

November 15, 2021
Updated: December 6, 2021

VIA ELECTRONIC DELIVERY

City of Miami Beach Design Review Board

c/o Mr. Thomas Mooney
City of Miami Beach
Planning Department
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: DRB21-0752 Final Submittal Letter of Intent / Application for Modification of Previously Approved Design Review Board File No. DRB20-0505 & DRB21-0632 (the “Application”) / Properties located at 666 71st Street, 6973-6981 Indian Creek Drive, & 6980-6994 Carlyle Avenue, Miami Beach, Florida (collectively, the “Overall Property”)

Dear Design Review Board Members:

Our firm represents NOBE CREEK LLC (the “Applicant”), in connection with certain land use and zoning matters relating to the Overall Property. Please accept this Application for a modification to the previously approved Design Review Board (“DRB”) Order File No. DRB21-0632², dated March 18, 2021 and DRB File No. DRB20-0505, dated July 7, 2020 (collectively, the “Approved Project”). The primary purpose of this Application is to include the new “notch out” parcel located at 6981 Indian Creek Drive and identified by Miami-Dade County Folio No. 02-3211-002-1210 (“Notch-out Parcel”) that was previously excluded from the Approved Project, as well as some minor design revisions. Note, given the assemblage’s unusual and restricting shape, the Approved Project contained a series of approved variances. As discussed more fully below, some of the approved variances will need to be extended to include the Notch-out Parcel.

I. The Property

The Overall Property is located within the North Beach Town Center neighborhood and is generally located at the intersection of Indian Creek Drive and 71st Street and is bound by 71st Street to the North, Carlyle Avenue to the East, Indian Creek Drive to the West with an interior lot line to the South. The Overall Property is irregularly shaped (triangular trapezoid) and contains a

¹ Per the enclosed survey, the total lot area of Overall Property is approximately 28,502 +/- square feet or 0.65 +/- acres.

² Please note, the Order contains a scrivener’s error and incorrectly identifies the File No. as DRB20-0632.

majority of Block 15 of the Normandy Beach South Plat/Subdivision, as recorded in Plat Book 21, Page 54 of the Public Records of Miami-Dade County, Florida.

II. Project History

On July 7, 2020, the DRB approved DRB20-0505 for the construction of a thirteen (13) story mixed use development (151' height), consisting of approximately 7,000 square feet of ground floor commercial space and 80 residential units (including co-living units³), 1,100 square feet of rooftop restaurant space and 79 parking spaces. Recently, the DRB approved Order DRB21-0632 allowing certain design modifications to the 2020 Approved Project, including increased height to 154', and 110 residential units (of which 81 were co-living units). Copies of Order DRB20-0505 and Order DRB21-0632 are enclosed for your ease of reference.

III. Proposed Modifications - Design Review Approval

With the aggregation of the Notch-out Parcel into the Overall Property, the Application seeks to create a more streamlined and complete project with a continuous façade along Indian Creek Drive allowing for increased commercial programming and efficient design integration. Additionally, the Applicant is requesting to reduce the parking podium by eliminating a floor of parking thus shrinking the overall building massing south of the tower on 71st Street. Note, even with the reduction in the parking podium, the Updated Project (defined below) fully complies with all parking and loading⁴ requirements (collectively, the "Proposed Modifications").

As detailed in the updated plans prepared by Built-Form, LLC dated December 6, 2021 (the "Updated Plans" or "Updated Project"), Applicant seeks to improve and redevelop the Overall Property consistent with the Approved Project with the following high-level revisions:

- a. The scope of the Overall Property is expanded to include the Notch-out Parcel, increasing the total lot area to approximately 28,502 +/- square feet or 0.63 +/- acres;
- b. Continuous activation along Indian Creek Drive with increased ground floor commercial use of 1,000 +/- square feet;
- c. Increased area for internal loading and back of house operations, including increased loading dock area from 3 loading berths to 4 total loading berths;
- d. Parking podium reduced to one floor, located on 2nd level, with 40 parking spaces;
- e. 3rd floor parking level removed and replaced with additional residential units and expanded pool deck and amenities; and
- f. Residential program increased by 16 units to 126 aggregate⁵ residential units (79 co-living units and 47 standard dwelling units).

³ Per Section 142-743(d)(2) of the Land Development Regulations (the "LDRs"), a co-living unit (less than 550 sq. ft.) counts as half (0.5) a unit for density purposes.

⁴ The revised ground floor configuration allows the Applicant to actually increase loading with an additional loading space and eliminate a prior approved variance.

⁵ 87 units for zoning density purposes.

The Proposed Modifications reflect a more cohesive and unified development with increased commercial and retail uses designed to activate the ground level streetscape and provide seamless connectivity throughout the Overall Property. Specifically, the Proposed Modifications, including the aggregate lot assemblage for the Overall Property, fills in the previously disjointed façade and creates an uninterrupted, pedestrian-friendly streetscape along Indian Creek Drive, a Class A frontage.

The Proposed Modifications satisfy and comply with the design review criteria in regard to the aesthetics, appearances, safety, and function of the structure in relation to the site, adjacent structures and surrounding community and are therefore in compliance with Section 118-251 of the Code. Additionally, the Applicant incorporates comments from previous DRB discussions.

IV. Variances

The Applicant requests the extension of certain variances previously approved under DRB20-0505 for the new building area located in the Notch-out Parcel, as well as the approval of new variances relating to the parking podium reduction from two (2) floors to one (1) floor.

A. High Level Summary of Previously Approved Variances and Proposed Modifications

As requested by Staff, a brief summary of the variances that were previously approved under DRB20-0505 are included below with italicized notations indicating the status of each variance (i.e. No Change, Extension, Extension with Modification, etc.) for the Updated Plans. Note, any variances requiring text modifications are noted with a strikethrough and red text for your convenience.

1. A variance to eliminate the required habitable space at the second (2nd) floor fronting 71st Street (Class A) in order to provide parking spaces.

No Change.

2. A variance to eliminate the required habitable space at the third (3rd) floor fronting 71st Street (Class A) in order to provide parking spaces.

No Change.

3. A variance to eliminate 25'-0" of the required minimum depth of 25'-0" for habitable space at the second (2nd) floor along 71st Street (Class A) in order to provide parking spaces.

No Change.

4. A variance to eliminate 25'-0" of the required minimum depth of 25'-0" for habitable space at the third (3rd) floor along 71st Street (Class A) in order to provide parking spaces.

No Change.

5. A variance to eliminate the required habitable space at the second (2nd) floor fronting Indian Creek Drive (Class A) in order to provide parking spaces.

Extension. Request to extend this previously approved variance to include the Notch out Parcel along Indian Creek Drive. The Proposed Modifications include extending the 2nd level of the parking garage along the Indian Creek Drive frontage, to include the Notch Out Parcel, creating a continuous, architecturally screened parking podium.

6. A variance to eliminate the required habitable space at the third (3rd) floor fronting Indian Creek Drive (Class A) in order to provide ~~parking spaces~~ amenity deck.

Extension with Modified Language. Request to extend this previously approved variance with a minor modification due to the revised scope of the third floor programming provided in the Updated Plans; the previously approved plans contained a 3rd level of parking, whereas the Updated Plans reduced the parking to a single level located on the 2nd story and the 3rd level now consists of an open air amenity deck.

7. A variance to eliminate 25'-0" of the required minimum depth of 25'-0" for habitable space at the second (2nd) floor along Indian Creek Drive (Class A) in order to provide parking spaces.

Extension. Request to extend this previously approved variance to include the Notch-out Parcel along Indian Creek Drive. The Proposed Modifications include extending the 2nd level of the parking garage along the Indian Creek Drive frontage, to include the Notch Out Parcel, creating a continuous, architecturally screened parking podium.

8. A variance to eliminate 25'-0" of the required minimum depth of 25'-0" for habitable space at the third (3rd) floor along Indian Creek Drive (Class A) in order to provide ~~parking spaces~~ amenity deck.

Extension with Modified Language. Similar to Variance 6, we request to extend this variance with a minor modification to accommodate the 3rd floor amenity deck in lieu of the previously approved parking level.

9. A variance to reduce the minimum required space with 50'-0" of the habitable depth requirement along Indian Creek Drive (Class A) for a limited area of back of house operations and electrical rooms, FPL vault and fire pump room.

Extension. Request to extend this variance to include the Notch-out Parcel along Indian Creek Drive.

10. A variance to provide ground floor utility infrastructure (FPL transformers, electrical rooms, etc.), on a Class A street frontage (Indian Creek Drive), which is not the only frontage that provides a means of egress to the property.

No Change.

12. A variance to reduce the required the 70% area of clear glass fenestration with views into the habitable space along the ground floor of Indian Creek Drive (Class A).

Extension. Request to extend this variance to include the Notch-out Parcel along Indian Creek Drive. With the addition of the Notch-out Parcel, more commercial space is

provided along Indian Creek Drive increasing the provided glazing to 2,074 sq. ft. (where 2,725 sq. ft. is required). However, due to the previously approved location of the utility infrastructure (southern portion of the Overall Property) the existing variance must be extended. Note, although we are requesting to extend this new variance to the Notch-out Parcel, the scope of the variance is actually reduced.

14. A variance to reduce the required 20'-0" of the habitable depth requirement for 85% (131'-4") of the building frontage is required at the ground level along Carlyle Avenue (Class C).

No Change.

15. A variance to allow loading area / surface parking to be not entirely screened from public right of ways and pedestrian path along Carlyle Avenue (Class C).

No Change.

17. A variance to not provide a clear pedestrian path free from obstructions along limited portions of Indian Creek Drive and 71st Street (Class A) frontages.

No Change.

~~18. A variance to eliminate the one (1) of the required three (3) off-street loading spaces for a residential building or hotel building over 100 units but not more than 200 units.~~

Withdrawn.

Please note, a more detailed analysis for the extended and modified variances as well as the new proposed variances per the Updated Plans is provided in the subsequent sections below.

B. Extensions of Previously Approved Variances under DRB20-0505

Although the lot size has increased with the addition of the new parcel, the triangular geometry and physical limitations of the Overall Property still remain. Therefore, the proposed variances listed below are extensions of the previously approved variances under Order DRB20-0505 and all relate to the height, depth and levels of required habitable space along Indian Creek Drive, a Class A frontage.

Variances requested from:

Sec. 142-745. - Street Frontage, Design, and Operations Requirements.

(e) Class A. In addition to other requirements in the City Code, Class A frontages shall be developed as follows:

(2) Buildings shall have a minimum of three (3) floors located along a minimum of 90 percent of the length of the setback line pursuant to the following regulations:

d. The second (2nd) and third (3rd) floors shall contain habitable space for residential, hotel, or commercial uses with a minimum depth of 25 feet from the building façade.

- A variance to eliminate the required habitable space at the second (2nd) floor fronting Indian Creek Drive (Class A) in order to provide parking spaces.
- A variance to eliminate the required habitable space at the third (3rd) floor fronting Indian Creek Drive (Class A) in order to provide extended amenity space.
- A variance to eliminate 25'-0" of the required minimum depth of 25'-0" for habitable space at the second (2nd) floor along Indian Creek Drive (Class A) in order to provide parking spaces.
- A variance to eliminate 25'-0" of the required minimum depth of 25'-0" for habitable space at the third (3rd) floor along Indian Creek Drive (Class A) in order to provide extended amenity space.

Sec. 142-745 - Street Frontage, Design, and Operations Requirements.

(e) Class A. In addition to other requirements in the City Code, Class A frontages shall be developed as follows:

(2) Buildings shall have a minimum of three (3) floors located along a minimum of 90 percent of the length of the setback line pursuant to the following regulations:

- b. Except where required for driveways and utility infrastructure, the ground floor shall contain habitable space with a minimum depth of 50 feet from the building façade.
- A variance to reduce the minimum required habitable space with 50'-0" in depth within 90% of the length of the façade at setback line in order to provide commercial, service and utility rooms fronting Indian Creek Drive (Class A).

It is important to note that despite these variances, the Updated Plans still maintain continuous and substantial ground floor commercial/retail and residential lobby space along 71st Street, with 1,000 square feet of additional ground floor retail opportunities along Indian Creek Drive due to the Notch-out Parcel. Along with the substantial ground floor activation along these Class A frontages, the required depth of 50 feet is also fully satisfied along 71st Street as well as portions of the ground level along Indian Creek Drive.

C. Request of New Variances as result of Reduced Podium

As mentioned above, the parking podium has been reduced from two (2) floors to one (1) floor, reducing the height and massing of the overall pedestal to 32 feet⁶ (where 35 feet is required) along Indian Creek Drive and Carlyle Avenue.

Sec. 142-745 - Street Frontage, Design, and Operations Requirements.

(e) Class A. In addition to other requirements in the City Code, Class A frontages shall be developed as follows:

⁶ Measured from BFE plus Freeboard of 5'.

(1) Facades shall have a minimum of height of 35 feet.

Sec. 142-745 - Street Frontage, Design, and Operations Requirements.

(g) Class C. In addition to other requirements in the City Code, Class C frontages shall be developed as follows:

(1) Facades shall have a minimum of height of 35 feet.

- A variance to reduce the required height of 35 feet along Indian Creek Drive (Class A).
- A variance to reduce the required height of 35 feet provided along Carlyle Avenue (Class C).

Section 118-353(d) of the City's Land Development Regulations delineates the standards of review for a Variance application. Specifically, the proposed variances shall be approved upon demonstration of the following:

- (i) *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.*

Satisfied; The Overall Property's irregular geometry and configuration and location along two (2) Class A frontages presents development constraints that are unique to this site. Applying the standard frontage requirements (i.e. depth, height and floors) would severely restrict any mixed use development at the Overall Property.

- (ii) *The special conditions and circumstances do not result from the action of the applicant.*

Satisfied; The triangular shaped lot and configuration of the Overall Property exists today, as originally platted. As a result, the hardship and proposed variances associated with the Overall Property do not result from the action or inaction of the Applicant.

- (iii) *Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district.*

Satisfied; As mentioned above, the Overall Property is uniquely situated and presents physical development constraints due to the overall site geometry and dimensions. Therefore, the requested Variances are a direct by-product of the irregular shape of the Overall Property.

- (iv) *Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same*

zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant.

Satisfied; Failure to approve the requested variances would create an undue hardship on the Applicant as there are practical difficulties that stem directly from the irregular shape of Overall Property. As City Staff and the DRB realized for the previously Approved Project, it is nearly impossible to satisfy the habitable liner requirements for Class A street frontages with regard to depth as well as design a functional parking garage given the inherent geometry of the Overall Property. The reduced podium massing helps integrate the Updated Project into the neighborhood context.

- (v) *The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.*

Satisfied; The previously approved and proposed Variances are the minimum required to develop the Updated Project in accordance with the clear intent of the TC-C regulations for the continued activation of the Class A frontages. Applicant is reducing the scope of the parking podium, while maintaining the screening elements previously approved. The overall Updated Project is in line with the previously reviewed and Approved Project, subject to the reduction of the parking podium which allows a reduced massing along the portion of the Overall Property that tapers down to approximately 60' at its narrowest point to the South.

- (vi) *The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

Satisfied; Despite the physical constraints of the Overall Property, the Updated Plans reflect the Applicant's intent to prioritize the Class A frontages by minimizing the parking podium and adding substantial commercial and retail programming. The express purpose of the requested variances are to improve the pedestrian realm to ensure that the Approved Project furthers the general intent and purpose of the Town Center zoning regulations.

- (vii) *The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.*

Satisfied; The requested variances will allow for the redevelopment of the Overall Property consistent with the City Comprehensive Plan while and will not reduce levels of service.

V. Sea Level Rise and Resiliency Review Waiver

The Proposed Modifications are appropriately designed to mirror the prior Approved Project and in compliance with Section 133-50(a) of the LDRs and the City's sea level rise and resiliency criteria.

- (i) *A recycling or salvage plan for partial or total demolition shall be provided.*

Satisfied; A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department.

- (ii) *Windows that are proposed to be replaced shall be hurricane proof impact windows.*

Satisfied; All newly constructed windows on the Overall Property will be hurricane proof impact windows.

- (iii) *Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.*

Satisfied; Passive cooling systems, such as operable windows, may be installed as appropriate.

- (iv) *Whether resilient landscaping (salt tolerate, highly water absorbent, native or Florida friendly plants) will be provided.*

Satisfied; All new landscaping will consist of Florida friendly plants.

- (v) *Whether 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, including a study of land elevation and elevation of surrounding properties were considered.*

Satisfied; Sea level rise projections were considered in the design of the Proposed Modifications and remain consistent with the Approved Project.

- (vi) *The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.*

Satisfied; The ground floor of the Indian Creek façade and other facades for the proposed development will be adaptable to the raising of public rights-of-way and adjacent land.

- (vii) *Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation with room to raise.*

Satisfied; all critical mechanical and electrical systems shall be located above base flood elevation.

- (viii) *Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.*

Not Applicable.

- (ix) *When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter 54 of the City Code.*

Satisfied; Habitable space located below BFE plus freeboard will be wet or dry flood proofed.

- (x) *Where feasible and appropriate, water retention systems shall be provided.*

Satisfied; water retention systems shall be provided where feasible and appropriate.

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

Satisfied; see plans for details.

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

Satisfied; the project is designed to minimize the potential for heat island effect on site, including but not limited to lush greenery and water features on the podium rooftop.

VI. Project Valuation

The estimated construction cost for the Approved Project, including the Proposed Modifications (defined below), is approximately \$15,000,000.00.

Based on the foregoing, we respectfully request your favorable consideration of this Application.

Sincerely,



Ethan B. Wasserman, Esq.

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