



Neisen O. Kasdin

Akerman LLP
Three Brickell City Centre
98 Southeast Seventh Street
Suite 1100
Miami, FL 33131

T: 305 374 5600
F: 305 374 5095

July 17, 2023

VIA EMAIL

Chair and Members of the Design Review Board ("DRB")
c/o City of Miami Beach Planning Department
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

RE: Letter of Intent for Variance for DRB 23-0949 (aka DRB 18-0225, DRB 23265)

Our firm represents JP Roosevelt, LLC ("Applicant") who is constructing a mixed-use building at 340 west 42nd Street (the "Property")¹ and is bounded by Pinetree Drive on the east, Sheridan Avenue on the west and 42nd Street on the north. The Applicant received its Design Review Board ("DRB") approval in 2018 (**DRB 18-0225**)² without any variances for site plan modifications and changes to the exteriors, including the incorporation of a ground floor retail component along West 42nd Street. The project had been previously approved by the DRB on June 7, 2016 (**DRB 23265**) where the envelope was the substantially the same but the project had ground floor residential townhome units.

The currently-approved building comprises retail and restaurant uses on the ground floor with 50 residential dwelling units above³. It was carefully designed to transition between the higher-intensity commercial uses along Arthur Godfrey Road to the south and give great deference to the lower-scale residential neighborhoods to its north, with articulated facades of varied materials, and significant step backs at the upper floors. If one walks the 42nd street sidewalk today, it is clear that the design has very successfully accomplished this goal. Particularly with the street trees preserved, the building is comfortably nestled between existing structures and softens the transition.

¹ The Applicant owns Folios: 02-3222-001-0420 (340 West 42nd Street) with the additional Folio 02-3222-001-0370 (4100 Pine Tree Drive)

² On June 5, 2018 (DRB18-0236) DRB approval was awarded for the construction of the seven story condo building with ground floor retail and a parking garage on the Property.

³ The number of dwelling units is decreasing as units are being purchased and combined.

Since the DRB approval, the Owner took additional strides when addressing the 2018 Comments. First, the building has been completely elevated to meet the Sea Level Rise criteria. And second, a problematic bank teller drive-through entry which had received many comments was eliminated and replaced by retail, better activating a pleasant pedestrian frontage along Pine Tree Drive.

The building's core and shell have been built under a Phased Building Permit⁴. However, it was discovered during the Planning Department's review for the Master Building Permit that there is an error in the built width of the parking garage ramp in which the design width of 22' was reduced.

Miami Beach Code Sec. 130-64 regulates Driveway Standards. The code has a threshold where the driveways of buildings of less than 25 dwelling units may be 9 feet each way and jumps to 11 feet each way over 25 dwelling units. This building's driveway is comprised of three parts: where it meets the street; its internal ramp; and the drive aisles where the parking occurs on either side. The driveway meets code requirements where the building meets Sheridan Avenue and where the unit owners park. However, deep in the belly of the building, the ramp's crash walls are thickened and take 1-2" continuously off of the ramp's clear width reducing the clear width to approximately 21-8" clear. In four places between levels one and two, structural columns step in another 2" on one side, to 21-6". In one place, a large column reduces the clear distance to 21'-5 5/8". Between levels 2 and 3, the same pattern follows, except one column reduces the ramp to 21'-0" clear. The clear width reduction is therefore continuously built at 0.015% below the required width. And the column interruptions translate to approximately .045% built reduction and the significant columns an approximately 9% reduction. While these deviations from the standard are mathematically slight, they cannot be approved administratively but must come to the Board.

At a minimum, significant demolition, drilling and reconstruction would be necessary to replace the faulty columns within the structure. So as to make it highly impractical and prohibitively expensive. The time, cost and noise associated with retrofitting the building would negatively impact both the neighborhood and the Owner. Further, the Owner is reviewing methods to ensure travel on the ramp is not problematic to the building's residents, including the addition of mirrors, stop bars and building out the columns to protect cars and columns, as the Owner would like the garage experience to be completely pleasing to the residents of the building. Additional methods such as electronic lights and column padding could also be considered. And most importantly, the width is still significantly wider than the 9' minimum for only slightly fewer dwelling units.

The City Charter, Subpart B, Article I, Sec. 2 states, "Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of said Zoning Ordinance, the Board of Adjustment shall have the power in passing upon appeals, to vary or modify any regulations or provisions of such ordinance relating to the use, construction, or alteration of

⁴ Phased Permit PH2100102 was issued 06/10/2022

buildings or structures, or the use of land, so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done." Additionally, Sec. 118-353 of the Land development Code establishes criteria by which requests for Variances are evaluated. In this situation, there is clearly a practical difficulty in adhering to the strict requirements for driveways, due to the extraordinary cost and impacts on the property owner as well as the neighborhood of correcting an extremely minor deviation from the standards of the Code. The proposed Variance is clearly in the spirit of the Land Development Code, promotes public safety benefits, the welfare of the surrounding neighborhood and provides substantive fairness in resolving this minor deviation. Additionally, if this building were less than 25 units, the Variance request would not even be required. There is no impact to the appearance of the building or to the urban condition.

We respectfully request the Design Review Board's approval of this variance due to the narrowing of the ramp and the placement of the columns to allow this project to continue forward without delay.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neisen O. Kasdin". The signature is fluid and cursive, with the first name "Neisen" being the most prominent part.

Neisen O. Kasdin

Attachment A: DRB Approval 2018, DRB Approval 2016

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

MEETING DATE: May 01, 2018

FILE NO: DRB18-0225 (aka DRB 23265)

PROPERTY: **340 West 42 Street, 301 Arthur Godfrey Road and 4100 Pine Tree Drive**

APPLICANT: JP Roosevelt LLC

LEGAL: Lots 4, 5, 6, 7, 8 and 9, Block 3, Orchard Subdivision No. 4, according to the Plat thereof, as recorded in Plat Book 25, at Page 30 of the Public Records of Miami-Dade County, Florida

IN RE: The Application for modifications to a previously approved Design Review Approval dated June 07, 2016 for site plan modifications and changes to the exteriors of a new seven-story residential building, including the incorporation of a ground floor retail component along West 42nd Street. This item will also require a modification to a previously approved Conditional Use application to be reviewed and approved by the Planning Board.

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 a 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 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 if the following conditions are met:
 - 1. Revised elevation, site plan and floor plan drawings for the proposed project at **340 West 42 Street, 301 Arthur Godfrey Road and 4100 Pine Tree Drive** shall



be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:

- a. The enclosed commercial space identified as "ATM teller" shall be reconfigured back into the ground floor along Pine Tree Drive as previously depicted.
- b. The architect shall further refine all street facing façades of the building, in a manner to be more reminiscent of the originally approved elevations, in order to provide greater movement and scale along all elevations, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the direction from the Board.
- c. The architect shall further refine the proposed commercial signage for the ground floor retail, in order to better engage the design and be more consistent with the architecture of the building. All building signage shall require a separate permit. A uniform sign plan for the new building shall be required. Such sign plan shall be consistent in materials, method of illumination and sign location. All future signage shall be designed as individual reverse channel letters with a brushed aluminum finish that can may or may not be backlit with/out a color, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- d. All kitchen ventilation for a ground floor restaurant shall be chased through the interior of the building at the garage level to the sides of the building. No exhaust ducts or vents shall be permitted on the ground floor front or side elevations.
- e. The ventilation openings for the parking levels shall be reconfigured with smaller opening sizes as previously depicted. The final details of the metal louvers screening the parking, including samples, 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
- f. The architect shall redesign the drive-thru bank teller component of the project to better engage the street and create a more prominent and attractive street presence and improved vehicular entrance, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- g. The curb-cuts for the drive-thru bank teller along Pine Tree Drive shall be reduced to one-way (maximum width of 12 feet), in-bound and out-bound traffic only, drives in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- h. The interior walls of the first level of the drive-thru bank teller entrance, drives and interior walls, shall be fully detailed on revised plans. Such interior areas shall consist of high quality, non-stucco surface materials which have a well finished appearance commensurate with the primary



façade of the building, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

- i. Final details of all exterior surface finishes and materials shall be required, including the Resysta wall cladding, or staff approved equivalent, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - j. A fully enclosed, air-conditioned trash room shall be provided, which is sufficient to handle the maximum uses intended for the proposed structure. External dumpsters shall not be permitted.
 - k. 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.
 - l. 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 site plan, 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 plan 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. 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 application, 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.



- d. A true “green” roof shall be incorporated that encompasses 13% of the rooftop area(s) with plant beds of sufficient size to accommodate trees and landscaping. The applicant shall explore utilizing the roofs of the mechanical equipment room and elevator and stairwell bulkhead roofs in order to increase that percentage up to 25% of the rooftop area(s). Sufficient depth of soil shall be provided for all proposed roof deck to ensure the proper health and growth of all landscape materials, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- e. Pavers and concrete banding shall be utilized for the entire entry drives along Sheridan Avenue and Pine Tree Drive, including alternate colors of concrete banding in place of painted striping, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- f. As part of the building permit plans for the project, the applicant shall submit revised architectural drawings, and landscape drawings, which shall be subject to the review and approval of staff; at a minimum, such plans shall satisfy the following:
 - i. A continuous walkway shall be provided along the commercial storefronts, subject to the review and approval of staff.
 - ii. A double, staggered row of large canopy shade trees, shall be provided in order to further enhance the green buffer from the residential uses on the north side of 42nd Street.
 - iii. Subject to the review and approval of the Public Works department, understory plant material, specified not to exceed 36” at maturity, shall be provided in the parkway area. If determined to be required by the CMB Urban Forester, Silva Cells or approved equal shall be incorporated under the adjacent sidewalk.
- g. The maximum number of outdoor seats for a restaurant shall not exceed 40 seats, and such outdoor seats shall not extend pass the limit of the restaurant storefront.
- h. If technically feasible, the overhead utility lines adjacent to the subject property shall be relocated underground.
- i. All exterior walkways and drives shall consist of decorative pavers, set in sand or other semi-pervious material, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- j. 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.



- k. The Backflow prevention device shall not be permitted within any area fronting a street or sidewalk, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board
- l. Street trees shall be required within the sidewalk 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.
- m. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- n. 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.
- o. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- p. 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.
- q. 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.
- r. 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. No variance(s) were filed as part of this application.

III. General Terms and Conditions applying to both 'I. Design Review Approval and 'II.



Variances' noted above.

- A. If applicable, the applicant shall comply with the electric vehicle parking requirements, pursuant to Sec. 130-39 of the City Code.
- B. The proposed elimination of the on-street parking spaces will require the review and approval of the Parking Department. The costs associated with the removal of the parking spaces will be the responsibility of the developer.
- A. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board, and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.
- B. Where one or more parcels are unified for a single development, the applicant shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- C. 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.
- D. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.
- E. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.
- F. In the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, subject to the review and approval of staff based upon the design review or appropriateness criteria, and/or directions received from the Board.
- G. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- H. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.



- I. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- J. 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.
- K. 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.
- L. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- M. 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 Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "340 West 42nd Street Miami Beach, FL" as prepared by **Arquitectonica**, dated 03/02/18 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 set forth in this Order. No building permit may be issued unless and until all 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 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 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 should 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 this 03 day of May, 2018.

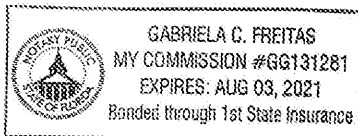
DESIGN REVIEW BOARD
 THE CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]

JAMES G. MURPHY
 CHIEF OF URBAN DESIGN
 FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this 3 day of MAY, 2018 by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



[Signature]
 NOTARY PUBLIC
 Miami-Dade County, Florida
 My commission expires: 8-3-21

Approved As To Form: [Signature] (5/3/18)
 City Attorney's Office:

Filed with the Clerk of the Design Review Board on [Signature] (5/3/18)

[Signature]

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

MEETING DATE: June 7, 2016

FILE NO: 23265

PROPERTY: **340 West 42nd Street, 4100-4120 Pine Tree Drive and 301 West 41st Street**

APPLICANT: Caton Owner LLC

LEGAL: Lots 4, 5, 6, 7, 8 and 9, Block 3, Orchard Subdivision No. 4, according to the Plat thereof, as recorded in Plat Book 25, at Page 30 of the Public Records of Miami-Dade County, Florida

IN RE: The Application for Design Review Approval for the construction of a new seven-story residential building ~~including a variance to eliminate the residential or commercial use requirement for all floors of a building containing parking spaces at the ground level along every facade facing a street.~~ This item will also require a Conditional Use application to be reviewed and approved by the Planning Board.

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 a 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 in Section 118-251 of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-251 if the following conditions are met:
 1. Revised elevation, site plan and floor plan drawings for the proposed development were submitted at the public hearing and shall be reviewed and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. The loading zone shall be relocated in the building shell and lined with active residential or commercial uses, in a manner to be reviewed and approved by staff.

- b. The architect shall further refine the ground floor elevations adjacent to the vehicular entrances along the east and west elevations, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the direction from the Board.
- c. The applicant shall explore incorporating eyebrows above certain windows along the top residential level of the project, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the direction from the Board.
- d. Any fence or gate at the front of the property shall be designed in a manner consistent with the architecture of the new structure, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- e. The final details of the metal louvers screening the parking, including samples, 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
- f. The architect shall redesign the drive-thru bank teller component of the project to better engage the street and create a more prominent and attractive street presence and improved vehicular entrance, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- g. The curb-cuts for the drive-thru bank teller along Pine Tree Drive shall be reduced to one-way (maximum width of 12 feet), in-bound and out-bound traffic only, drives in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- h. The interior walls of the first level of the drive-thru bank teller entrance, drives and interior walls, shall be fully detailed on revised plans. Such interior areas shall consist of high quality, non-stucco surface materials which have a well finished appearance commensurate with the primary façade of the building, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- i. The three parking spaces located within the access drive for the drive-thru bank teller shall be for the use of the bank employees or commercial tenants only and proper signage shall be incorporated identifying such.
- j. Final details of all exterior surface finishes and materials shall be required, including the Resysta wall cladding, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

- k. A fully enclosed, air-conditioned trash room shall be provided, which is sufficient to handle the maximum uses intended for the proposed structure. External dumpsters shall not be permitted.
 - 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. 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 site plan, 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 plan 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. 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 application, 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.
 - d. A true "green" roof shall be incorporated that encompasses 25% of the rooftop area(s) with plant beds of sufficient size to accommodate trees and landscaping. Sufficient depth of soil shall be provided for all proposed roof deck and second level landscaping to ensure the proper health and growth of all landscape materials, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

- e. Pavers and concrete banding shall be utilized for the entire entry drives along Sheridan Avenue and Pine Tree Drive, including alternate colors of concrete banding in place of painted striping, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- f. The paving areas configured adjacent to the south of the garage driveway shall be eliminated and the hardscape shall be replaced with additional landscaping with the exception of a 44" wide pathway in the southern area that connects the traffic area to the sidewalk, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- g. If technically feasible, the overhead utility lines adjacent to the subject property shall be relocated underground.
- h. All exterior walkways and drives shall consist of decorative pavers, set in sand or other semi-pervious material, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- i. 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.
- j. The Backflow prevention device shall not be permitted within any area fronting a street or sidewalk, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- k. Street trees shall be required within the sidewalk 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.
- l. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- 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/or 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 wall 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):
 - 1. ~~A variance to eliminate the residential or commercial use requirement for all floors of a building containing parking spaces at every level along every facade facing a street.~~ (Variance withdrawn)

III. General Terms and Conditions applying to both 'I. Design Review Approval' and 'II. Variances' noted above.

- A. The proposed elimination of the on-street parking spaces will require the review and approval of the Parking Department. The costs associated with the removal of the parking spaces will be the responsibility of the developer.
- B. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- C. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.
- D. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be


paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.

- E. In the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, subject to the review and approval of staff based upon the design review or appropriateness criteria, and/or directions received from the Board.
- F. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- G. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- H. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- I. 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.
- J. 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.
- K. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- L. 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 Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "340 West 42nd Street", as prepared by **Arquitectonica**, dated signed and sealed April 29, 2016 and supplemental sheets presented at the June 7, 2015 Design Review Board dated June 7, 2015 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 set forth in this Order. No building permit may be issued unless and until all 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 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 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 should 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.

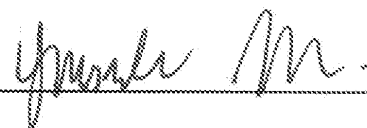
Dated this 10th day of June, 2016.

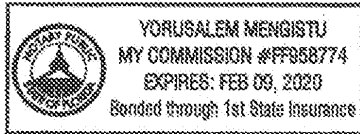
DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: 
DEBORAH J. TACKETT
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this 10th day of June, 2016 by Deborah J. Tackett, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.





NOTARY PUBLIC

Miami-Dade County, Florida

My commission expires: 2-9-20

Approved As To Form:

City Attorney's Office: [Signature] (6/10/16)

Filed with the Clerk of the Design Review Board on [Signature] (6-10-16)

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