

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: November 2, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: DRB21-0713
7921 Abbott Avenue

An application has been filed requesting a side setback variance for the installation of air conditioning equipment for an existing single story multifamily building.

RECOMMENDATION:

Approval with conditions.

LEGAL DESCRIPTION:

Lot 4, Block 8, of ALTOS DEL MAR NO. 3, according to Plat thereof as recorded in Plat Book 8, Page 41 of the Public Records of Miami-Dade County, Florida.

BACKGROUND:

At the October 5, 2021 meeting this application was continued to a date certain of October 20, 2021 due to the excess number of applications on the agenda.

At the October 20, 2021 meeting, the application was continued to a date certain of November 2, 2021 due to lack of quorum.

SITE DATA:

Zoning: RM-1
Future Land Use: RM
Existing Unit Count: 6 | No increase
Lot Size: 5,625 SF

SURROUNDING PROPERTIES:

East: 2-Story multifamily building
North: 2-story 1939 multifamily building
South: 1-story 1956 multifamily building
West: 2-story 1937 and 1952 multifamily buildings

EXISTING STRUCTURE:

Architect: Gilbert M. Fein
Year of Construction: 1949

THE PROJECT:

The applicant has submitted plans entitled "Proposed MIMO on the Beach IX Condo", as prepared by **Krel Design LLC** dated June 1, 2021.

The applicant is requesting the following variance:

1. A variance to reduce by a range of 2 feet to 3.5 feet the minimum required interior side setback of 5'-0" in order to install a series of condensing units with interior setbacks ranging from 1.5 feet to 3 feet along the north interior side yard.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the City Code, with the exception of the requested variance.

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

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded 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 comply with the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code with the exception of variance #5, as noted above:

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

COMPLIANCE WITH 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; However, the applicant is requesting a variance for the installation of condensing units within the north side yard.
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 applicant is requesting a variance for the installation of condensing units within the north side yard.
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 applicant is requesting a variance for the installation of condensing units within the north side yard.
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Not Satisfied; See Staff Analysis. As the site is extensively paved, reduction in hardscape and replacement with landscaping, to the greatest extent possible is recommended in order to mitigate the variance request and enhance the appearance of the property and surrounding neighborhood.
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Not Satisfied; See No. 4 above.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Not Satisfied; See No. 4 above.
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.

Not Satisfied; See No. 4 above.

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.

Not Satisfied; See No. 4 above.

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 Applicable

10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.

Not Satisfied; See No. 4 above.

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.

Not Applicable

12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

Not Applicable

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.

Not Applicable

14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Not Applicable

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.
Not Applicable
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; provided the trash area is screened from view from the right-of-way.
18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the city Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.
Not Applicable
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.
Not 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 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.
Not Satisfied; however the applicant has agreed to submit a landscape plan which will minimize the extent of paving on the site to the extent possible.
- (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.
Not Applicable
- (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.

Not Applicable

- (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.

Not Applicable

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

Not Satisfied: As the exterior of the property is nearly completely paved, removal of hardscape areas to the extent possible and replacement with landscaping will help reduce the heat island effect on the site.

STAFF ANALYSIS:
VARIANCE REVIEW

The existing single story 6-unit apartment building was constructed in 1949 and designed by architect Gilbert Fein. Typical of low-scale buildings constructed during this period, the building has minimal setbacks of 5 feet on the north side, 5 feet on the rear, 7.8 feet on the south side, and approximately 10 feet in the front. With the exception of the unit facing the street, all units are thru units, with the main entrances located along the south side (with the greater setback), and a service entrance at the rear of the units (located along the north side of the building). The building also contains a painted raised brick (slump brick) planter that wraps the southwest corner of the building.

The applicant is requesting the following variance:

1. A variance to reduce by a range of 2 feet to 3.5 feet the minimum required interior side setback of 5'-0" in order to install a series of condensing units with interior setbacks ranging from 1.5 feet to 3 feet along the north interior side yard.

- Variance requested from:

Sec. 142-1132. Allowable encroachments within required yards for districts other than single-family districts.

- (f) *Central air conditioners, emergency generators, swimming pool equipment, and other mechanical equipment. Accessory central air conditioners, generators, swimming pool equipment, and any other mechanical equipment, including attached screening elements, may occupy a required side or rear yard, in townhome or in the RM-1 residential multifamily low intensity districts only, provided that:*
- (1) *They are not closer than five feet to a rear or interior side lot line or ten feet to a side lot line facing a street.*
 - (2) *The maximum height of the equipment including attached screening elements, shall not exceed five feet above current flood elevation, with a maximum height not to exceed ten feet above grade, as defined in subsection 114-1, of the lot at which they are located.*
 - (3) *If visible from the right-of-way, physical and/or landscape screening shall be required.*
 - (4) *Any required sound buffering equipment shall comply with the setback requirements specified in subsection (f)(1) of this section.*
 - (5) *If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), (3), and (4) above, then such equipment shall follow the setbacks of the main structure.*

According to the building card, the structure was originally constructed without air conditioning, and wall units were added to the building starting in 1962. As part of the renovation of the building, the applicant is requesting approval to install condensing units within the north (service) side yard of the building. The abutting property to the north is comprised of a single-story building and the property to the south is comprised of a 2-story building.

Staff is supportive of the applicant's request due to the original conditions of the property, with minimal setbacks that present practical difficulties in providing central air-conditioning while also complying with the required five (5') foot side setback for mechanical equipment. The location on the north side is the most appropriate location for such equipment, as it is screened from view from the abutting single-story structure with a solid fence. Locating the equipment on the south side would result in the units being visible from the second story of the abutting building to the south. Locating such equipment on the roof would also result in greater visibility from the street and surrounding properties.

While supportive of the variance request, staff would further recommend that the extent of paving on the south side yard be reduced to the greatest extent possible. Staff recommends that the lighter color concrete (as seen in the provided photos) be removed and replaced with in ground landscaping, subject to the review and approval of staff. Staff would also recommend that the existing minimal landscaping with the existing planter be enhanced or replaced with new landscaping

In summary, staff is supportive of the application due to the practical difficulties associated in adding necessary central air conditioning equipment to a building and site that was not originally designed for such equipment. With the additional landscaping, as recommended by

staff and agreed to by the applicant, the resulting renovation will enhance the appearance of the property and the surrounding neighborhood.

RECOMMENDATION:

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

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: November 2, 2021

PROPERTY: **7921 Abbott Avenue** **02-3202-157-0010**
 02-3202-157-0020
 02-3202-157-0030
 02-3202-157-0040
 02-3202-157-0050
 02-3202-157-0060

FILE NO: DRB21-0713

IN RE: An application has been filed requesting a side setback variance for the installation of air conditioning equipment for an existing single story multifamily building.

LEGAL: Lot 4, Block 8, of ALTOS DEL MAR NO. 3, according to Plat thereof as recorded in Plat Book 8, Page 41 of the Public Records of Miami-Dade County, Florida.

APPLICANT: Lirame Properties 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 4-8, and 10 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 the Sea Level Rise Criteria 4 and 12 in Section 133-50(a) of the Miami Beach Code.
- D. The project would be consistent with the criteria and requirements of Section 118-251 and/ or Section 133-50(a) if the following conditions are met:

1. Revised site plan and floor plan drawings for the proposed air conditioning equipment at 7921 Abbott Avenue shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. All trash containers shall be located behind the fencing located along the front of the property, subject to the review and approval of staff.
 - b. 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.
 - c. Prior to the issuance of a Certificate of Completion, 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. The extent of paving along the south side yard shall be reduced to the greatest extent possible, while providing access to each of the units, by removing the existing lighter colored concrete, and replacing with in-ground landscaping, in a manner to be reviewed and approved by staff.
 - b. The existing landscaping within the raised planters shall be enhanced or replaced with additional landscaping, in a manner to be reviewed and approved by staff.
 - c. An irrigation system for 100% coverage of all landscaping on site shall be provided, subject to the review and approval of staff.

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 which was **approved** by the Board:
 1. A variance to reduce by a range of 2 feet to 3.5 feet the minimum required interior side setback of 5'-0" in order to install a series of condensing units with interior setbacks ranging from 1.5 feet to 3 feet along the north interior side yard.

- B. The applicant has submitted plans and documents with the application that the Board has concluded satisfy Article 1, Section 2 of the Related Special Acts only as it relates to variance(s) II.A.1 and II.A.2 and II.A.3 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 only as it relates to variance(s) II.A.1 and II.A.2, as noted:

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

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

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

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

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

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

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

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

- A. The Board hereby **Approves** the medications to Variances #1 and #2 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.

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 final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- B. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- C. 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.
- D. 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.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- F. 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 "Proposed MIMO on the Beach IX Condo", as prepared by **Krel Design LLC** dated June 1, 2021 and as approved by the Design Review Board, as determined by staff.

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.

{NOTARIAL SEAL}

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

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

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