


# MIAMI BEACH

PLANNING DEPARTMENT  
Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members      DATE: November 13, 2023

FROM: Thomas R. Mooney, AICP       for TRM  
Planning Director

SUBJECT: DRB23-0952  
**4230 North Bay Road**

An application has been filed requesting Design Review Approval for the construction of a new 2-story home with an understory, including one or more waivers, and variances from the required front yard, side yard, and sum of the side yards setback requirements, and a variance from the maximum lot coverage. This site is part of a lot split application approved by the Planning Board on July 25, 2023 (PB23-0595).

## **RECOMMENDATION:**

Approval of the design, with conditions.  
Approval of the variances #1, #2 & #3.

## **LEGAL DESCRIPTION:**

See Exhibit A: "Legal Description"

## **BACKGROUND:**

The subject parcel is the northern portion (Lot1) of a property that was part of an application for a division of land that was heard and approved by the Planning Board on July 25<sup>th</sup>, 2023 (PB23-0595).

## **SITE DATA:**

Zoning:	RS-4
Future Land Use:	RS
Lot Size:	7,769 SF
Lot Coverage:	
Proposed:	1,935 SF / 25%*
Maximum:	1,942.25 SF / 25%
Unit size:	
Proposed:	3,884 SF / <b>50%*</b>
Maximum:	3,107.60 SF / 40%

## **\*VARIANCE REQUIRED**

Height:

Proposed:	27'-0" flat roof
Maximum:	31'-0" flat roof

Grade: +3.06' NGVD  
Base Flood Elevation: +8.00' NGVD

Adjusted Grade: +5.53' NGVD  
First Floor Elevation: +16.00' NGVD (BFE+8'fb)

## **EXISTING PROPERTY:**

Year:	N/A
Architect:	N/A
Vacant:	Yes
Demolition:	N/A

## **SURROUNDING PROPERTIES:**

East: Two-story 1925 residence  
North: Two-story 1934 residence (lot 2)  
South: Alton Road Ramp  
West: Alton Road Ramp

**THE PROJECT:**

The applicant has submitted plans entitled "Private Residence 4230 North Bay Road Miami Beach, FL 33140, as designed by **Borges Architect**, signed, sealed, and dated September 11, 2023.

The applicant is requesting review for an understory area:

1. Understory area shall be subject to the review and approval of the Design Review Board in accordance with Section 7.2.2.3.b.6.

The applicant is requesting the following variance(s):

1. A variance from **Sec. 7.2.2.3.b.11** to exceed by 10% (777 SF) the maximum unit size allowed of 40% (3,108 SF) for a lot resulting from a lot split in order to construct a 3,884 SF two-story home with 50% total unit size.
2. A variance from **Sec. 7.2.2.3.b.2.b.** to reduce by 10'-0" the minimum required 40'-0" front setback for the second story to construct a new two-story structure at 30'-0" facing North Bay Road.
3. A variance from **Sec. Sec. 7.2.2.3.b** to reduce by 2'-1 3/4" the minimum required sum of the side yard of 22'-1 3/4" in order to construct a new two-story structure with a sum of 20'-0".

**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.

Additionally, staff 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 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, in addition to the requested variances:

- All parking, including required parking, shall be provided within the understory area, and shall be clearly delineated by a different surface finish or bollards.
- The minimum elevation of the understory ground shall be constructed no lower than future crown of road as defined in chapter 54, of the city Code.
- All allowable decking, gravel, pavers, non-supporting breakaway walls, open-wood lattice work, louvers or similar architectural treatments located in the understory area shall be set back a minimum of five feet from each side of the underneath of the slab of the first habitable floor above, with the exception of driveways and walkways leading to the property, and access walkways and/or steps or ramps for the front and side area. Provide the setback of the wood deck in the understory to the underside of the slab of the first habitable floor above
- The site shall comply with the minimum and maximum yard elevation of sec. 7.2.2.3.b.10.
- Two-story side elevations located parallel to a side property line shall not exceed 50 percent (50%) of the lot depth, or 60 feet, whichever is less, without incorporating additional open space, in excess of the minimum required side yard, directly adjacent to the required side yard. The west and east elevation do not comply with the following criteria:
  - The additional open space shall be regular in shape, open to the sky from grade, and at least 8 feet in depth, measured perpendicular from the minimum required side setback line.
  - The square footage of the additional open space shall not be less than one percent (1%) of the lot area.
  - The elevation (height) of the open space provided shall not exceed the elevation of the first habitable floor, and at least 50 percent (50%) of the required interior open space area shall be sodded or landscaped previous open space.
- It should be noted that that is has been determined that the I-195 on-ramp is NOT considered a street, and thus the street side setback requirements due not apply to the site frontage along the on-ramp.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator

prior to the issuance of a Building Permit.

**COMPLIANCE WITH DESIGN REVIEW CRITERIA, SECTION 2.5.3.1:**

Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearance, safety, and function of any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community. The design review board and the planning department shall review plans based upon the below stated criteria, criteria listed in neighborhood plans, if applicable, and applicable design guidelines. Recommendations of the planning department may include, but not be limited to, comments from the building department and the public works department.

- a. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.  
**Satisfied**
- b. 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**
- c. 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**
- d. 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 2.5.3.2.  
**Satisfied**
- e. 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 article and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the design review board and historic preservation board and all pertinent master plans.  
**Satisfied**
- f. The proposed structure, 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**
- g. 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**

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- h. 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 safety 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**
- i. 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.**
- j. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.  
**Satisfied**
- k. 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**
- l. 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**
- m. 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**
- n. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.  
**Satisfied**
- o. 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**
- p. 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**

- q. 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**
- r. In addition to the foregoing criteria, subsection 118-104-6(t) of the General Ordinances 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**
- s. The structure and site comply with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.  
**Not Satisfied; see below**

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 7.1.2.4(a)(i) of the Land Development Regulations 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 4 of the Land Development Regulations.  
**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.  
**Satisfied**
- (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; additional information will be required at the time of building permit in order to demonstrate compliance.**

### **STAFF ANALYSIS:** **DESIGN REVIEW**

The applicant is proposing a new two-story home on an irregularly shaped corner lot that is located west of North Bay Road and north of the I-195 on-ramp. The application includes the review of the understory, design waivers, and several variance requests.

The subject parcel is the western portion (lot 1) of a property that was part of an application for a division of land that was approved by the Planning Board on July 25<sup>th</sup>, 2023, pursuant to PB23-0595. The combined site contains an existing pre-1942 residence that is located at the center of lot 2. The existing home (lot 2) will be retained while lot 3 will be developed under a separate application.

The proposed home features an understory that is substantially open and the habitable floor of the residence designed at an elevation of 16'-0" NGVD, 3' greater than the maximum 5' of freeboard. The design intent of the understory is to create non air-conditioned space below the main slab of the home that serves as a usable outdoor recreational amenity and program feature for the owner. In this design, the project architect adapted its use to storage, amenity deck, and an entry vestibule with access to the main level. The remainder of the understory level is dedicated to outdoor recreation spaces and parking.

The new two-story residence is designed in a modern architectural style and features wall planes of smooth stucco and an aluminum screen that imitates IPE wood. Aluminum railings compliment the fenestration while breaking up the floor to ceiling glazing. The curved forms,

flat roof lines, and horizontal railings contained in the proposed design successfully follow the natural shape of the lot.

The applicant is requesting a design waiver of the two-story side elevation and additional open space on the west and east side. Pursuant to Sec. 7.2.2.3.b.2., the additional open space is required to be regular in shape, open to the sky from grade, and at least 8 feet in depth, measured perpendicular from the minimum required side setback line. Additionally, the square footage of the additional open space shall not be less than one percent (1%) of the lot area or in this case, a minimum of 78 SF.

The second story side elevation on the west elevation provides a minimum depth of 6' and therefore does not comply with both the required depth and minimum square footage of 1% of the lot depth. On the east elevation, the architect has designed the home to continue the curvature on the site and to create movement and visual interest. The west elevation is recessed along the stacked windows to break up the massing and provide additional open space to the only neighbor which is the applicant. In contrast, the east elevation has no adjacent neighbors and therefore, there will be minimal impact of the volume of the residence. As such, staff recommends approval of the proposed design waivers.

Overall, staff finds the design corresponds to the irregular site, and commends its engagement with the retained building so that the residence is constructed in a functional yet resilient manner.

## VARIANCE REVIEW

The requested variances are noted below along with staff recommendations for each variance:

1. A variance from Sec. 7.2.2.3.b to exceed by 10% (777SF) the maximum unit size allowed of 40% (3,10 SF) for a lot resulting from a lot split in order to construct a 3,884 SF two-story home with 50% total unit size.
  - Variances requested from:  
**7.2.2.3 Development Regulations (RS):**  
(11) *Lot split. All new construction for homes on lots resulting from a lot split application approved by the planning board shall be subject to the review and approval of the design review board (DRB) or historic preservation board (HPB), as applicable. The following shall apply to all newly created lots, when the new lots created do not follow the lines of the original platted lots .  
The maximum lot coverage for a new one-story home shall not exceed 40 percent (40%) of the lot area, and the maximum lot coverage for a new two-story home shall not exceed 25 percent (25%) of the lot area, or such lesser number, as determined by the planning board.  
The maximum unit size shall not exceed 40 percent (40%) of the lot area for both one story, and two-story structures, or such less numbers, as determined by the planning board.*

This property is rather unique in that the lot width along the rear yard is 26.10' and the lot width at the required front setback line is 88'-7". In addition, the lot depth at the south elevation is situated along a large curve and therefore, the site has a narrow buildable envelope. Most



RS-4 lots on Miami Beach have a lot depth of at least 100 feet and an average width of 60'-65' in width. When a lot split does not follow the originally platted lots, the maximum unit size is reduced to 40%. This shallow lot width, as well as the unique curved shape of the lot, does present a hardship for the construction of any home on the subject site.

The unit size increase being requested (50%) does not exceed what would be permitted on a regular single family lot. Due to the extreme irregularities of the site, which present practical difficulties in designing a structure, staff is supportive of these variance to increase the unit size to 50%.

2. A variance from **Sec. 7.2.2.3.b.2.b.** to reduce by 10'-0" the minimum required 40'-0" front setback for the second story to construct a new two-story structure at 30'-0" facing North Bay Road.
  - Variances requested from:  
**7.2.2.3 Development Regulations (RS):**  
*b. The development regulations for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*  
*B. For two story homes with an overall lot coverage of 25 percent (25%) or greater, the following additional requirements shall apply to the second floor (including any portion of the home above a height of 18 feet as measured from base flood elevation plus freeboard):*  
*I. At least 35 percent (35%) of the second floor along the front elevation shall be set back a minimum of 5 feet from the minimum required setback.*
3. A variance from **Sec. 7.2.2.3.b** to reduce by 2'-1 3/4" the minimum required sum of the side yard of 22'-1 3/4" in order to construct a new two-story structure with a sum of 20'-0".
  - Variances requested from:  
**7.2.2.3 Development Regulations (RS):**  
*b. The development regulations for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*  
*The FAR, density, lot area, lot width, lot coverage, unit size, setbacks, and building height requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*  
*Side, Interior Setback -Lots greater than 65 feet in width: the sum of the required side yards shall be at least 25% of the lot width*

As per the Resiliency Code, the minimum required setback for two-story structures is 30'. However, the Code allows for one-story structures to maintain a minimum 20' setback while the second-floor level shall have a minimum setback of 40'. The applicant is proposing a 30' setback from the front lot line along North Bay Road. For further context, the average lot depth for the site is approximately 154.3' and the required rear setback is 23'. Given these parameters, the applicant would have to provide a minimum setback of 10' on each side and 22'-1 3/4" as the sum of the side yards. However, this creates a building envelope that would be too narrow along the first 45' from the rear lot line and reduces the linear side elevation by 10' on the east side due to the required 40' front setback at the second level. Again, based upon the hardship presented by the unique shape, depth, and width of the lot, staff is

supportive of the requested variances related to the primary setbacks of the two-story side elevation.

In summary, due to the hardship presented by the site, and practical difficulties previously noted, staff is supportive of the requested variances and design waivers.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends **approval** of the design and variance requests, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review criteria, Sea Level Rise criteria and Practical Difficulty and Hardship criteria.

**Exhibit A: "Legal Description"****LEGAL DESCRIPTION:**

A PORTION OF LOT 44 IN BLOCK 1 OF NAUTILUS SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 8, PAGE 95, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

ALSO THAT PART OF LOT 45 IN BLOCK 1 OF NAUTILUS SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, PAGE 95, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 45 AND RUNS WEST 9 FEET ALONG THE SOUTH LINE THEREOF TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 239 FEET; RUN THENCE NORTHWESTERLY 156.43 FEET ALONG SAID CURVE TO THE NORTHERLY LINE OF SAID LOT 45 AT A POINT OF 16 FEET EASTERLY FROM THE NORTHWEST CORNER THEREOF; RUN THENCE EASTERLY 133 FEET ALONG THE NORTHERLY LINE OF SAID LOT 45 TO THE NORTHEAST CORNER THEREOF; RUN THENCE SOUTHERLY 100 FEET ALONG THE EASTERLY LINE OF SAID LOT 45 TO THE POINT OF BEGINNING.

ALSO THAT PART OF LOT 43, IN BLOCK 1 OF NAUTILUS SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, AT PAGE 95, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 43 RUN THENCE WESTERLY 108 FEET ALONG THE SOUTHERLY LINE OF SAID LOT 43 TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEASTERLY, HAVING A RADIUS OF 768 FEET; RUN THENCE NORTHEASTERLY 144 FEET ALONG SAID CURVE TO THE EASTERLY LINE OF SAID LOT 43; RUN THENCE SOUTHERLY 85 FEET ALONG SAID LINE OF THE POINT OF BEGINNING.

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

MEETING DATE: November 13, 2023

PROPERTY/FOLIO: **4230 N. Bay Rd (Lot 1)**

FILE NO: DRB23-0952

IN RE: An application for Design Review Approval for the construction of a new 2-story home with an understory, including one or more waivers, and variances from the required front yard, side yard, and sum of the side yards setback requirements, and a variance from the maximum lot coverage. This site is part of a lot split application approved by the Planning Board on July 25, 2023 (PB23-0595).

LEGAL: See "Exhibit A".

APPLICANT: Ernesto and Ashley Taylor Arguello

**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 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 inconsistent with Design Review Criteria i. and s. 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:

- a. The understory **shall be** approved as proposed.
  - b. The open space requirements along both side elevations shall be waived, as proposed.
  - c. 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.
  - d. URBAN HEAT ISLAND ORDINANCE Section 7.5.3.2(g)(iv) Driveways and parking areas that are open to the sky within any required yard shall be composed of porous pavement or shall have a high albedo surface consisting of a durable material or sealant, as defined in Section 1.2.1 of this Code, and (v) Driveways and parking areas composed of asphalt that does not have a high albedo surface, as defined in Section 1.2.1, shall be prohibited.
  - e. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding plans shall be submitted to and approved by staff. The species, type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plans shall comply with Chapter 4-Landscape Requirements of the Miami Beach Code and shall incorporate the following:
- a. The plans shall comply with the line-of-sight visibility triangle requirements, subject to the review and approval of the Public Works Department.
  - b. 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.
  - c. 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.
  - d. 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.

- e. 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.
- f. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.
- g. Street trees shall be required within the swale at the front of the property if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department. Any new street trees shall be of a consistent canopy tree species as similar to the neighboring trees along the street.
- h. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- i. 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.
- j. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- k. 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 an application with the Planning Department for the following variance(s):
  - 1. A variance from **Sec. 7.2.2.3.b.11** to exceed by 10% (777 SF) the maximum unit size allowed of 40% (3,108 SF) for a lot resulting from a lot split in order to construct a 3,884 SF two-story home with 50% total unit size.

2. A variance from **Sec. 7.2.2.3.b.2.b.** to reduce by 10'-0" the minimum required 40'-0" front setback for the second story to construct a new two-story structure at 30'-0" facing North Bay Road.
  3. A variance from **Sec. Sec. 7.2.2.3.b** to reduce by 2'-1 3/4" the minimum required sum of the side yard of 22'-1 3/4" in order to construct a new two-story structure with a sum of 20'-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 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.

**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 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.
- C. 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.
- D. 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 6.3.2 of the Land Development Regulations.
- E. 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.
- F. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.
- G. 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.
- H. This order shall be enforced by the Building, Planning, Parking and Code Compliance Departments.



- I. 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.
- J. 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.
- K. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- L. 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.
- M. 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.
- N. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- O. 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 for Design Review approval 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 revised entitled "Private Residence 4230 North Bay Road Miami Beach, FL 33140, as designed by **Borges Architect**, signed, sealed, and dated September 11, 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 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 \_\_\_\_\_.

DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
Michael Belush, AICP  
Planning & Design Officer  
For Chairman

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by Michael Belush, Planning & Design Officer of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

Notary:  
Print Name  
Notary Public, State of Florida  
My Commission Expires:  
Commission Number:

{NOTARIAL SEAL}

Approved As To Form:  
City Attorney's Office: \_\_\_\_\_ ( )

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