

# MIAMI BEACH

PLANNING DEPARTMENT  
Staff Report & Recommendation

Design Review Board

TO: Chairperson and Members  
Design Review Board

DATE: November 1, 2022

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **DRB22-0866, 456 W 41<sup>st</sup> Street**

An application has been filed requesting Design Review Approval for construction of a new single-story, double height commercial building, including a variance from the loading requirements, to replace an existing 2-story building.

## **RECOMMENDATION:**

Approval of the design.  
Approval of the variance.

## **LEGAL DESCRIPTION:**

Lot 11, Block 54 of "Orchard Subdivision 2 & 3", according to the Plat thereof, as recorded in Plat Book 8, at Page 116, of the Public Records of Miami-Dade County, Florida.

## **SITE DATA:**

Zoning: CD-3  
Future Land Use: CD-3  
Parking District: 3  
Lot Size: 5,517 SF  
Proposed FAR: 5,267 SF/ 0.95\*  
Permitted FAR: 12,413 SF/ 2.25

\*As represented by the applicant

Height:

Proposed: **25'-0"**

Maximum: **75'-0"**\*

Highest Projection: +5'-0"

(30'-0" NGVD)

CMB Grade: 4.73' NGVD

Base Flood Elevation: 8' NGVD

Proposed Use: Commercial –  
Retail or restaurant

Required Parking: 0 Spaces

Provided Parking: 0 Spaces

## **SURROUNDING PROPERTIES:**

North: 1 & 2 Story Commercial

South: CMB Surface Parking Lot

West: One-story Commercial

East: Two-story Commercial

## **THE PROJECT:**

The applicant has submitted plans entitled "New Construction 456 W 41<sup>st</sup> Street", as prepared by **Anthony Leon**, signed, sealed, and dated 9/6/2022. The applicant is proposing to construct a new single story commercial building to replace the existing 2-story commercial building, to be demolished.

The applicant is requesting the following variance:

1. A variance from Section 130-101 of the City code, to eliminate the one (1) required off-street loading space for new construction. For new construction over 2000 SF, but less than 10,000 SF, one loading space is required.

**COMPLIANCE WITH ZONING CODE:**

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the requirements of the City Code, excluding requested variance(s):

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**
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**
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**
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**
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**

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

**Satisfied**

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

**Satisfied**

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

**Not Applicable**

16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.  
**Satisfied**
17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.  
**Satisfied**
18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the city Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.  
**Not Applicable**
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.  
**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.

**Satisfied**

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

**Satisfied**

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

**Satisfied**

**ANALYSIS:**

**DESIGN REVIEW**

The applicant is proposing to construct a modest new single story (double-height) commercial building on a small interior lot on the south side of 41<sup>st</sup> street. Due to the interior nature of the site, only the front and rear elevations will be visible. As proposed, the plan could accommodate two tenants (not yet identified), each with a recessed covered entrance located in at the center of the building. The front elevation consists largely of storefront glazing with vertical stucco pilasters framing the windows, along with a stone-faced knee wall. The rear elevation consists of service doors at the base of the building with a continuous row of windows above. Horizontal louvers are indicated on the roof to screen any required mechanical equipment. Staff is supportive of the overall design.

**VARIANCE(S) REVIEW**

The applicant is requesting the following variance(s):

1. A variance to eliminate the required loading space.
  - Variance requested from:

***Sec. 130-101. Space requirements and location.***

- A. *When any new building or structure is erected or an existing building is modified resulting in an increase in FAR, accessory off-street loading spaces shall be provided for the new building, new structure, or increase in floor area in accordance with the following schedule:*

- (1) *For each retail store, department store, restaurant, wholesale house, warehouse, repair, general service, manufacturing or industrial establishment, or similar use, which has an aggregate floor area in square feet of:*

a. ***Over 2,000 but not over 10,000: One space.***

The subject site is located in Parking District No. 3 (along 41<sup>st</sup> Street), which provides a parking exemption for restaurant and retail uses. However one *loading space* is required based on the extent of new construction. Unlike the blocks to the east and west, there is no alley located to the rear of the buildings along this block of 41<sup>st</sup> street. There is however a city parking lot located to the south of the subject site, which includes a driveway that has been used as a de facto alley for loading. This includes two (2) spaces in the lot, which happen to abut the subject property, and which are designated by the city as loading spaces.

The applicant is providing one loading space within the proposed new building on private property, which could only be accessed from the abutting parking lot. Because the City will have to authorize this vehicular access through the parking lot, and because such access could also be removed in the future, the applicant is requesting a variance to eliminate the required loading space in an abundance of caution for both now and in the future. The only other solution to provide a loading space on the property would require a curb cut on 41<sup>st</sup> street. Such option would negatively impact the continuous storefronts along the street, and also result in negative impacts to traffic flow. The nature of this commercial property, located on a block with no service alley, presents a hardship for any new construction, and for the reasons noted, staff is supportive of the requested variance.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application be **approved, including the requested variance**, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review and Sea Level Rise criteria.

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

MEETING DATE: November 1, 2022

PROPERTY/FOLIO: **456 W 41<sup>st</sup> Street** 02-3227-017-1230

FILE NO: DRB22-0866

IN RE: An application for Design Review Approval for construction of a new single-story, double height commercial building, including a variance from the loading requirements, to replace an existing 2-story building.

LEGAL: Lot 11, Block 54 of "Orchard Subdivision 2 & 3", according to the Plat thereof, as recorded in Plat Book 8, at Page 116, of the Public Records of Miami-Dade County, Florida.

APPLICANTS: RAJAMIM, LLC

**ORDER**

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

**I. Design Review**

- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not an individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Design Review Criteria 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 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 shall be submitted, at a minimum, such drawings shall incorporate the following:

- a. No fixtures or shelving shall be permitted within 5 feet of the storefront glazing on the ground floor, in a manner to be reviewed and approved by staff.
  - b. The final design and details of the proposed roof top mechanical screening shall be provided, subject to the review and approval of staff.
  - c. Interior lighting, visible from the exterior, shall be subject to the review and approval of staff.
  - d. 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.
  - e. 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.
  - f. 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. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.
  - b. 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.
  - c. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
  - d. 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.
  - e. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
  - f. 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):

1. A variance from Section 130-101.to eliminate the one required loading space.

- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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

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

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

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

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

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

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

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 **Approves** the Variance request(s), and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:
1. The use of the abutting city parking lot to access the proposed loading space and service doors on private property, shall be subject to the review and approval of applicable city departments, including the Parking Department, with the execution of a maintenance and operating agreement, in a form approved by the City Attorney, prior to the issuance of any building permit that includes vehicular or pedestrian access from the rear of the site abutting the city parking lot.
  2. 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. If applicable, a Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- C. 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.
- D. 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.
- E. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- F. 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.

- G. 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.
- H. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- I. 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 "New Construction 456 W 41<sup>st</sup> Street", as prepared by **Anthony Leon**, signed, sealed, and dated 9/6/2022, 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 the City Code. Failure to comply with this **Order** shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated \_\_\_\_\_.

DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
Michael Belush, AICP  
Chief of Planning and Zoning  
For Chairman

STATE OF FLORIDA           )  
  )SS  
COUNTY OF MIAMI-DADE   )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

{NOTARIAL SEAL}

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

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

Filed with the Clerk of the  
Design Review Board on: \_\_\_\_\_ ( )