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## **VIA ELECTRONIC SUBMITTAL**

July 10, 2023

Michael Belush, Chief of Planning and Zoning  
Planning Department  
City of Miami Beach  
1700 Convention Center Drive, 2nd Floor  
Miami Beach, Florida 33139

Re: **ZBA23-0152** – Board of Adjustment Approval for One  
Non-Use Variance for Proposed Dock at the Property  
Located at 2108 N Bay Road, Miami Beach

Dear Mr. Belush:

This law firm represents 2108 North Bay LLC (the "Applicant"), the owner of the property located at 2108 N Bay Road (the "Property") within the City of Miami Beach (the "City"). Please allow this letter to serve as the letter of intent in connection with a request to the Board of Adjustment for approval of a non-use variance for a proposed dock for an existing home.

Property Description. The Property is a waterfront lot located on the west side of N Bay Road along the waterway by the Sunset Islands. See Figures 1 and 2, below. That waterway is approximately 474' wide in this area, which extends to the north on the east side of the Islands. Further, this location is a significant distance from any narrow canal so there is plenty of waterway for navigation. The Property, identified by the Miami-Dade County Property Appraiser's Office by Folio No. 02-3227-008-1351, contained a two-story single-family residential structure originally constructed in 1990 and a dock constructed in 2016. See Exhibit A, Property Appraiser Summary Report. The Applicant recently demolished the home and is in the process of building a new one. The Property is located within the RS-2, Single Family Residential Zoning District.

Notably, through a separate entity, the Applicant also owns the adjacent property to the south at 2068 N Bay Road. Through separate permit application preliminarily approved by the County, that entity is replacing the existing dock for that property with a Code-compliant dock, keeping it basically in the same location to avoid negatively impacting the marine resources in the area. See plans for that dock in the application materials. As the two properties are controlled by the Applicant, there is no issue with the location of structures and boat slips for the two docks, and doing so ensures more expansive views for the other adjacent property owners.



**Figure 1.**





**Figure 2.**

Proposed Seawall and Dock. The Applicant proposes to replace the existing dock with a new dock extending 60' and additional mooring piles out to 87' from the face of the seawall (the "Project"). Specifically, the Project includes a new dock 494.6' square feet in size, a new seawall cap, boat lift boarding platform, sixteen (16) new concrete dock piles for the dock and boat lift and fifteen (15) new freestanding marine-treated wood mooring

piles near the seawall and extending out along south side of the dock.<sup>1</sup> The Project will provide docking space for a 65' foot vessel between the dock and the southern mooring piles and a 28' foot vessel in the boat lift.

The Applicant's goal is to improve the resiliency of the Property in a manner that replaces the existing dock and boat lift with a new, more resilient dock and boat lift, provides increased structural support, and maintains the use and enjoyment of the Property. In conjunction, the Applicant has recently completed demolition of the existing home (Permit No. BR2105278) and has obtained a building permit for a new home (Permit No. BR2206674), construction of which will begin soon.

Variance Request. The Applicant seeks the following variance:

1. A Variance of Code Section 66-113(a) to provide a for dock that extends 60' feet into the water, with mooring piles at 87' where maximum dock projection allowed is 40' feet (the "Variance Request").

In all other respects, the Project's design complies with the current City of Miami Beach Code of Ordinances (the "Code") requirements for private docks. The Applicant's proposal complies with the RS-2 land development regulations.

Satisfaction of Hardship Criteria. The variance requested satisfies the hardship criteria pursuant to Section 118-353(d) of the City Code, as follows:

- 1. 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;**

There are special conditions and circumstances that exist which are peculiar to the land and uses, specifically environmental conditions. The low water depths close to the Property and existing underwater resources force the location of dock, mooring piles and larger slip to the south and to extend further out into the waterway.

- 2. The special conditions and circumstances do not result from the action of the applicant;**

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<sup>1</sup> The Applicant already obtained permits for improvements to the seawall and rip-rap, County Permit No. CLI-2021-0392 and City Permit No. BR2105893, and work has begun.

The special circumstances, do not result from the actions of the Applicant. The Applicant has no control over the water depths or underwater resources and to be resilient, must accommodate these environmental conditions in the Project.

**3. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;**

The Code allows property owners to seek similar variances to accommodate sensitive environmental conditions and does not confer a special privilege on the Applicant.

**4. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;**

A literal interpretation of the provisions of the land development regulations would deprive the Applicant rights enjoyed by other properties in the same zoning district. Other properties with water access to Biscayne Bay have similar docks comparable to the one proposed. The waterway width is expansive in this area, approximately 474' and extending north a great distance. One measure of allowable projections in the Code is 15% or roughly 71'. The dock extends only to 60' and environmental conditions require mooring piles for the Project at slightly more, yet, there won't be any impediment to navigation in this area. Application of the 40' foot maximum projection requirement would present unnecessary hardship on the Applicant as the environmental conditions dictate layout for dock and mooring piles for a reasonable use of the Property and associated riparian rights. A literal application of the requirements would keep the Applicant from enjoying similar rights commonly enjoyed by neighboring properties.

**5. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure**

The variance sought is the minimum variance that will make possible the reasonable use of Property's waterfront and access to Biscayne Bay while appropriately accommodating existing environmental conditions. The variance to allow for a dock projection extending more than 40' feet from the Property's shoreline is close to the allowable 15% projection. The Project will allow for the safe operation of the Applicant's vessels without impediment to navigation of other vessels. The proposed dock has been

designed to comply with all other applicable land development regulations and provide for resilient structures with as little impact to marine resources as possible.

**6. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and**

Granting of the variance will be in harmony with the general intent and purpose of these land development regulations and will not be injurious to the area or otherwise detrimental to the public welfare. The variance ensures protection of marine resources and acknowledges low water depths for appropriate dockage of vessels at the Property. Further, due to the same ownership for the property adjacent to the south, the Applicant seeks to provide as much distance as possible from the neighboring property to the north and, to that end, has designed the dock to be closer to the neighboring property to the south, setback at the minimum required 7'6" feet.

**7. 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 planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board of adjustment voting on the applicant's request.**

The variance requested is consistent with the comprehensive plan and will have no impact on the levels of service for the Property.

Practical Difficulty. The existing environmental conditions, including low water depths near the shoreline and marine resources throughout the underwater area create a practical difficulty in providing a dock and mooring piles that only project up to 40' that otherwise would inhibit a reasonable use of the waterfront. Since no dredging is allowed and to avoid impacts to the living resources, the dock and mooring piles need to extend to 60' for the dock and 86' for a few mooring piles. Notably a 15% projection for this wide waterway is approximately 71' and the dock significantly complies with that and thus the intent of the Code. The width further ensures no impediments to navigation by other vessels. Further, due to same ownership by the Applicant of the adjacent property to the south, the Project appropriately places the dock and vessel towards the south to create as much openness as possible for the neighbor to the north.

Sea Level Rise and Resiliency Criteria. The new dock and mooring piles advance the sea level rise and resiliency criteria in Section 133-50(a) of the Code, as follows:

**1. A recycling or salvage plan for partial or total demolition shall be provided.**

A recycling and salvage plan for demolition of existing portions of the dock and boat lift will be provided at permitting.

**2. Windows that are proposed to be replaced shall be hurricane proof impact windows.**

Not applicable.

**3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.**

Not applicable.

**4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.**

Not applicable.

**5. Whether 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, including a study of land elevation and elevation of surrounding properties were considered.**

The Applicant has considered and are proactively addressing seal level rise projections by increasing the height of the seawall through separate permits already obtained. Further, that the design and construction of the Project will protect existing environmental conditions and ensure longevity of the structures and projection to the seawall and upland areas.

**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.**

Not applicable.

**7. Where feasible and appropriate. All critical mechanical and electrical systems are located above base flood elevation.**

Not applicable.

**8. Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.**

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.**

The proposed dock does not contain any habitable space.

**10. Where feasible and appropriate, water retention systems shall be provided.**

Not applicable.

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

Not applicable.

**12. The design of each project shall minimize the potential for heat island effects on-site.**

The proposed dock is designed to minimize the potential for heat island effects on the site.

Conclusion. Granting this variance application will allow for the protection of existing marine resources and appropriately accommodating low water depths for a reasonable use of the Property and its waterfront. The Project is designed to have as minimal impact as possible on these existing conditions, does not impede other vessels and substantially respects the neighboring property to the north.



We look forward to your favorable review of the application. If you have any questions or comments in the interim, please give me a call at 305-377-6236.

Sincerely,

Matthew Amster

Attachment