

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: October 5, 2021

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB21-0693
6881 Indian Creek Drive

An application has been filed requesting Design Review Approval for the construction of a new four-story townhouse project with mechanical parking, including one or more waivers and a variance from the setback requirements.

RECOMMENDATION:

Approval with conditions.
Approval of the variances.

LEGAL DESCRIPTION:

All of Block K of "Atlantic Heights", according to the plat thereof as recorded in Plat Book 9 at Page 14 of the Public Records of Miami-Dade County, Florida.

BACKGROUND:

A previous project was approved by the Design Review Board on October 3, 2017 (DRB17-0165) for improvements and retention of the existing structure, including variances to reduce the minimum required front and side facing a street setbacks, from the maximum projection allowed for a porch and roof overhangs, from the minimum hotel unit size required, and to allow encroachments closer to property lines adjacent to streets than permitted. However a full building permit was not obtained within the required timeframe and this application expired.

At the September 10, 2021 meeting the application was continued to a date certain of October 5, 2021 due to the lack of a quorum.

SITE DATA:

Zoning: TC-3
Future Land Use: TC-3
Lot Size: 12,062.12 SF
Proposed FAR: 14,458 SF/ 1.25*
Maximum FAR: 15,077.6 SF/ 1.25

*As represented by the applicant

Height:
Proposed: 37'-6" / 4-Story
Maximum: 45'-0" /
Existing Use: Multifamily building
Proposed Use: Townhomes
Residential Units: 5 Units
Required Parking: 10 Spaces

Provided Parking: 10 Spaces

Grade: +3.58' NGVD
Base Flood Elevation: +8.00' NGVD
Adjusted Grade: +5.79' NGVD
Finished Floor Elevation: +9.60' NGVD

EXISTING PROPERTY:

Two-Story multifamily building -30 units
Year: 1939
Architect: Russell Pancoast

Surrounding Properties:

East: 2-story and 4-story Multi-Family Buildings
North: 2-story 1951 Multi-Family Building

South: Indian Creek Dr and Police Station North Shore Sub-station
West: 1-story 2006 Fire Station Building

THE PROJECT:

The applicant has submitted revised plans entitled "Villas at Indian Creek", as prepared by **DNB Design Group** dated, signed and sealed July 2, 2021. The applicant is proposing to construct a new 4-story townhome development on a property containing a two-story apartment building, which will be demolished.

The applicant is requesting the following variance(s):

1. A variance to reduce by 2'-2" the minimum required street side setback of 10'-0" to construct a new building up to 7'-10" setback from the property line facing Byron Avenue.
2. A variance to reduce by 1'-10" the minimum required street side setback of 10'-0" to construct a new building up to 8'-2" setback from the property line facing Indian Creek Drive.
3. A variance to exceed by 1.31' the maximum elevation of 8.29' NGVD for allowable projections in required yards in order to construct a new access stair up to 9.6' NGVD facing 69th Street.
4. A variance to reduce by 7'-6" the minimum required street side setback of 15'-0" in order to construct individual pools and pool decks at 7'-6" from the property line facing Indian Creek Drive.
5. A variance to reduce by 7'-2" the minimum required street side setback of 15'-0" in order to construct a pool and pool deck at 7'-10" from the property line facing Byron Avenue.
6. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing 69th Street.
7. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing Byron Avenue.
8. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing Indian Creek Drive.
9. A variance to eliminate the setback required from the building façade for structures above the roofline to construct a new building with multiple rooftop features up to the edge of the building façade on 69th street, Byron Avenue and Indian creek Drive.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that 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 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.

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 variance(s):

- Sec 114.0. Floor area. Area of swinging doors at 4th floor shall count in FAR. This area is enclosed on 3 sides and not cantilevered; therefore it is not considered a balcony. Enclosed rooms next to elevators at the roof level are not identified. Only stair bulkheads, elevators, vestibules and mechanical rooms are exempted from FAR above the roof level.
- 142-1132(f) Air conditioner equipment shall be screened from view.

- Balconies and projections shall comply with Section 142-1132 (o).

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.

CONSISTENCY WITH 2040 COMPREHENSIVE PLAN

A preliminary review of the project indicates that the proposed **multi-family residential** use appears to be **consistent** with the Future Land Use Map of the Comprehensive Plan.

ACCESSIBILITY COMPLIANCE

Additional information will be required for a complete review for compliance with the Florida Building Code 2001 Edition, Section 11 (Florida Accessibility Code for Building Construction). These and all accessibility matters shall require final review and verification by the Building Department prior to the issuance of a Building Permit.

CONCURRENCY DETERMINATION:

In accordance with Chapter 122 of the Code of the City of Miami Beach, the Transportation and Concurrency Management Division has conducted a preliminary concurrency evaluation and determined that the project does not meet the City's concurrency requirements and level-of-service standards. However, the City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division will make the determination of the project's fair-share mitigation cost.

A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.

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.
Satisfied
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.

Satisfied; However, the proposed project seeks variances 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.

Satisfied; However, the proposed project seeks variances 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.

Satisfied

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.

Satisfied; However, the proposed project seeks variances 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.

Satisfied; However, the applicant is requesting one variance from the required front setback.

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; a lighting plan was not submitted.

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).
Satisfied
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.
Satisfied
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.

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) 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-ways 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 (3) additional feet in height.
Satisfied
- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.
Satisfied

- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, 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 of 54 of the City Code.

Not Applicable

- (10) In all new projects, water retention systems shall be provided.

Not Satisfied

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

Satisfied

- (12) The project design shall minimize the potential for a project causing a heat island effect on site.

Satisfied

STAFF ANALYSIS:
DESIGN REVIEW

The subject site is a triangular shaped parcel located within the TC-3 District in North Beach. The applicant is proposing to demolish the existing two-story residential building and to construct five (5) contemporary four-story townhomes. Each residential townhouse type unit is proposed with a private active roof terrace, parking and outdoor garden space with a pool. Vehicular access is from Byron Avenue. Each unit has been designed with individual entrances and associated parking areas.

Contemporary in design, the townhomes feature large windows, smooth stucco and concrete finishes. The proposed townhouse building is compatible and consistent with the scale and massing of the surrounding residential area and the setbacks proposed conform with the residential fabric of the neighborhood.

The project, as proposed, is designed with shifting volumes and architectural elements that work together to form a complemented, cohesive and well-articulated design. The massing of the structure features breaks that contribute to alleviating the impact of this structure within the existing urban context and the surrounding area. Staff does recommend further refinement of the north and south elevations, specifically unit #5's south and north walls where there are expanses of wall without fenestration or movement. Overall, staff recommends the approval of the application with the recommendations and conditions noted in the draft final order.

VARIANCE ANALYSIS

The applicant is requesting the following variance(s):

1. A variance to reduce by 2'-2" the minimum required street side setback of 10'-0" to construct a new building up to 7'-10" setback from the property line facing Byron Avenue.
2. A variance to reduce by 1'-10" the minimum required street side setback of 10'-0" to construct a new building up to 8'-2" setback from the property line facing Indian Creek Drive.
 - Variances requested from:

Sec. 142-737. Development regulations.

(b) Setback requirements: The minimum setback requirements for the TC-1, TC-2 and TC-3 districts are as follows. This includes all buildings, regardless of use, and subterranean parking structures. The minimum setbacks define the buildable area of the lot.

TC-3 Town Center Residential Office, Side facing a Street : 10 feet for lots greater than 50 feet in width

The property is a unique site with a triangular shape surrounded by a street on all sides. The front of the property has been determined along 69th Street with Indian Creek and Byron Avenue as street sides. The street side setbacks required are based on the lot width measured at the required front setback. In this case, the lot width for the property is approximately 90'-0" at 15'-0" front setback and the new building is required to comply with the 10'-0" side setback requirements for lots greater than 50'-0" in width. However, the triangular shape of the site with almost zero at the rear side substantially reduces the available area for development on most of the property.

The applicant is requesting two variances to reduce the street side setbacks to 7'-10" on Byron Avenue and 8'-2" on Indian Creek Drive. Staff does not object to these variances based on the existing site conditions and shape of the lot that create practical difficulties that satisfy the criteria for approval. The proposed setbacks should not have a negative impact on the surrounded properties as they exceed the 7'-6" minimum street side setback required for lots that are 50'-0" in width or less. In summary, staff recommends approval of variances #1 and #2.

3. A variance to exceed by 1.31' the maximum elevation of 8.29' NGVD for allowable projections in required yards in order to construct a new access stair up to 9.6' NGVD facing 69th Street.
 - Variance requested from:

Sec. 142-1132. - Allowable encroachments within required yards.

(o) Projections. In all districts, 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.

(6) Porches, platforms and terraces up to 30 inches above the adjusted grade elevation of the lot, as defined in chapter 114.

This variance request is related to an access stair facing 69th Street for Unit #5. The building complies with the required front setback of 15'-0' and the stair, as is typical for most projects, is located within the required front yard. As an allowable encroachment, the stair is limited to an elevation of 30" above adjusted grade or 8.29' in this case. Adjusted grade is determined as the average between grade elevation and flood elevation. Grade elevation (sidewalk elevation at the center front of the property) is approximately 3.58' NGVD and flood elevation is 8.0' NGVD resulting in a maximum elevation of 8.29' for allowable projections. The existing grade elevation is considered very low and the requirement for the minimum finish floor elevation of 9.0' imposes a significant difference between these two points. Staff would note that although the Code was modified for single family districts to allow access stairs up to the finish floor of the home and encroach into the required yards, this change does not apply to commercial or residential multifamily districts, such as the TC-3. As the variance request applies to only one (1) of the residential units and the existing conditions of the properties previously noted create practical difficulties for a new residential development, staff has no objections to the applicant's request and recommends approval of the variance.

4. A variance to reduce by 7'-6" the minimum required street side setback of 15'-0" in order to construct individual pools and pool decks at 7'-6" from the property line facing Indian Creek Drive.
5. A variance to reduce by 7'-2" the minimum required street side setback of 15'-0" in order to construct a pool and pool deck at 7'-10" from the property line facing Byron Avenue.
 - Variances requested from:

Sec. 142-1133. Swimming pools.

This section applies to swimming pools in all districts, except where specified. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:

(3) Side yard facing a street. For a side yard facing a street: A 15-foot setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure

The project includes a pool at the ground level for each of the five (5) residential units. The required setback for a pool or pool deck when facing a street is 15'-0". The applicant is proposing pool and deck setbacks that range from 7'-6" to 10'-1". Staff would note that the minimum setback required for pool and pool deck in single family residences is 10'-0" and the required 15'-0" setback required is more consistent with a commercial or hotel type of use. Based on the constraints of the triangular parcel and the limited area for development, as previously noted, staff finds that the variance request satisfies the practical difficulties criteria for approval.

6. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing 69th Street.
7. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing Byron Avenue.
8. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing Indian Creek Drive.
 - Variances requested from:

Sec. 142-737.- Development regulations.

(a) The development regulations in the TC-1, TC-2 and TC-3 town center districts are as follows:

TC-3 Town Center Residential Office; Maximum Building Height: The facade of buildings facing the lot front adjacent to streets shall not exceed 23 feet in height to the top of the roof deck. Any portion of the building above 23 feet shall be set back an additional 1 foot for every 1 foot in height above 23 feet.

The additional setback required for the structure above 23'-0" impacts all sides of the property and substantially reduce the floor area available due to the triangular shape of the lot. The street front condition on all sides and the irregular shape of the property create the practical difficulties that satisfy the criteria for approval. The variances requested should not have an adverse impact in the surrounding urban area or on the adjacent properties located in the RM-1, RM-2, TCC and GU districts do not have a similar requirement and could contain a structure higher than 45'-0" maximum height required in the TC-3 district. The roof deck is proposed at a height of 34'-6" and the overall building height is 37'-6", which is below the maximum 45'-0" allowed. In summary, staff recommends approval of these three variances.

9. A variance to eliminate the setback required from the building façades for structures above the roofline to construct a new building with multiple rooftop features up to the edge of the building façade on 69th street, Byron Avenue and Indian creek Drive.
 - Variance requested from:

Sec. 142-737.- Development regulations.

(b) Setback requirements: The minimum setback requirements for the TC-1, TC-2 and TC-3 districts are as follows. This includes all buildings, regardless of use, and subterranean parking structures. The minimum setbacks define the buildable area of the lot.

(3) Rooftop features. In the TC-3 district, stairwell and elevator bulkheads and other rooftop features permissible in section 142-1161 extending above the roofline of a building shall be required to be set back from the main building one foot for every one foot in height above the top of the roof deck of each level, with the exception of parapet walls which shall not exceed 3.5 feet in height

This required additional setback for allowable structures above the roof also impacts the location and area for elevators, stairs bulkheads and covered structures. In this case, due to the irregular shape of the lot and the triangular configuration of the structure, the rooftop features do not comply with this requirement. Based on the lot shape and multiple street front location of the property, staff again recommends approval of the variances requested. Staff would also note that some of the rooftop elements are setback more than 20'-0" from the property line facing Indian creek Drive, where portions of the building have an increased setback on the west side.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **approved**, including the variances requested, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review, Sea Level Rise criteria and Hardship and Practical Difficulties criteria, as applicable.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: October 5, 2021

PROPERTY: **6881 Indian Creek Drive 02-3211-001-0750**

FILE NO: DRB21-0693

IN RE: An application has been filed requesting Design Review Approval for the construction of a new four-story townhouse project with mechanical parking, including one or more waivers and a variance from the setback requirements.

LEGAL: All of Block K of "Atlantic Heights", according to the plat thereof as recorded in Plat Book 9 at Page 14, of the Public Records of Miami-Dade County, Florida.

APPLICANT: 6881 Indian Creek Drive, LLC.

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 9 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 and 10 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:

2. Revised elevation, site plan and floor plan drawings for the proposed townhouse project shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. URBAN HEAT ISLAND ORDINANCE. - Commercial and noncommercial parking lots. 3) Open- air parking lots, open to the sky, shall be constructed with (i) a high albedo surface consisting of a durable material or sealant in order to minimize the urban heat island effect, or ii) porous pavement. The provisions of this paragraph shall apply to all parking areas, and all drive lanes and ramps.
 - b. The south and north stucco wall of Unit #5, the north most unit on the site, shall be further refined to include fenestration or movement, and 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.
 - c. The final details of all exterior surface finishes and materials, including samples, 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.
 - d. A properly architecturally designed automatic overhead garage door shall be required for the parking garages. The final design details and material sample of the roll down garage doors 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.
 - e. Post Indicator Valves (PIV) and Fire Department Connections (FDC) that are proposed visible from the right-of-way shall be finished in chrome.
 - f. All exterior handrails and support posts shall incorporate a flat profile. The final design details, dimensions material and color of all exterior handrails shall be made part of the building permit plans and shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.
 - g. The final color selection of the exterior concrete finish elements shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.
 - h. The final color selection of the exterior stucco elements shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.
 - i. 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.

- j. 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 site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
 - a. 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. 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.
 - d. 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.
 - e. The amount of paving within the required front yard shall not be greater than 50% of the required front yard.
 - f. The proposed landscape buffer within the (south) interior side yard shall be further enhanced in order to provide a continuous landscape buffer in the form of bamboo or fish tail palms or similar planting materials that will adequately screen the massing of the proposed structure in order to mitigate the impact of the proposed structure on the neighboring property in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

- g. The architect shall substantially increase the amount of native canopy shade trees within the site, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- h. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.
- i. 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.
- 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/or 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 wall 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):

1. A variance to reduce by 2'-2" the minimum required street side setback of 10'-0" to construct a new building up to 7'-10" setback from the property line facing Byron Avenue.
2. A variance to reduce by 1'-10" the minimum required street side setback of 10'-0" to construct a new building up to 8'-2" setback from the property line facing Indian Creek Drive.
3. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing 69th Street.
4. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing Byron Avenue.
5. A variance to exceed the maximum height of 23'-0" to the roof deck for building façade on a street frontage to provide a building façade of 34'-6" facing Indian Creek Drive.
6. A variance to eliminate the setback required from the building façade for structures above the roofline to construct a new building with multiple rooftop features up to the edge of the building façade on 69th street, Byron Avenue and Indian creek Drive.
7. A variance to reduce by 7'-2" the minimum required street side setback of 15'-0" in order to construct a pool and pool deck at 7'-10" from the property line facing Byron Avenue.
8. A variance to reduce by 7'-6" the minimum required street side setback of 15'-0" in order to construct individual pools and pool decks at 7'-6" from the property line facing Indian Creek Drive.
9. A variance to exceed by 1.31' the maximum elevation of 8.29' NGVD for allowable projections in required yards in order to construct a new access stair up to 9.6' NGVD facing 69th Street.

B. The applicant has submitted plans and documents with the application that satisfies 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 the Board has concluded comply with the following hardship criteria, 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.

- C. The Board hereby **Approves** 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. Revised plans shall be submitted at the time of the building permit to verify the FAR proposed for the property.

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. The applicant shall comply with the electric vehicle parking requirements, pursuant to Sec. 130-39 of the City Code.
- B. All new construction over 7,000 square feet shall be required to be, at a minimum, certified as LEED Gold by USGBC. In lieu of achieving LEED Gold certification, properties can

elect to pay a sustainability fee, pursuant to Chapter 133 of the City Code. This fee is set as a percentage of the cost of construction.

- C. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit
- D. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- E. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- F. 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.
- G. 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.
- H. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- I. 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 "Villas at Indian Creek", as prepared by **DNB Design Group** dated, signed and sealed July 2, 2021, 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 the City Code. Failure to comply with this **Order** shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated _____

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, AICP
Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

Notary:
Print Name
Notary Public, State of Florida
My Commission Expires:
Commission Number:

{NOTARIAL SEAL}

Approved As To Form:
City Attorney's Office: _____ ()

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