

MIAMI BEACH

PLANNING DEPARTMENT


Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: February 7th, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

 for TRM

SUBJECT: DRB22-0899
401 W 30th Street

An application has been filed requesting Design Review Approval for the construction of a new two-story residence, including variances from the maximum lot coverage, from the maximum yard elevation, from the minimum interior side yard setback requirements, from the minimum required deck setback requirements, and from the minimum pervious open space requirements in the rear yard, and one or more waivers to replace an existing residence.

RECOMMENDATION:

Approval of the Design.

Approval of Variances #2, #3 and #4.

Approval of Variance # 5 with modifications.

Denial of Variances #1, #6, #7, #8 & #9.

LEGAL DESCRIPTION:

Lot 12, Block 42, Orchard Subdivision No. 1, according to the Plat thereof, as recorded in Plat Book 6, Page 111, of the public records of Miami-Dade County, Florida.

SITE DATA:

Zoning: RS-4
Future Land Use: RS
Lot Size: 8,538 SF (as stated
by the applicant*)

Lot Coverage:

Proposed: 2,588 SF / 30.3%

Maximum: 2,561.4 SF / 30%

Unit size:

Proposed: 4,262 SF / 49.9%

Maximum: 4,269 SF / 50%

Height:

Proposed: 24'-9" sloped roof

Maximum: 27'-0" sloped roof

Grade:

+4.60' NGVD

Base Flood Elevation: +8.00' NGVD

Adjusted Grade: +6.30' NGVD

First Floor Elevation: +12.00' NGVD (BFE+
4' fb)

EXISTING PROPERTY:

Year: 1925

Architect: Unknown

Vacant: No

Demolition: N/A

SURROUNDING PROPERTIES:

East: One-story 1950 residence

North: Two-story 1923 residence

South: One-story 1981 residence

West: Two-story 1923 residence

THE PROJECT:

The applicant has submitted plans entitled "Ayad Residence", as designed by **Debowsky Design Group**, signed, sealed, and dated December 11th, 2022.

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

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

The applicant is requesting the following variance(s):

1. A variance to exceed by 0.3% (26.6 S.F.) the maximum allowed lot coverage of 30% (2,561.4 S.F.) for a two-story single-family home property in order to construct a new two-story residence with a lot coverage of 30.3% (2,588 S.F.)

Denial Recommended

2. A variance to reduce 2'-6" the minimum required 25'-0" of the sum of side setbacks in order to construct a two-story residence and provide a sum of the side setbacks at 22'-6".

Approval Recommended

3. A variance to reduce by 2'-6" the minimum required 10'-0" interior side setback in order to construct a new two-story single-family residence at 7'-6" from the interior side property line.

Approval Recommended

4. A variance from Sec. 142-105(b)(8) c.1 to exceed the maximum elevation of the front yard to construct a driveway at 8'-0" NGVD.

Approval Recommended

5. A variance from Sec. 142-105(b)(8) c.3 to exceed the maximum elevation of the side yard facing-a-street to construct a deck and driveway at 11'-0" and 10'-0" N.G.V.D., respectively.

Approval Recommended with modifications

6. A variance to reduce 7'-10" of the minimum required setback of 10'-0" for a deck located on a corner lot, in order to construct the deck at 2'-2" from the side yard facing-a-street lot line.

Denial Recommended

7. A variance to reduce 7.7% (82 S.F.) of the minimum required rear yard pervious open space of 70% (741.3 S.F.) in order to construct a new single-family residence with 62.3% (659.7 S.F.) open space in the rear yard.

Denial Recommended

8. A variance to reduce 2'-2" of the required sum of the side setbacks of 25'-0" in order to construct a trellis and provide a sum of the side setbacks of 22'-10".

Denial Recommended

9. A variance to reduce 12'-10" the minimum required 15'-0" side yard facing-a-street setback in order to construct a trellis at 2'-2" from the side yard facing-a-street property line.

Denial Recommended

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, only as it relates to variances #2, #3, #4 and #5 allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

Additionally, staff has concluded that the plans and documents with the application comply with the following hardship criteria, only as it relates to variances #2 and #3 as noted, 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:

- Two-story side elevations located parallel to a side property line shall not exceed 50 percent of the lot depth, or 60 feet, whichever is less, without incorporating additional open space, in excess of the minimum required side yard, directly adjacent to the required side yard:

- The additional open space shall be regular in shape, open to the sky from grade, and at least eight feet in depth, measured perpendicular from the minimum required side setback line.
- The square footage of the additional open space shall not be less than one percent of the lot area.
- The elevation (height) of the open space provided shall not exceed the maximum permitted elevation height of the required side yard, and
- At least 50 percent of the required interior open space area shall be sodded or landscaped with pervious open space.
- Driveways and parking spaces located within the side yard facing the street shall have a minimum setback of five feet from the rear property line.
- Driveways and parking areas that are open to the sky within any required yard shall be composed of porous pavement or shall have a high albedo surface consisting of a durable material or sealant, as defined in section 114-1 of this Code.

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

Satisfied; However, the applicant is requesting one design waiver and variances.

6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.

Satisfied; However, the applicant is requesting one design waiver and variances.

7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.

Satisfied

8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.

Satisfied

9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.

Not Satisfied; a lighting plan has not been submitted.

10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.

Satisfied

11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

Satisfied

12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

Satisfied; However, the applicant is requesting one design waiver and variances.

13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a

residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

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; applicant will provide a recycle/salvage plan for demolition at time of permitting.
2. Windows that are proposed to be replaced shall be hurricane proof impact windows.
Satisfied
3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied

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

Satisfied

5. The project applicant shall consider the adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.

Satisfied

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

Satisfied

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

Satisfied

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

Not Applicable

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

Not Applicable

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

Not Satisfied; additional information will be required at the time of building permit in order to demonstrate compliance.

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

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

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

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

ANALYSIS:
DESIGN REVIEW

The applicant is proposing to construct a new two-story residence in a contemporary style to replace an existing 1925 residence on an irregularly shaped corner parcel located at the corner of W 30th Street and Sheridan Avenue. The finished first floor elevation of the new residence is proposed at base flood elevation (8') plus 4' of free board, or 12' N.G.V.D. The applicant is requesting one design waiver and several variances as part of this application.

The requested waiver relates to the open space requirements for two-story elevations that exceed 60'-0" in length. The applicant is requesting the waiver for the western two-story elevation that is 84'-7" in length. In contrast, the east elevation is setback 16' from the side yard facing-a-street and is further recessed an additional 16'-6" in the center to create an open courtyard. In order to comply with the City code a courtyard with a minimum depth of 8' and 1% of the lot is required for the interior side yard. In order to comply with the open space requirement, the buildable envelope of the structure would be limited as the width of the lot ranges from 79'-6" from the south lot line and 49'-4" from the north property line.

Staff is supportive of the requested waiver, provided that bedroom 2 is shifted to the east elevation where a portion of the dining room area on the first floor is open to below and is accessible through the corridor between the master bedroom and family room. This will allow for a significant break in the interior 2-story side elevation of the home, without sacrificing unit size. Staff is supportive of the overall design and the requested design waiver with the recommendations and conditions noted in the attached draft Order.

VARIANCE REVIEW

The project includes the following variance requests:

1. A variance to exceed by 0.3% (26.6 s.f.) the maximum allowed lot coverage of 30% (2,561 s.f.) for a two-story single family home property in order to construct a new two-story residence with a lot coverage of 30.3% (2,588 s.f.).
 - Variance requested from:

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

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

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

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

The applicant is requesting a variance to exceed the maximum 30% lot coverage allowed for a two-story home by 27 SF. The City Code includes several exceptions to areas that do not count in the lot coverage. One of the exceptions is up to 500 square feet of garage area when the garage is not part of the principal façade and has a side entrance. The garage is proposed as part of the main façade with direct access from the street, with an enclosed floor above, and as such, the entire garage area counts as part of the lot coverage. If the garage were designed along the street side, with no enclosed unit area above, it could be exempted from the lot coverage calculation (up to 500 square feet).

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

2. A variance to reduce 2'-6" the minimum required 25'-0" of the sum of side setbacks in order to construct a two-story residence and provide a sum of the side setbacks at 22'-6".

- Variance requested from:

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

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

- 2) *Side yards.*

- a. *The sum of the required side yards shall be at least 25 percent of the lot width.*

3. A variance to reduce by 2'-6" the minimum required 10'-0" interior side setback in order to construct a new two-story single-family residence at 7'-6" from the interior side property line.

- Variance requested from:

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

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

- (2) *Side yards:*

- c. *Interior sides.*

1. *For lots greater than 65 feet in width each interior side yard shall have a minimum of ten percent of the lot width or ten feet, whichever is greater.*

2. *For lots 65 feet in width or less each interior side yard shall have a minimum of seven and one-half feet.*

The property is an irregular shaped lot with a curved front property line 79'-6" in length and a rear property line measuring 49.3'. Based on the parcel's geometry, it is considered as 'a lot greater than 65'-0" in width' because the lot width is measured at the required 30'-0" front setback, which in this case results in a lot width larger than 65'-0". Therefore, the interior side yards have a minimum setback requirement of 10'-0". The applicant is proposing a setback of 16' from the side yard facing a street setback and 7'-6" on the interior side yard, consistent with the requirements for a rectangular property with a lot width of less than 65 feet. Staff would note that the surrounding corner properties along the west side of Sheridan Avenue and the abutting properties fronting W 30th Street also have a similar shape with a 50' rear property line and slightly wider street front property line.

Staff finds that practical difficulties exist for the variances requested based on the irregular

shape on the lot, as originally platted. Additionally the granting of these variances is not expected to have an adverse impact on the adjacent properties. For these reasons, staff recommends approval of variances #2 and #3.

4. A variance from Sec. 142-105(b)(8)c.1 to exceed the maximum elevation of the front yard to construct a driveway at 8'-0" NGVD.

- Variances requested from:

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

(8) Exterior building and lot standards. The following shall apply to all buildings and properties in the RS-1, RS-2, RS-3, RS-4 single-family residential districts:

c. Maximum yard elevation requirements. The maximum elevation of a required yard shall be in accordance with the following, however in no instance shall the elevation of a required yard, exceed the minimum flood elevation, plus freeboard:

1. Front yard. The maximum elevation within a required front yard shall not exceed adjusted grade, 30 inches above grade, or future adjusted grade, whichever is greater.

5. A variance from Sec. 142-105(b)(8) c.3 to exceed the maximum elevation of the side yard facing-a-street to construct a deck and driveway at 10'-0" NGVD.

- Variances requested from:

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

(8) Exterior building and lot standards. The following shall apply to all buildings and properties in the RS-1, RS-2, RS-3, RS-4 single-family residential districts:

c. Maximum yard elevation requirements. The maximum elevation of a required yard shall be in accordance with the following, however in no instance shall the elevation of a required yard, exceed the minimum flood elevation, plus freeboard:

3. Side yard facing a street. The maximum elevation within a required side yard facing a street shall not exceed adjusted grade, 30 inches above grade, or future adjusted grade, whichever is greater.

Variance #4 is for the height of the driveway within the front yard facing West 30th Street. An elevation of 8'-0" is requested where the maximum height is 7.1 feet (future adjusted grade). However, variance #5 is for the height of the deck and driveway that is located along the side yard facing Sheridan Avenue. The deck is being proposed at 11'-0 N.G.V.D. whereas the driveway is proposed as high as 10' NGVD. The City Code allows for the elevation of the front and side yard facing-a-street to increase to grade, 30 inches above grade, or future adjusted grade, whichever is greater. The survey notes that the grade elevation is 4.5' NGVD and the base flood elevation is 8' NGVD. In this case, the higher elevation would consist of the future adjusted grade, 7.1,' as the maximum yard elevation for both the front and side yard facing-a-street.

The City's new Resiliency Code, which is currently pending adoption by the City Commission, includes some slight adjustments to the maximum allowed yard elevations for single family home. This includes a more straightforward standard of calculation, which would allow front

yards and street side yards, to be elevated as high as the base flood elevation for a particular lot, which in this case is 8' NGVD.

Although the elevation of the driveway and deck is restricted within the yard elevations, the portion of the encroachments that are located within the building envelope can remain at the proposed height. While the City Code does allow pool decks with a street side setback of 10 feet (vs. 15 feet for the home), the code does not allow pools and decks to be located above the maximum yard elevation, when located within a required yard.

Due to the constraints of the property, staff is supportive of variance #4. For the same reason staff is supportive of variance #5 for the pool deck, but would recommend that the driveway and parking in the required rear yard not exceed 8' NGVD (BFE), which is consistent with the pending Resiliency Code.

6. A variance to reduce 7'-10" of the minimum required side yard facing-a-street setback of 10'-0" for a deck located on a corner lot, in order to construct the deck at 2'-2" from the side yard facing-a-street lot line.

- Variances requested from:

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

(b) Allowable encroachments within required yards.:

(16) Swimming pools. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or a screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, subject to the following:

c. Side yard, facing a street.

1. A ten-foot setback shall be required from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.

The proposed swimming pool deck is proposed with a setback of 2'-2" from the street side yard lot line. The swimming pool and walkway to access the main residence complies with the minimum setback of 10'. The intent of the deck is to serve as a paved surface for the trellis and BBQ area. Staff finds that there is lack of hardship or practical difficulty to support the variance requested given that the applicant can provide a recreational deck area for the intended use at the 10' setback line. As a result, staff recommends denial of variance #6.

7. A variance to reduce 7.7% (82 s.f.) the minimum required rear yard open space of 70% (741.3 s.f.) to be sodded or landscaped pervious open space in order to construct a new single family residence with 62.3% (659.7 s.f.) open space in the rear yard.

- Variances requested from:

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

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

(3) Rear. The rear setback requirement shall be 15 percent of the lot depth, 20 feet minimum, 50 feet maximum. At least 70 percent of the required rear yard shall be sodded or landscaped pervious open space; when located at or below adjusted grade, the water portion of a

swimming pool may count toward this requirement, when located above adjusted grade, the water portion of a swimming pool may count towards 50 percent of this requirement, provided adequate infrastructure is incorporated into the design of the pool to fully accommodate on-site stormwater retention.

The City Code requires that at least 70 percent of the required rear yard shall be sodded or landscaped pervious open space. The total square footage of the rear yard is approximately 1,059 S.F. which would result in a minimum pervious open space requirement of 659 S.F. (70%). The applicant is proposing a driveway along the side yard facing Sheridan Avenue that encroaches within the rear yard. Although the driveway is noted as permeable, the Code only allows landscape and sod to count towards the pervious calculation. Although the length of the driveway is not provided in the final submitted plans the paved surface is approximately 400 S.F. and does not comply with the minimum open space requirement. Staff finds that a secondary driveway along the rear is not required, as the principal entrance to the garage is along West 30th Street. The paved surface can easily be reduced to comply with the current open space requirement. As such, staff recommends denial of variance #7.

8. A variance to reduce by 2'-2" the required sum of the side setbacks of 25'-0" in order to construct a trellis and provide a sum of the side setbacks of 22'-10".

- Variance requested from:

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

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

2) Side yards.

- a. The sum of the required side yards shall be at least 25 percent of the lot width.

9. A variance to reduce 12'-10" the minimum required 15'-0" side yard facing-a-street setback in order to construct a trellis at 2'-2" from the side yard facing-a-street property line.

- Variance requested from:

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

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

(2) Side yards:

- b. Side, facing a street. 1. Each required side yard facing a street shall be no less than ten percent of the lot width or 15 feet, whichever is greater.

These variances are related to variances #2 and #3. For clarity purposes, staff has separated the variances for the primary home from the variances requested for the proposed trellis.

The applicant is proposing a trellis along Sheridan Avenue with a sum of the side yard at 22'-10" and a side setback of 2'-2". As per the Code, a trellis is not an allowable projection within

the required yard and would require complying with the minimum setback requirements of Sec. 142-106(a). To place a structure, even a trellis, with such a minimal street side setback would result in construction that is out of character with the neighborhood. In light of the fact that these variances do not satisfy the practical difficulty or hardship criteria, staff recommends denial of variances #8 and #9, and that the applicant explore a projecting trellis or awning from the building, which is allowed to project 25% into the street side yard.

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

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **approved**, and that variance requests #1, #6, #7, #8, and #9 be **denied** and variances #2, #3, #4 and #5 be **approved**, subject to the conditions enumerated in the attached Draft Order which address the inconsistencies with the aforementioned Certificate of Appropriateness criteria and Practical Difficulty and Hardship criteria, as applicable.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: February 7th 2023

PROPERTY: **401 W 30th Street**
FOLIO: **02-3227-001-0170**

FILE NO: DRB22-0899

IN RE: An application for Design Review Approval for the construction of a new two-story residence, including variances from the maximum lot coverage, from the maximum yard elevation, from the minimum interior side yard setback requirements, from the minimum required deck setback requirements, and from the minimum pervious open space requirements in the rear yard, and one or more waivers to replace an existing residence.

LEGAL: Lot 12, Block 42, Orchard Subdivision No. 1, according to the Plat thereof, as recorded in Plat Book 6, Page 111, of the public records of Miami-Dade County, Florida.

APPLICANTS: Michael Ayad and Genevieve Chu

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 and 10 in Section 133-50(a) of the Miami Beach Code.
- D. The project would be consistent with the criteria and requirements of Section 118-251 and/ or Section 133-50(a) if the following conditions are met:

1. Revised elevation, site plan, and floor plan drawings for the proposed new residence at 401 W 30th Street shall be submitted, at a minimum, such drawings shall incorporate the following:
 - a. The proposed (west) side open space requirement **shall be** waived, provided that the plans are revised to provide an open space at the second level of the west elevation in place of 'Bedroom 2', subject to the review and approval of staff.
 - b. Driveways and parking spaces located within the side yard facing the street shall have a minimum setback of five feet from the rear property line.
 - c. Driveways and parking areas that are open to the sky within any required yard shall be composed of porous pavement or shall have a high albedo surface consisting of a durable material or sealant, as defined in section 114-1 of this Code.
 - 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. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding plans shall be submitted to and approved by staff. The species, type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plans shall comply with Chapter 26-Landscape Requirements of the Miami Beach Code and shall incorporate the following:
 - a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - c. Prior to any site demolition work, a tree protection fence following the City standard shall be installed for trees scheduled to remain subject to the review and approval of the City Urban Forester.
 - d. Any necessary root and tree branch pruning with a diameter at breast height (DBH) of 2" or greater shall be approved by the City Urban Forester prior to any tree work.

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

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

II. Variance(s)

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

1. A variance to exceed by 0.3% (26.6 S.F.) the maximum allowed lot coverage of 30% (2,561.4 S.F.) for a two-story single-family home property in order to construct a new two-story residence with a lot coverage of 30.3% (2,588 S.F.) **(Denied)**
2. A variance to reduce 2'-6" the minimum required 25'-0" of the sum of side setbacks in order to construct a two-story residence and provide a sum of the side setbacks at 22'-6". **(Approved)**
3. A variance to reduce by 2'-6" the minimum required 10'-0" interior side setback in order to construct a new two-story single-family residence at 7'-6" from the interior side property line. **(Approved)**
4. A variance from Sec. 142-105(b)(8) c.1 to exceed the maximum elevation of the front yard to construct a driveway at 8'-0" NGVD. **(Approved)**
5. A variance from Sec. 142-105(b)(8) c.3 to exceed the maximum elevation of the side yard facing-a-street to construct a deck and driveway at 11'-0" and 10'-0" N.G.V.D., respectively. **(Approved with modifications)**
6. A variance to reduce 7'-10" of the minimum required setback of 10'-0" for a deck located on a corner lot, in order to construct the deck at 2'-2" from the side yard facing-a-street lot line. **(Denied)**
7. A variance to reduce 7.7% (82 S.F.) of the minimum required rear yard pervious open space of 70% (741.3 S.F.) in order to construct a new single-family residence with 62.3% (659.7 S.F.) open space in the rear yard. **(Denied)**
8. A variance to reduce 2'-2" of the required sum of the side setbacks of 25'-0" in order to construct a trellis and provide a sum of the side setbacks of 22'-10". **(Denied)**
9. A variance to reduce 12'-10" the minimum required 15'-0" side yard facing-a-street setback in order to construct a trellis at 2'-2" from the side yard facing-a-street property line. **(Denied)**

B. The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts, only as it relates to variances #2, #3, #4 & #5, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

Additionally, staff has concluded that the plans and documents with the application comply with the following hardship criteria, only as it relates to

variances #2, #3, & #5, as noted, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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

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

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

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

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

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

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

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

C. The Board hereby **Denies** the variance request #1, #3, #4, #6, #7, #8 and 9 and **Approves** variances #2, #3, & #5 and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. The elevation of the required rear yard, including driveway, shall not exceed 8' NGVD, in a manner to be reviewed and approved by staff.
2. The pool and deck along the side yard facing a street, shall not exceed an elevation of 10' NGVD, subject to the review and approval of staff.
3. The maximum elevation of the side yard facing a street (not including the pool and deck), shall not exceed 8' NGVD, in a manner to be reviewed and approved by staff.
4. 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 construction work, the applicant shall maintain gravel at the front of the construction site within the first 15'-0" of the required front yard, and including the swale (subject to the review and approval of Public Works), to mitigate disturbance of soil and mud by related personal vehicles exiting and entering the site. All construction materials, including dumpsters and portable toilets, shall be located behind the construction fence and not visible from the right-of-way.
- D. 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.
- E. Prior to the issuance of a building permit for the new home, a construction fence shall be installed along all property lines, in accordance with Section 142-876 of the City Code, "Vacant and abandoned properties and construction sites."
- F. 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.
- G. 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.
- H. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.
- I. 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.

- J. This order shall be enforced by the Building, Planning, Parking and Code Compliance Departments.
- K. 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.
- L. 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.
- M. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- N. 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.
- O. 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.
- P. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- Q. 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 "Ayad Residence", as designed by **Debowsky Design Goup**, signed, sealed, and dated December 11th, 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
Planning & Design Officer
For Chairman

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

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by Michael Belush, Planning & Design Officer 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 _____ ()