

**MIAMI BEACH**  
PLANNING DEPARTMENT  
Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: October 20, 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. On October 5, 2021 the application was continued to a date certain of October 20, 2021 due to the excessive number of applications on the agenda.

**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

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

**Surrounding Properties:**

**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 69<sup>th</sup> 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 69<sup>th</sup> 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 4<sup>th</sup> 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 69<sup>th</sup> 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 69<sup>th</sup> 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 69<sup>th</sup> 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 69<sup>th</sup> 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 69<sup>th</sup> 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.