed the roof deck does not comply with the Code requirement for a minimum 10'-0" setback from the exterior wall of the floor below, along

the interior sides of the property. This was an oversight during permit review and was identified during the review of the BOA application.

At its closest point the roof deck is over 50'-0" feet from the southern interior side yard setback, where a minimum 30'-0" setback is required. The southern edge of the roof deck is partially obstructed by the elevator bulkhead and exterior stairs. Based on the design of the home and the positioning of the deck in reference to the southern property line, the design complies with the intent of the ordinance limiting the impact that a roof deck may have on an adjacent neighbor. As such, staff is supportive of the requested variance.

#### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the **variances 1, 2, 5, and 6 be approved as requested** with the conditions listed in the draft final order, and **variances 3 and 4 be denied**.

## ZONING/SITE MAP

