

# MIAMI BEACH

PLANNING DEPARTMENT  
Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: November 1, 2022

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: DRB22-0877  
**5446 North Bay Rd**

An application has been filed requesting Design Review Approval, including a variance to exceed the maximum height allowed for an elevator bulkhead on an existing residence.

## **RECOMMENDATION**

Approval of the design.

Approval of the variance.

## **LEGAL DESCRIPTION:**

Lots 3 & 4, Block 14, "La Gorce Golf Subdivision", According to the Plat Thereof, as Recorded in Plat Book 14, Page 43, of the Public Records of Miami-Dade County, Florida.

Begin at Northeast corner of Lot 5, Block 14, La Gorce Golf Subdivision, as recorded in Plat Book 14, at Page 43, of the Public Records of Miami-Dade County, Florida; thence West along a line parallel to the South line of said Lot 5 for a distance of 163.60 feet, more or less, to the West line of Lot 4; thence South along the West line of Lot 4, to the Southwest corner of said Lot 4; thence East along the South line of said Lot 4, for a distance of 163.80 feet more or less, to the Point of the Beginning.

## **BACKGROUND:**

On March 5, 2013, the Design Review Board approved an application for the construction of a new two-story single-family residence, pursuant to DRB File No. 22944. A building permit was issued for the new home and construction was completed.

## **SITE DATA:**

Zoning:	RS-3
Future Land Use:	RS
Lot Size:	30,892 SF
Lot Coverage:	
Existing:	8,283 SF / 26.95%
Maximum:	9,267.63 S.F / 30%
Unit size:	
Existing:	11,984 SF / 38.9%
Maximum:	15,446 SF / 50%
Height:	
Proposed:	27'-10" flat roof
Maximum:	28'-0" flat roof / 31'-0" sloped roof

Grade:	+4.68' NGVD
Flood:	+8.00' NGVD
Adjusted Grade:	+6.34' NGVD
First Floor Elevation:	+9.00' NGVD

## **EXISTING PROPERTY:**

Year:	2014
Architect:	Choeff & Levy, PA
Vacant:	No
Demolition:	Partial

## **SURROUNDING PROPERTIES:**

East:	Two-story 1940 residence
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North: Two-story 1935 residence  
South: One-story 1957 residence

West: Biscayne Bay

**THE PROJECT:**

The applicant has submitted plans entitled "5446 N Bay Road Renovations", as designed by **Choeff & Levy, PA** signed, sealed, and dated March 7, 2022. The residence has been undergoing renovations and it was determined that the elevator needed to be replaced. In order to install an elevator landing for access to the roof, the bulkhead has been determined to require a total height of 13'-5".

The applicant is requesting the following variance:

1. A variance from **Section 142-105(b)(7)f.** to exceed by 3'-0" the maximum height allowed of 10'-0" feet above the roofline in order to construct an elevator bulkhead up to 13'-0" above the roofline.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

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

Additionally, staff has concluded that the plans and documents submitted with the application 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 consistent with the City Code, with the exception of the requested variances:

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.  
**N/A**
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.  
**N/A**
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.  
**N/A**
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).  
**N/A**
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.  
**N/A**
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).  
**Satisfied**
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.  
**N/A**
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.  
**N/A**
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.  
**N/A**
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.  
**N/A (for the current requested modifications)**

**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.  
**N/A**
2. Windows that are proposed to be replaced shall be hurricane proof impact windows.  
**N/A**
3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**N/A**
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.  
**N/A**
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.  
**N/A**

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.

N/A

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.

N/A

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

N/A

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.

N/A

10. In all new projects, water retention systems shall be provided.

N/A

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

N/A

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

N/A

**STAFF ANALYSIS:**  
**VARIANCE REVIEW**

The project includes the following variance request:

1. A variance to exceed by 3'-0" the maximum height allowed of 10'-0" feet above the roofline in order to construct an elevator bulkhead up to 13'-0" above the roofline.

- 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:*

*(7) Height exceptions. The height regulation exceptions contained in section 142-1161 shall not apply to the RS-1, RS-2, RS-3 and RS-4 zoning districts. The following exceptions shall apply, and unless otherwise specified in terms of height and location, shall not exceed 10'-0" above the roofline of the structure.*

*f. Elevator bulkheads shall be located as close to the center of the roof as possible and be visually recessive such that they do not become vertical extensions of exterior building elevations.*

The applicant is proposing modifications to the height of the elevator that was previously approved as part of the new single-family home on the property. A variance to exceed by 3'-0" the maximum allowable height is now being requested for the elevator; the elevator remains in the same location as previously approved.

The property has a total unit size of approximately 23,737 SF and the elevator is located within the area of new construction that is approximately 15,710 SF. Staff would also note that this variance request has been previously granted for other properties of similar size on large lots. The proposed elevator is centrally located on the site, and minimally visible from view. Given the expansive nature of the site, the proposed increase in height for the elevator is not expected to be detrimental to the surrounding properties.

However, staff would note that under the City Charter, the maximum height variance that can be by the Board for the elevator is three (3') feet from the main roof line. The proposed exterior elevations and letter of intent state that the variance requested is for a height of 3'-6". Staff has no objection to the height variance of 3' and finds that there are practical difficulties related to the height of the elevator serving homes of this size, which are typically best serviced with a commercial type of elevator.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application be **approved**, subject to the conditions enumerated in the attached Draft Order which address the inconsistencies with the aforementioned Practical Difficulty and Hardship criteria, as applicable.

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

MEETING DATE: November 1, 2022

PROPERTY/FOLIO: **5446 North Bay Rd** 02-3215-003-1800

FILE NO: DRB22-0877

LEGAL: Lots 3 & 4, Block 14, "La Gorce Golf Subdivision", According to the Plat Thereof, as Recorded in Plat Book 14, Page 43, of the Public Records of Miami-Dade County, Florida. Begin at Northeast corner of Lot 5, Block 14, La Gorce Golf Subdivision, as recorded in Plat Book 14, at Page 43, of the Public Records of Miami-Dade County, Florida; thence West along a line parallel to the South line of said Lot 5 for a distance of 163.60 feet, more or less, to the West line of Lot 4; thence South along the West line of Lot 4, to the Southwest corner of said Lot 4; thence East along the South line of said Lot 4, for a distance of 163.80 feet more or less, to the Point of the Beginning.

IN RE: An application for Design Review Approval, including a variance to exceed the maximum height allowed for an elevator bulkhead on an existing residence.

APPLICANT: XI LLC TRS

**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 consistent with Design Review Criteria in Section 118-251 of the Miami Beach Code.

**II. Variance(s)**

- A. The applicant filed an application with the Planning Department for the following variance(s):
  - 1. A variance to exceed by 3'-0" the maximum height allowed of 10'-0" above the roofline in order to construct an elevator bulkhead of up to 13'-0" above



the roofline.

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

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

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.

B. The Board hereby **Approves** the Variance request 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. All new construction over 7,000 square feet shall be required to be, at a minimum, certified as LEED Gold by USGBC. In lieu of achieving LEED Gold certification, properties can elect to pay a sustainability fee, pursuant to Chapter 133 of the City Code. This fee is set as a percentage of the cost of construction.
- B. 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.
- C. During the course of construction, all vehicles, including, but not limited to all personal vehicles, shall park within the confines of the private property, the swale directly abutting the construction site, or at alternate overflow parking sites that are not on-street metered spaces and not zoned RS. Additionally, parking of any vehicles shall be prohibited in the travel lanes of all streets.
- D. 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.
- E. 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.
- F. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.
- G. 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.
- H. This order shall be enforced by the Building, Planning, Parking and Code Compliance Departments.
- I. 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.
- 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 "5446 N Bay Road Renovations", as designed by **Choeff & Levy, PA** signed, sealed, and dated March 7, 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.

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