

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

MEETING DATES: September 5, 2023

PROPERTY/FOLIOS: 340 W 42nd Street 02-3222-001-0420 & 02-3222-001-0370

FILE NOS: DRB 23-0949 (aka Design Review File No. DRB18-0225 and 23265)

IN RE: An application for modifications to a previously issued Design Review Approval for the construction of a new 7-story mixed-use building. Specifically, the applicant is requesting a variance from the minimum required width for 2-way drives.

LEGAL: Lot 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.

APPLICANTS: JP Roosevelt, LLC.

CONSOLIDATED ORDER

This document consolidates the previously issued order for DRB18-0225 and DRB 23265 dated May 1st, 2018, and DRB 23265, dated June 7th, 2016.

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 2.1.3.1 of the Land Development Regulations. The property is not located within a designated local historic district and is not an individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with Design Review Criteria in Section 2.5.3.1 of the Land Development Regulations.
- 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 7.1.2.4(a)(i) of the Land Development Regulations.
- D. The project would be consistent with the criteria and requirements 2.5.3.1 and/ or Section 7.1.2.4(a)(i) if the following conditions are met:
 1. Revised elevation, site plan, and floor plan drawings for the proposed new home shall be submitted; at a minimum, such drawings shall incorporate the following:

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- a. 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. **[Approved by the Board on 5/1/2018]**
- b. 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. **[Approved by the Board on 5/1/2018]**
- c. 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. **[Approved by the Board on 5/1/2018]**
- d. 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. **[Approved by the Board on 5/1/2018]**
- e. 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. **[Approved by the Board on 6/7/16]**
- f. 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. **[Approved by the Board on 6/7/16]**
- g. 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. **[Approved by the Board on 6/7/16]**
- h. 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. **[Approved by the Board on 6/7/16]**
- i. 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. **[Approved by the Board on 6/7/16]**

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- j. 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. **[Approved by the Board on 6/7/16]**
 - k. 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. **[Approved by the Board on 6/7/16]**
 - 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 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 4-Landscape Requirements of the Land Development Regulations 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. 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.
 - c. 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.
 - d. Street trees shall be required within the swale at the front of the property if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.
 - e. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP
 - f. 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.



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- g. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- h. 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.
- i. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- j. 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 2.2.4.8 of the Land Development Regulations, the applicant, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal a decision of the design review board for design review approval only to 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 applications with the Planning Department for the following variance(s):
 - 1. A variance to reduce 1'-0" from the minimum required width of 22'-0" interior drive aisle in order to provide an interior drive aisle of 21'-0".
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, 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.

Additionally, the Board has concluded that the plans and documents submitted with the application comply with the following hardship criteria, as they relate to the requirements of Section 2.8.3 of the Land Development Regulations:

- i. 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;
- ii. The special conditions and circumstances do not result from the action of the applicant;
- iii. 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;
- iv. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the



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- same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;
- v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
 - vi. 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;
 - vii. 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; and
 - viii. 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 7, article I, as applicable.
- C. The Board hereby **Approves** the variance requests and imposes the following condition based on its authority in Section 2.8.4 of the Land Development Regulations:
- 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.
 - 2. A painted striped double yellow line, along with directional arrows on each side on the drive surface, shall be provided along the ramped drives, subject to the review and approval of staff

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. 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. 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.



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- C. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.
- D. 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.
- E. This order shall be enforced by the Building, Planning, Parking and Code Compliance Departments.
- F. 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.
- G. 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.
- 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 Finding of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "42-Pine-Miami Beach, FL" as prepared by **Arquitectonica**, dated July 17th, 2023, and as modified with plans entitled ""340 West 42nd Street" as prepared by **Arquitectonica**, dated 3/2/2018, and as approved by the Design Review Board, as determined by staff.



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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 (**July 7th, 2016**), 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 Section 2.2.4.6 of the Land Development Regulations; 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 2 of the Land Development Regulations, 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 2 of the Land Development Regulations, for revocation or modification of the application.

Dated 10/6/2023 | 3:50 PM EDT

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

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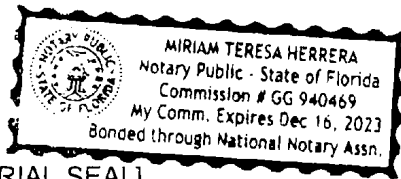

BY: DEC3ECF2EB68404...

Michael Belush, AICP
Planning & Design Officer
For Chairman

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

The foregoing instrument was acknowledged before me this 1 day of October 2023 by Michael Belush, Planning & Design Officer of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



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{NOTARIAL SEAL}

Notary: *Miriam Herrera*
Print Name *Miriam Herrera*
Notary Public, State of Florida
My Commission Expires: *12-16-23*
Commission Number: *66940469*

Approved As To Form:
City Attorney's Office:

DocuSigned by:

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(10/6/2023 | 3:50 PM EDT)

Filed with the Clerk of the
Design Review Board on

DocuSigned by:

Jessica Gonzalez

(10/6/2023 | 4:58 PM EDT)

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JH