

# 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: DRB21-0731  
5262 La Gorce Drive

An application has been filed requesting Design Review Approval for the construction of a new two-story residence that includes one or more waivers and variances from the required front yard setback, from the maximum lot coverage allowed, from the required setback for a driveway and from the setback required for mechanical equipment to replace an existing two-story residence.

## **RECOMMENDATION:**

Approval with conditions.

Denial of the variances #1, #2, #3 and #4.

## **LEGAL DESCRIPTION:**

Lot 7, less the south 11 feet of the west 57.06 feet, Block 10, of "BEACH VIEW SUBDIVISION", according to the plat thereof, as recorded in Plat Book 9, Page 158, of the public records of Miami-Dade County, Florida.

## **SITE DATA:**

Zoning: RS-4  
Future Land Use: RS  
Lot Size: 21,497 SF  
Lot Coverage:  
Proposed: 62,131 SF / 31.7%  
Maximum: 2,016 SF / 30%  
Unit size:  
Proposed: 3,253 SF / 48.4%  
Maximum: 3,359 SF / 50%  
Height:  
Proposed: 27'-0" sloped roof  
Maximum: 27'-0" sloped roof

Grade: +4.50' NGVD  
Base Flood Elevation: +8.00' NGVD

Adjusted Grade: +6.25' NGVD  
First Floor Elevation: +9.00' NGVD (BFE+ 1' fb)

## **EXISTING PROPERTY:**

Year: 1972  
Architect: Roberto Gambach  
Vacant: No  
Demolition: Total

## **SURROUNDING PROPERTIES:**

East: Two-story 1939 residence  
North: Two-story 1925, 2020 residence  
South: Two-story 1929 residence  
West: La Gorce Golf Course

## **THE PROJECT:**

The applicant has submitted plans entitled "Proposed Two-Story Residence", as designed by **The Weber Studio**, signed, sealed, and dated September 7, 2021.

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

1. A two-story side (south) elevation in excess of 60'-0" in length in accordance with Section 142-106 (a) (2)(d).

The applicant is requesting the following variance(s):

1. A variance to reduce by 7'-11" the minimum required 30'-0" front setback in order to construct a new two-story single family residence at 22'-1" from the front property line facing West 53<sup>rd</sup> Street.
2. A variance to exceed by 2% (129.9 s.f.) the maximum allowed lot coverage of 30% (1,889.1 s.f.) for a two-story single family home property in order to construct a new two-story residence with a lot coverage of 32% (2,019 s.f.).
3. A variance to reduce up to 1'-6" the minimum setback required of 5'-0" from an interior side property line in order to install air conditioning equipment at a minimum of 3'-6" from the interior south side property line.
4. A variance to eliminate the required 5'-0" setback from the street side property line for parallel parking in order to construct a driveway with parallel parking at zero from the street side property line facing West 53<sup>rd</sup> Street.

#### **PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

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

Additionally, staff has concluded that the plans and documents with the application **DO NOT** 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.
- The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

**COMPLIANCE WITH ZONING CODE:**

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

1. Two-story side elevations located parallel to a side property line shall not exceed 50 percent of the lot depth, or 60 feet, whichever is less, without incorporating additional open space, in excess of the minimum required side yard, directly adjacent to the required side yard:
  - a. The additional open space shall be regular in shape, open to the sky from grade, and at least eight feet in depth, measured perpendicular from the minimum required side setback line.
  - b. The square footage of the additional open space shall not be less than one percent of the lot area.
  - c. The elevation (height) of the open space provided shall not exceed the maximum permitted elevation height of the required side yard, and
  - d. At least 50 percent of the required interior open space area shall be sodded or landscaped with pervious open space.
2. Section 142-105(b)(5). Lot coverage calculations and diagrams shall be revised. Portion of roof overhang exceeding 5'-0" on the west side balcony count in lot coverage. Portion exceeding 5'-0" from the second floor on the north side terrace does not count in lot coverage. If variance request is approved, the maximum lot coverage shall not exceed the maximum area indicated in variance.
3. Section 142-105(b)(8). All calculations and elevations related to grade elevation shall be modified, as applicable to match grade elevation in a revised survey. Pool and pool deck cannot exceed the maximum elevation allowed in the rear yard.
4. Section 142-106(a)(3). Open space diagram in the rear yard shall be revised. Only ½ of the area of the water counts as open space when pool walls are located at or above adjusted grade.
5. Section 142-106(b)(7). Proposed fences shall comply with maximum height allowed.

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

**COMPLIANCE WITH DESIGN REVIEW CRITERIA:**

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of

the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.  
**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.  
**Not Satisfied; the applicant is requesting one design waiver and variances.**
3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.  
**Not Satisfied; the applicant is requesting one design waiver and variances.**
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 applicant is requesting one design waiver and variances.**
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 design waiver and variances.**
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 has not been 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; However, the applicant is requesting one design waiver and variances.**

13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

**Satisfied**

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

**Satisfied**

15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

**Not Applicable**

16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

**Satisfied**

17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.  
**Not Applicable**
18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the city Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.  
**Not Applicable**
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.  
**Not Satisfied; see below**

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

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

1. A recycling or salvage plan for partial or total demolition shall be provided.  
**Not Satisfied; applicant will provide a recycle/salvage plan for demolition at time of permitting.**
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; additional information will be required at the time of building permit in order to demonstrate compliance.**

11. Cool pavement materials or porous pavement materials shall be utilized.

**Satisfied; additional information will be required at the time of building permit in order to demonstrate compliance.**

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

**Satisfied; additional information will be required at the time of building permit in order to demonstrate compliance.**

### **ANALYSIS:**

#### **DESIGN REVIEW**

The applicant is proposing to construct a new two-story residence in a traditional style of architecture to replace an existing 1972 residence on an irregularly shaped corner parcel that is sited at the eastern edge of the La Gorce Golf Course. The design finished first floor elevation of the new residence is proposed at base flood elevation (8') plus 1' of free board, or 9' NGVD. The home requests one design waiver and several variances as part of this application.

The requested waiver relates to the open space requirements for two-story elevations that exceed 60'-0" in length. The applicant is requesting the waiver for its southern two-story elevation that is 74'-9" in length and contours to the odd interior property line, which runs from the street 67.98', juts inwards 11 feet to then continue another 57.06' feet. As proposed, the interior elevation is broken up into two-volumes, of which neither exceeds 60' feet in length, but given the peculiar interior lot line, renders the elevation not complying with the Code. Staff finds that the proposed elevation meets the intent of the code in massing, but recommends that the south elevation, especially along its ground floor, feature more fenestration and screening around the mechanical, generator and pool equipment sited within this interior side yard.

Staff is supportive of the design and the requested design waiver with the design recommendations and conditions noted herein.

## **VARIANCE REVIEW**

The project includes the following variance requests:

1. A variance to exceed by up to 1.7% (115.4 s.f.) the maximum allowed lot coverage of 30% (2,015.6 s.f.) for a two-story single family home property in order to construct a new two-story residence with a lot coverage up to 31.7% (2,131 s.f.).

- Variance requested from:

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

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

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

*Zoning District: RS-4, Maximum Lot Coverage for a 2-story Home (% of lot area): 30%.  
Maximum Unit Size (% of lot area): 50%.*

The applicant is requesting a variance to exceed the maximum 30% lot coverage allowed for a two-story home. The City Code includes several exceptions to areas that do not count in the lot coverage when designed with the limitations specified in the Code. One of the exceptions is up to 500 square feet of garage area when the garage is not part of the principal façade and has a side entrance. The garage is proposed as part of the main façade with direct access from the front street, with an enclosed floor above; as such the entire garage area counts as part of the lot coverage. If the garage were designed along the street side, with no enclosed unit area above, it could be exempted from the lot coverage calculation (up to 500 square feet).

Staff finds that this variance request is design related and does not satisfy the hardship, nor the practical difficulties criteria. The location of the property along a street side is a condition that allows the garage to be located along the street side and not count as part of the lot coverage. Staff recommends that the variance be denied and that the project be modified to comply with the maximum lot coverage allowed.

2. A variance to reduce by 7'-11" the minimum required 30'-0" front setback in order to construct a new two-story single family residence at 22'-1" from the front property line facing West 53<sup>rd</sup> Street.

- Variance requested from:

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

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

*(1) Front yards: The minimum front yard setback requirement for these districts shall be as follows:*

- a. One-story structures: 20 feet, provided that any portion of a 2-story attached structure shall be setback a minimum of 40 feet.*
- b. Two-story structures: 30 feet, provided (a)(1)(a) above does not apply.*

Under the City Code, two-story structures have a minimum front setback requirement of 30'-

0". In this design, a front setback of 22'-1" is proposed and also a 28'-1" rear setback is proposed where 20'-0" is required. Although the site is of an irregular shape, the placement of the massing of the home so closed to the front is not consistent with the intent of the Code regarding front setbacks and in this corner location results in a negative impact on the surrounding residential neighborhood. There is excess available space in the rear yard, approximately 8'-0", to redesign the home and comply with the required front setback. Staff finds that there are no practical difficulties or hardships associated with this variance request, since the request is design driven and ample area exists in the rear yard. Staff finds that the variance request is triggered by the specific design of the home, and therefore, it does not satisfy the practical difficulties or hardship criteria. Staff recommends that the variance request be denied and that the project be modified to comply with the 30'-0" front setback required. Alternatively the applicant could explore a different design with the 20- 40 feet front setback option allowed by the Code.

3. A variance to reduce up to 1'-6" the minimum setback required of 5'-0" from an interior side property line in order to install air conditioning equipment at a minimum of 3'-6" from the interior south side property line.
4. A variance to eliminate the required 5'-0" setback from the street side property line for parallel parking in order to construct a driveway with parallel parking at zero from the street side property line facing West 53<sup>rd</sup> Street.
  - Variances requested from:

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

*(b) Allowable encroachments within required yards.*

*(5) 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, provided that:*

*a. 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.*

*(6) Driveways. Driveways and parking spaces leading into a property are subject to the following requirements:*

*b. Driveways and parking spaces parallel to the front property line shall have a minimum setback of five feet from the front property line.*

Variance #3 is related to the location of the air conditioning equipment within the required interior side yard. A minimum setback of five (5') feet is required for such equipment, and 3'-6" and 4'-2" setbacks are proposed for two (2) sets of mechanical equipment along the interior side yard. Because mechanical equipment usually does not occupy a significant space, typically they are located in a recessed area in the building or on the roof if the size of the equipment does not allow compliance with the 5'-0" setback. Since there are several options for placement of the equipment, staff finds that this variance request lacks any practical difficulties and does not satisfy the hardship criteria. As such, staff recommends denial of variance #3 and that the applicant modify the design to meet the minimum 5' foot setback requirement.

Variance #4 pertains to the driveway on the street side that requires a minimum 5'-0" setback from the property line for parallel parking to allow for additional landscape. The project proposes a driveway/parking area that is 15'-0" in width and occupies the entire width of the street side yard of 15'-0". Staff would note that for single family homes, the driveway could be designed up to 9'-0" in width. The project features a two-car garage at the front, which satisfies the minimum parking required for single family homes and the proposed parking on the street side constitutes additional parking that is not required. Staff finds that this variance request is not related to existing conditions of the property and does not satisfy the hardship or practical difficulties criteria. As such, staff recommends denial of variance #4 and that the proposed additional parking area be redesigned or removed.

In summary, staff believes that the modifications required to address the denial of the above noted variances can be accommodated as part of the review of the building permit application, as they would not result in a significant change in the design of the project.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application be **approved**, and that the variance requests be **denied**. However, should the Board find that the variance(s) requested 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, staff recommends that any approval be subject to the conditions enumerated in the attached Draft Order which address the inconsistencies with the aforementioned Certificate of Appropriateness criteria and Practical Difficulty and Hardship criteria, as applicable.

**DESIGN REVIEW BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: November 2, 2021

PROPERTY/FOLIO: **5262 La Gorce Drive**                      **02-3214-003-1392**

FILE NO: DRB21-0731

IN RE: An application has been filed requesting Design Review Approval for the construction of a new two-story residence that includes one or more waivers and variances from the required front yard setback, from the maximum lot coverage allowed, from the required setback for a driveway and from the setback required for mechanical equipment to replace an existing two-story residence.

LEGAL: Lot 7, less the south 11 feet of the west 57.06 feet, Block 10, of "BEACH VIEW SUBDIVISION", according to the plat thereof, as recorded in Plat Book 9, Page 158, of the public records of Miami-Dade County, Florida.

APPLICANTS: Garrett Kamen and Shaina Kamen

**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 2, 3, 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:
  - 1. Revised elevation, site plan, and floor plan drawings for the proposed new residence at 5262 La Gorce Drive shall be submitted, at a minimum, such drawings shall incorporate the following:

- a. The proposed (south) side open space requirement **shall be** waived.
  - b. The south interior elevation shall be revised to include additional fenestration and architectural interest along its ground floor elevation.
  - c. The final design details and color selection of the wood details proposed for the balconies 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. The final design details and color selection of the metal railings proposed for the balconies 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. The final design details of the exterior materials and finishes 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.
  - f. 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.
  - g. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding plans shall be submitted to and approved by staff. The species, type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plans shall comply with Chapter 26-Landscape Requirements of the Miami Beach Code and shall incorporate the following:
- a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
  - b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
  - c. Prior to any site demolition work, a tree protection fence following the City standard shall be installed for trees scheduled to remain subject to the review and approval of the City Urban Forester.

- d. Any necessary root and tree branch pruning with a diameter at breast height (DBH) of 2" or greater shall be approved by the City Urban Forester prior to any tree work.
- e. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.
- f. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.
- g. 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.
- h. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP
- i. Any proposed new street trees shall be of a planting species consistent or similar with existing street trees in the immediate area or consistent with any master street tree plan for the area, subject to the review and approval of the City Urban Forester.
- j. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- k. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
- l. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- m. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures. The location of backflow preventors, Siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans, and shall be subject to the review and approval of staff.

- n. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right-of-way shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
- o. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.

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

## **II. Variance(s)**

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

The following variance were denied by the Board:

- 1. A variance to reduce by 7'-11" the minimum required 30'-0" front setback in order to construct a new two-story single family residence at 22'-1" from the front property line facing West 53<sup>rd</sup> Street.
- 2. A variance to exceed by 2% (129.9 s.f.) the maximum allowed lot coverage of 30% (1,889.1 s.f.) for a two-story single family home property in order to construct a new two-story residence with a lot coverage of 32% (2,019 s.f.).
- 3. A variance to reduce up to 1'-6" the minimum setback required of 5'-0" from an interior side property line in order to install air conditioning equipment at a minimum of 3'-6" from the interior south side property line.
- 4. A variance to eliminate the required 5'-0" setback from the street side property line for parallel parking in order to construct a driveway with parallel parking at zero from the street side property line facing West 53<sup>rd</sup> Street.

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

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

Board has concluded **DO NOT** 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.

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

- C. The Board hereby **Denies** the variance requests #1, #2, #3 and #4 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.

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

- A. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board, and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the

- issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.
- B. Prior to the issuance of a demolition permit for the existing home, a construction fence shall be installed along all property lines, in accordance with Section 142-876 of the City Code, "Vacant and abandoned properties and construction sites." However, along the front property line, such fence shall consist of an opaque screening, a minimum of eight (8') feet tall (as measured from adjacent grade), which may include plywood or aluminum panels, or the equivalent solid construction on a wood or metal frame, with a continuous color finish, and concrete foundations. Only rolling gates or rigid folding panels shall be permitted. Swinging gates shall not be permitted. Such fence shall not encroach into the right-of-way.
  - C. All allowable construction signage shall be attached to or situated behind the construction fence, and shall be limited to one (1) sign, not to exceed four (4) square feet, in accordance with Section 138-133 of the City Code.
  - D. The building and parking departments shall approve a construction parking plan prior to the issuance of any building permit, including applicable demolition permits for the project.
  - E. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.
  - F. The contractor(s) shall ensure that the street and the swale directly abutting the construction site remains free of debris and refuse at all times; at a minimum, the contractor(s) shall inspect and clear the street and swale areas before leaving at the end of each day.
  - G. This order shall be enforced by the Building, Planning, Parking and Code Compliance Departments.
  - H. A recycling/salvage plan shall be provided as part of the submittal for a demolition/building permit, in a manner to be reviewed and approved by staff.
  - I. All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street.
  - J. 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.
  - K. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
  - L. 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.

- M. 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.
- N. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- O. 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 Two-Story Residence", as designed by **The Weber Studio**, signed, sealed, and dated September 7, 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

