

MIAMI BEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: June 7, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: DRB21-0739
291 Palm Avenue

An application has been filed requesting Design Review approval for the construction of a new two-story residence on the east side of the property, one or more waivers and variances from the maximum lot coverage and unit size, from the setback requirements (front & interior sides), from the maximum yard elevation, and from the setback requirements for a roof deck, for the construction of new home, pool, and pool deck, to replace the portion of an existing one-story architecturally significant pre-1942 residence on lot 55.

RECOMMENDATION:

Approval of the design, with conditions.

Approval of variances #1-10.

Denial of variance #11.

LEGAL DESCRIPTION:

See "Exhibit A"

BACKGROUND:

The subject parcel is the eastern portion (Lot 55, or Lot B) of a property that was part of an application for a division of land that was heard and approved by the Planning Board on October 26, 2021 (PB21-0464).

At the February 1, 2022 DRB meeting, this application was reviewed and continued to a date certain of April 5, 2022, in order to address the concerns expressed by the Board. At the April 5, 2022 meeting, the application was continued to a date certain of June 7, 2022, in order to address the still outstanding concerns expressed by the Board.

SITE DATA:

Zoning: RS-4
Future Land Use: RS
Lot Size: 6,011 SF
Lot Coverage:
Proposed: **1,612 SF** 1,879 SF /
29.6 31.2%*
Maximum: 1,503 SF / 25%*

***VARIANCE REQUIRED**

Unit size:
Proposed: **2,703 SF** 3,009 SF /
45 50%*

Maximum: 2,404 SF / 40%

***VARIANCE REQUIRED**

Height:
Proposed: 24'-0" flat roof
Maximum: 24'-0" flat roof

Grade: +4.79' NGVD
Base Flood Elevation: +9.00' NGVD
Adjusted Grade: +6.9' NGVD
First Floor Elevation: +9.00' NGVD (BFE+ 5'fb)

EXISTING PROPERTY:

Year:	1935	East:	Two-story 1957 residence
Architect:	E. H. Ehmann	North:	Two-story 1992 residence and two-story 1939/2000 residence
Vacant:	No	South:	CMB median and pump station
Demolition:	Partial	West:	Two-story 1936/1984 residence

THE PROJECT:

The applicant has submitted plans entitled "291 Palm Avenue – Lalani Developers - Lot B", as designed by **Royal Byckovas**, signed, sealed, and dated May 9, 2022.

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

1. A second story along the front elevation when the lot coverage for a two-story home is 25% or greater in accordance with Section 142-105 (b) (4) c.

The applicant is requesting the following variance(s):

Note: **Underline** notes current request and ~~strike through~~ denotes previous request.

1. A variance from Sec. 142-105(b)(9)(a) to exceed ~~by 6.2% (512 SF)~~ the maximum lot coverage allowed of 25% (1,503 SF) for a lot resulting from a lot split in order to construct a new two-story residence with a lot coverage of **29.6%** ~~31.2% (1,879 SF)~~.
2. A variance from Sec. 142-105(b)(9)(b) to from the maximum unit size allowed of 40% (2,404 SF) for a lot resulting from a lot split in order to construct a two-story home with **45%** ~~50%~~ total unit size.
3. A variance from Sec. 142-106(a)(1)(b) from the minimum required 30'-0" front setback, in order to construct a new two-story structure from the front property line facing North Coconut Lane with a 12'-4" setback.
4. A variance from Sec. 142-106(a)(1)(b) from the minimum required 30'-0" front setback to construct a new two-story structure from the front property line facing Palm Avenue with a 20'-0" front setback.
5. A variance from Sec. 142-106(a)(2)(c)(1) from the minimum required setback of 10'-0" from an interior side property line in order to construct a new two-story structure with a **7'-7"** ~~5'-0"~~ setback.
6. A variance from Sec. 142-106(a)(2)(a) from the minimum required sum of the side yard of 21'-6" in order to provide a sum of the sideyards setback of **17'-7"** ~~15'-0"~~.
7. ~~A variance to reduce by 3'-0" the minimum required side yard of 9'-0" for the pool water's edge and to reduce by 2'-6" the minimum required side yard of 7'-6" for a pool deck and catch basin.~~ **Withdrawn by Applicant**
8. A variance from Sec. 142-106(b)(16)g from the minimum required 10'-0" setback in the front yard, in order to construct a pool deck with a setback of 5'-0".
9. A Variance from Sec. 142-106(b)(16)b.1 to allow a pool's deck in side yard setback to be **6'-2"** ~~5'-0"~~ where 7'-6" is required.

10. A Variance from Sec. 142-105(b)(6) to allow the habitable roof deck to be set back ~~8'-6"~~ 8'-4" and ~~4'-4"~~ 4'-10" to the north and south respectively when 10'-0" is required.
11. A Variance from Sec. 142-105(b)(8)b.1 to exceed maximum 7'-6" elevation of side yard and front yard to construct portions of the pool deck ~~and front yard~~ at an elevation of 10' NGVD.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded PARTIALLY satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents submitted with the application PARTIALLY 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, in addition to the requested variances:

- Subject to the review and approval of the Design Review Board the following applies to the second story of two-story homes with a lot coverage of 25% or greater: At least 35% of the second floor along the front elevation shall be setback a minimum of five feet from the minimum required setback.

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.
Satisfied. However, the applicant is requesting one waiver and ten variances from the Board.
3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
Satisfied. However, the applicant is requesting one waiver and ten variances from the Board.
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Satisfied
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Partially Satisfied; Staff is recommending denial of variance #11 in order to reduce the impact of new construction on the surrounding neighborhood. See Staff Analysis.
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.

Partially Satisfied; See No. 5 above and staff analysis.

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.

Partially Satisfied; See No. 5 above and Staff Analysis.

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

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.

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

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

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

Satisfied

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

Satisfied

- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 126 of the City Code.

Satisfied

- (5) The project applicant shall consider the adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact. The applicant shall also

specifically study the land elevation of the subject property and the elevation of surrounding properties.

Satisfied

- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.

Satisfied

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

Satisfied

- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.

Not Applicable

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

Satisfied

- (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

- (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.

STAFF ANALYSIS:

DESIGN REVIEW

The applicant is proposing to construct a new two-story residence on an irregularly shaped lot that has two street fronts: North Coconut Lane and Palm Avenue. The design floor elevation of the new residence is proposed at base flood elevation (9' NGVD) plus 1' of freeboard, or 10' NGVD. One design waiver and ten variances are being requested as part of this application.

The subject parcel is the eastern portion of a property that was part of an application for a division of land that was approved by the Planning Board on October 26, 2021 (PB21-0464). The combined site contains an existing pre-1942 residence with a separate one-story garage.

The existing home will be demolished as part of this application. DRB21-0738 is the companion application for the western lot, which was approved by the Board on April 6, 2022.

This item was initially heard by the Board on February 1, 2002 and continued to the April 6, 2022 meeting in order to address the concerns expressed by the Board and staff, which primarily related to the size of the home. At the April 6, 2022 meeting, the overall size of the home had not changed and the application was again continued. Since that time, the plans have been modified with an overall reduction in lot coverage from the previously proposed 31.2 % to 29.6% and unit size has been reduced from 50% to 45 %.

The applicant is also requesting a design waiver for the setback of the second story of the front elevation when the lot coverage exceeds 25%. The City code requires that in such instances, 35% of the second-floor elevation shall be further setback 5', and variation from this requirement is subject to the review and approval of the Design Review Board. As this site has two front elevations, the request is specific to the Palm Avenue frontage, where the North Coconut Lane elevation is in compliance. As noted herein, this site has curved front property lines, with the more restrictive concaved angle on Palm Avenue. The proposed design provides a 5' setback for 26% of the second floor on the subject elevation. In addition to the planar setback, the second floor design features an open terrace that is encased in stucco and screened. To better meet the intent of the code, staff recommends that the spacing of the vertical screen be increased.

VARIANCE REVIEW

Since the last meeting the applicant has revised the submittal to include both the previously proposed plans as well as the current proposal, which clearly shows the reduction in the overall building mass.

As indicated previously, this lot is rather unique in that it has a curved trapezoidal shape, with two street fronts and is also very shallow, with a lot depth of only 70 feet. Most single family lots on Miami Beach have a lot depth of at least 100 feet. The diagram below shows that absent any relief from the City code, with the current required setbacks, the maximum width of a single-story home is 30 feet, and the maximum width for a 2-story home is only 10 feet. This shallow lot depth, as well as the unique bean shape of the lot, does present a hardship for the construction of any home on the subject site.

With the reduction in unit size, from the previous request of 50% down to 45% - **Variance #2)** and the reduction in lot coverage from the previous request of 31.2% down to 30% - **Variance #1)**, staff is now supportive of these variances, which are now consistent with our prior recommendation.

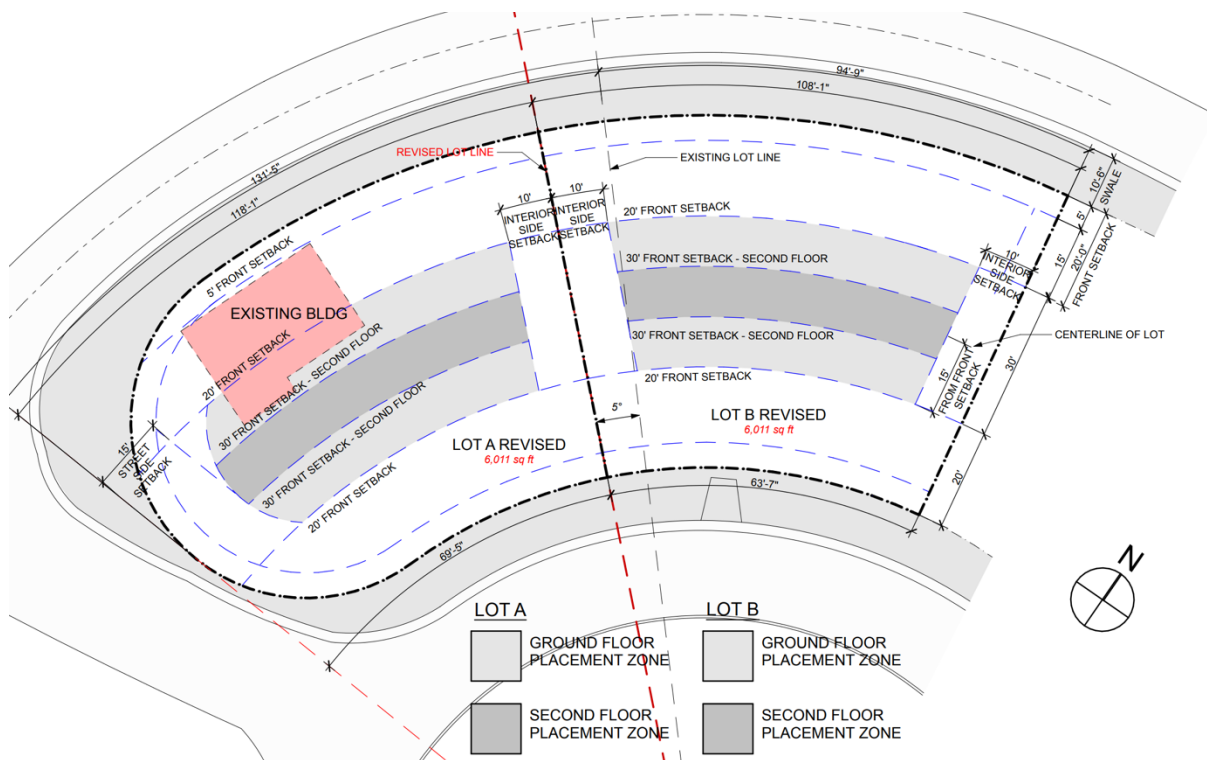
The subject property is located on the eastern half of an approved lot split application by the Planning Board. Since the newly created lots do not follow the lines of the original platted lots, AND because the prior pre-1942 home will be demolished, the Code limits the maximum lot coverage for a new two-story home to no more than 25% of the lot area, and the maximum unit size shall not exceed 40% of the lot area, or such lesser number, as determined by the planning board. These reduced allowances are intended to mitigate adverse impacts of what could otherwise be a large home on the current site with a unit size up to 50% and footprint of 30%.

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

(9) Lot split. All new construction for homes on lots resulting from a lot split application approved by the planning board shall be subject to the review and approval of the design review board (DRB). The following shall apply to all newly created lots, when the new lots created do not follow the lines of the original platted lots and/or the lots being divided contain an architecturally significant, pre-1942 home that is proposed to be demolished.

- a. The maximum lot coverage for a new one-story home shall not exceed 40 percent of the lot area, and the maximum lot coverage for a new two-story home shall not exceed 25 percent of the lot area, or such lesser number, as determined by the planning board.
- b. The maximum unit size shall not exceed 40 percent of the lot area for both one story, and two-story structures, or such less numbers, as determined by the planning board.

Staff would note that the existing homes average unit size (for the study area, included in the Planning Board report) is much larger than the average for most of the City's single family neighborhoods, which is typically around 31%. As such, staff is supportive of the updated variance requests for lot coverage and unit size.



Staff would also point out that the existing 2-story home (although much lower in height than the proposed new home) has a setback of around 5 feet for a large frontage of the home along North Coconut Lane. Again, based upon the hardship presented by the unique shape and

depth of the lot, staff is supportive of the requested variances related to the primary setbacks of the home (**Variances #3 & #4**), including the proposed interior side setback and sum of the side yard setbacks (**Variances #5 & #6**). With the overall reduction in lot coverage and unit size, the side setbacks have been increased from the prior submittal.

The requested variances, some of which have been revised from the prior submittal, are noted below along with the staff recommendation for each variance:

1. A variance from Sec. 142-105(b)(9)(a) to exceed ~~by 6.2% (512 SF)~~ the maximum lot coverage allowed of 25% (1,503 SF) for a lot resulting from a lot split in order to construct a new two-story residence with a lot coverage of 29.6% ~~31.2% (1,879 SF)~~.

Approval recommended

2. A variance from Sec. 142-105(b)(9)(b) to ~~from the~~ maximum unit size allowed of 40% (2,404 SF) for a lot resulting from a lot split in order to construct a two-story home with 45% ~~50%~~ total unit size.

Approval recommended

3. A variance from Sec. 142-106(a)(1)(b) from the minimum required 30'-0" front setback, in order to construct a new two-story structure from the front property line facing North Coconut Lane with a 12'-4" setback.

Approval recommended

4. A variance from Sec. 142-106(a)(1)(b) from the minimum required 30'-0" front setback to construct a new two-story structure from the front property line facing Palm Avenue with a 20'-0" front setback.

Approval recommended

5. A variance from Sec. 142-106(a)(2)(c)(1) from the minimum required setback of 10'-0" from an interior side property line in order to construct a new two-story structure with a 7'-7" ~~5'-0"~~ setback.

Approval recommended

6. A variance from Sec. 142-106(a)(2)(a) from the minimum required sum of the side yard of 21'-6" in order to provide a sum of the sideyards setback of 17'-7" ~~15'-0"~~.

Approval recommended

7. ~~A variance to reduce by 3'-0" the minimum required side yard of 9'-0" for the pool water's edge and to reduce by 2'-6" the minimum required side yard of 7'-6" for a pool deck and catch basin.~~ **Variance Withdrawn**

8. A variance from Sec. 142-106(b)(16)g from the minimum required 10'-0" setback in the front yard, in order to construct a pool deck with a setback of 5'-0".

Approval recommended

9. A Variance from Sec. 142-106(b)(16)b.1 to allow a pool's deck in side yard setback to be 6'-2" ~~5'-0"~~ where 7'-6" is required.

Approval recommended

10. A Variance from Sec. 142-105(b)(6) to allow the habitable roof deck to be set back 8'-6" ~~8'-4"~~ and 4'-4" ~~4'-10"~~ to the north and south respectively when 10'-0" is required.

Approval recommended

11. A Variance from Sec. 142-105(b)(8)b.1 to exceed maximum 7'-6" elevation of side yard and front yard to construct portions of the pool deck ~~and front yard~~ at an elevation of 10' NGVD.

Denial recommended

Variances #7, #8, and #9 relate to the setback requirements for the pool and pool deck. Due to the irregular shape of the lot, minimal lot depth, and because the lot has two frontages, staff is supportive of the variances for the western side of the lot, which abut the companion lot that was part of the lot split process. As the eastern side abuts an existing property, staff previously recommended that the pool and pool deck on the eastern side of the site comply with the setback requirements so that the abutting neighbor is not negatively impacted by the proximity of the pool deck. The applicant has revised the plans and variance request to comply with this recommendation.

Variance #10 is for the setback requirements for the roof deck facing both Palm Avenue and North Coconut Lane. The deck exceeds the setback requirements on the east and west sides. Due to the narrow width of the building, which is a result of the unusually shallow property depth, staff recommends approval of this variance due to the practical difficulties presented based on the size and shape of the lot.

Variance #11 is for the height of the pool deck within the front yard facing Palm Avenue and west interior side yard, which has been modified from the prior submittal. An elevation of 10'-0" is requested where the maximum height is 7.5 feet (grade + 30 inches). The City Code allows rear yards of waterfront lots to be constructed at the same finished floor of the house, up to BFE+ 5 feet. However, this allowance is not provided for a non-waterfront property. The applicant has reduced the extent of the variance request, which is now limited to only portions of an elevated pool deck on the western side of the front yard. The pool and smaller portion of pool deck has been lowered to the maximum elevation of 7'-6" NGVD.

However, although these changes are an improvement, as this is a vacant site, and provided that the setbacks noted above are approved by the Board, a pool and pool deck can be constructed in the functional rear of the house at the maximum elevation allowed by the City Code. As such, staff recommends denial of the requested variance, due to lack of hardship or practical difficulty.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval of the design, approval of variance requests #1-10, denial of Variance request #11**, with the modifications noted above, 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.

Exhibit "A"

Legal Description:

LOT A (LOT 56)

PROPOSED PARCEL 2

Lot 55 In Block 2—B. of ENTITLE AMENDED RIVIERA AND THE FIRST AND SECOND ADDITIONS, according to the Plat thereof. as recorded in Plat Book 32. at Page 37. of the Public Records of Miami—Dade County, Florida.

AND

A portion of Lot 56 in Block 2—B. of ENTITLE AMENDED RIVIERA AND THE FIRST AND SECOND ADDITIONS, according To the Plot thereof, as recorded in Plot Book 32, of Page 37, of the Public Records of Miami—Dade County. Florida, more particularly described as follows:

Begin at the Southeasterly corner of said Lot 56 also being the Southwesterly corner of said Lot 55; thence N132°14'E along the Easterly line of Lot 56 also being the Westerly line of Lot 55 as shown on said Plat of ENTITLE AMENDED RIVIERA AND THE FIRST AND SECOND ADDITIONS. Plat Book 32. Page 37; a distance of 70.00 feet to the Northeasterly corner of said Lot 56, also being the Northwesterly corner of Lot 55 as shown on said Plot of ENTITLE AMENDED RIVIERA AND THE FIRST AND SECOND ADDITIONS, Plot Book 32, Page 37; sold point being a point of non tangency, to which point a radial line bears N132°14'E; thence run westerly along the arc of a circular curve to the left having for its elements a radius of 170 feet. a central angle of 4°58'18" and an arc distance of 14.75 feet; thence S08°30'56"W a distance of 70.00 feet to a point on the Southerly line of said Lot 56: said point being a point of non tangency. to which point a radial line bears N08°30'56"E: thence run southeasterly along the arc of a circular curve to the right having for its elements a radius of 100 feet, a central angle of 4°58'18" and an arc distance of 8.68 feet to the Point of Beginning.