

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: April 4, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: DRB22-0905
1420 West 22nd Street

An application has been filed requesting Design Review Approval for the construction of a new two-story residence including one or more waivers and variances from the required front setback, street facing side yards setbacks, and sum of the side yards setbacks, to replace an existing 2-story home.

RECOMMENDATION:

Approval of the Design.

Approval of the Variances.

LEGAL DESCRIPTION:

Block all of Block 4-E, of Third Revised Plat of Sunset Islands, according to the Plat thereof, as recorded in Plat Book 40, at Page 8, of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning: RS-4
Future Land Use: RS
Lot Size: 19,863 SF
Lot Coverage:

Proposed: 5,302.8 SF / 26.6%

Maximum: 5,959 SF / 30%

Unit size:

Proposed: 8,296 SF / 41.77%

Maximum: 9,931.5 SF / 50%

Height:

Proposed: 26'-5.5" sloped roof |
24'-0" flat roof

Maximum: 27'-0" sloped roof |
24'-0" flat roof

Grade: +4.54' NGVD

Flood: +8.00' NGVD

Difference: +3.46' NGVD

Adjusted Grade: +6.27' NGVD

Finished Floor Elevation: 9.5' NGVD (BFE +1.5 FB)

SURROUNDING PROPERTIES:

North: Two-story 1938 residence | one-story
1970 residence

South: Sunset Lake Park

West: One-story 1940 residence | one-story
1953 residence

East: Two - story 2018 residence | one-
story 1939 residence

PRIOR STRUCTURE:

Year: 1939

Architect: Robert Law Weed

THE PROJECT

The applicant has submitted plans entitled "Hertzberg Residence" as designed by **Brandon Architects, Inc.**, signed, sealed, and dated, signed, sealed, and dated 02/13/2023.

The applicant is requesting Design Review Approval for the construction of a new two-story single-family residence to replace an existing two-story architecturally significant pre-1942 residence.

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

1. A waiver from the additional 5'-0" setback from the minimum required setback that is required for 50% of the second-floor façade facing a side street (Lake Avenue) when the lot coverage is 25% or greater as per Sec. 142-105(b)(4)(c)(2) of the city code. As proposed, 49.3% of the second level is setback an additional 3' from the minimum 20'-8" setback requirement.

The applicant is requesting the following variance(s):

1. A variance to reduce by 10'-0" the minimum required 30'-0" front setback in order to construct a new two-story single family residence at 20'-0" from the front property line facing West 22nd Street.
2. A variance to reduce by 2'-3" the minimum required street side setback of 17'-3" for a structure in order to construct part of the covered patio 15'-0" from the street side property line facing Sunset Drive.
3. A variance to reduce by 7'-5" the minimum required sum of the side yards setback of 43'-0" for a two-story structure in order to construct a new two-story single family home and provide a sum of the side setbacks of 35'-7".

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, as it relates to variances #1, #2, and #3, 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, 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:

1. The required pool deck setback is 10 feet from Sunset Drive.
2. The existing fencing within the right of way shall be removed, unless a revocable permit is issued from the Public Works Department.
3. The existing hedging within the right-of-way shall be removed, unless a revocable permit is issued from the Public Works Department.
4. Sec. 142-1135. Corner visibility.
On a corner lot, there shall be no structure or planting which obstructs traffic visibility between the height of two feet and ten feet above the street corner grade, within the triangular space bounded by the two intersecting right-of-way lines and a straight line connecting the right-of-way lines 15 feet from their intersection.

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; however, the applicant is requesting one waiver and three variances.
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.

Satisfied; however, the applicant is requesting one waiver and three 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.

Satisfied; however, the applicant is requesting one waiver and three 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 waiver and three 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 waiver and three 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 waiver and three 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.
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.

Not Applicable

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

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

ANALYSIS:
DESIGN REVIEW

The applicant is proposing to construct a new two-story residence within an interior, triangular lot on Sunset Island 4. The pie-shaped property is bounded by three (3) intersections: Sunset Drive and West 22nd Street to its northwest, West 22nd Street and Lake Avenue to the northeast and Sunset Drive and Lake Avenue to the south. The first floor of the proposed home is located at base flood elevation (8' NGVD) plus a freeboard of 1.5 feet, or 9.5 feet NGVD. The applicant is requesting one (1) design waiver and three (3) variances for the proposed design.

The proposed residence has been designed in a transitional style of architecture and features sloped metal roofs that contrasts white brick and siding clad walls. Large windows with divided lights are proposed, as well as louver shutters and wood molded details on columns, rails and brackets. Additionally, the home has several covered patios that overlook a large pool, and solar panels on a flat portion of the roof. The layout of the home has been designed to hug the property line along West 22nd Street and Lake Avenue in order to amplify outdoor living and landscape areas within the site. The project proposes a three-car garage at the corner of Lake Avenue and West 22nd Street.

The application includes a design waiver request for the required additional 5'-0" setback on the second-floor side elevation facing a street when the proposed lot coverage is 25% or greater, per Section 142-105(b)(4)(c)(2) of the city code. Based on the final submitted set, the first-floor plan contains a linear frontage of approximately 65 feet along Lake Avenue and the second-floor plan consists of a linear footage of approximately 55 feet along Lake Avenue. The current regulations require that 50% of the second-floor façade be setback an additional 5' from the minimum required setback. In this case, a linear footage of 32.5' is required to be set back the additional five (5') feet.

As proposed, approximately 31' of the second floor is setback 3' from the minimum required setback, and approximately 6' is setback more than the required 5'. Staff is not opposed to this requested waiver based upon the design of the second-floor elevation that features more than 50% of its elevation being setback from the minimum required setback. Further, the home's frontage along Lake Avenue is itself approximately 50% of the developable frontage. The intent of the code is to safeguard second floor volumes from imposing on the pedestrian/street realm and staff finds that the proposed second floor elevation meets the intent of the code. Accordingly, staff recommends the approval of the design, including the design waiver.

VARIANCE REVIEW

The applicant is requesting the following variance(s):

1. A variance to reduce by 10'-0" the minimum required 30'-0" front setback in order to construct a new two-story single family residence at 20'-0" from the front property line facing West 22nd Street.
 2. A variance to reduce by 2'-3" the minimum required street side setback of 17'-3" for a structure in order to construct part of the covered patio 15'-0" from the street side property line facing Sunset Drive.
 3. A variance to reduce by 7'-5" the minimum required sum of the side yards setback of 43'-0" for a two-story structure in order to construct a new two-story single family home and provide a sum of the side setbacks of 35'-7".
- 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:*

(1) Front yards: The minimum front yard setback requirement for these districts shall be as follows:

- a. *One-story structures: 20 feet, provided that any portion of a 2-story attached structure shall be setback a minimum of 40 feet.*
- b. *Two-story structures: 30 feet, provided (a)(1)(a) above does not apply.*

(2) Side yards:

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

The subject parcel, although relatively large at nearly 20,000 square feet, is bound by three (3 streets) in a triangular configuration, and has an unusually large frontage along each street. For zoning purposes 22nd Street is considered the front, and Lake Avenue and Sunset Drive are street facing side yards. While the typical non-waterfront lot on the island has a lot width of 60 feet and the typical waterfront lot has a lot width of 60-75 feet, the subject parcel has a lot width of over 170 feet on W 22nd Street.

Regarding variance #1, the applicant is proposing a front setback of 20 feet where 30 feet is required. The proposed new home has been designed with an orientation and front setback that is consistent with the current 2-story home, which has an existing front setback of approximately 20 feet. As the subject parcel is a block on its own, with no directly abutting parcels, the proposed setback of 20 feet is consistent with the setback of the existing home and should not negatively impact the surrounding neighbors.

Regarding variance #1 and #2, as the required side setbacks are based upon the lot width of the property, the required minimum side yard setback is 17'-3" and the minimum sum of the side yard setbacks is 43 feet. The applicant is proposing a street side setback of 15 feet on Sunset Drive and 20'-7" on Lake Avenue, for a total sum of 35'-7". A typical large corner lot would require a street side setback of 15 feet and sum of the side yards setback of 22.5 to 25 feet. Due to the atypical lot width for this triangular parcel, the proposed street side setbacks proposed are consistent or greater than what is typically required for a corner lot. The triangular shape of the property and the unusually large lot width presents a hardship for designing a new home on the subject site. For these reasons, staff is supportive of the requested variances.

RECOMMENDATION:

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

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: April 4, 2023

PROPERTY/FOLIO: 1420 West 22nd Street 02-3228-001-2240

FILE NO: DRB23-0905

IN RE: An application for Design Review Approval for the construction of a new two-story residence including one or more waivers and variances from the required front setback, street facing side yards setbacks, and sum of the side yards setbacks, to replace an existing 2-story home.

LEGAL: Block all of Block 4-E, of Third Revised Plat of Sunset Islands, according to the Plat thereof, as recorded in Plat Book 40, at Page 8, of the Public Records of Miami-Dade County, Florida.

APPLICANT: Daniel Hertzberg

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 for the proposed new home at 1420 W 22nd Street shall be submitted, at a minimum, such drawings shall incorporate the following:
 - a. A design waiver from the additional required second floor setback on the Lake Avenue elevation, per Sec. 142-105(b)(4)(c)(1), **shall be granted**.

- b. 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.
 - c. 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 126-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 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. The existing fencing within the right-of-way shall be removed, unless a revocable permit is issued by the Public Works Department.
- l. The plans shall be revised to show compliance with Section 142-1135. Corner Visibility, subject to the review and approval of staff.
- m. 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.
- n. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- o. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures. The location of backflow preventors, Siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans, and shall be subject to the review and approval of staff.
- p. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right-of-way shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
- q. 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, withdrawn, or denied:

The following variance(s) were approved by the Board:

1. A variance to reduce by 10'-0" the minimum required 30'-0" front setback in order to construct a new two-story single family residence at 20'-0" from the front property line facing West 22nd Street.
 2. A variance to reduce by 2'-3" the minimum required street side setback of 17'-3" for a structure in order to construct part of the covered patio 15'-0" from the street side property line facing Sunset Drive.
 3. A variance to reduce by 7'- 5" the minimum required sum of the side yards setback of 43'-0" for a two-story structure in order to construct a new two-story single family home and provide a sum of the side yards setbacks of 35'-7".
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, only as it relates to variance(s) #3, #4, #6 and #7, as noted above 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, only as it relates to variance(s), #3, #4, #6 and #7.

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 requests and imposes the following condition 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.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

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." However, along the front property line, such fence shall consist of an opaque screening, a minimum of eight (8') feet tall (as measured from adjacent grade), which may include plywood or aluminum panels, or the equivalent solid construction on a wood or metal frame, with a continuous color finish, and concrete foundations. Only rolling gates or rigid folding panels shall be permitted. Swinging gates shall not be permitted. Such fence shall not encroach into the right-of-way.
 - 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 "Hertzberg Residence" as designed by **Brandon Architects, Inc.**, signed, sealed, and dated, signed, sealed, and dated 02/13/2023, 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 _____.

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