MIAMIBEACH
PLANNING DEPARTMENT
Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: June 4, 2024

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB24-1016
976 West 41st Street, 3925 & 3915 Alton Road

An application has been filed requesting Design Review Approval for the construction of a new seven story commercial building, to replace existing commercial buildings. Specifically, the application includes a variance to reduce the required rear setback and including one or more waivers.

RECOMMENDATION:
Approval with conditions.

LEGAL DESCRIPTION:
LOTS 2, 3, 4, AND 5, BLOCK 1, 41ST STREET BUSINESS SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 34, PAGE 92 OF THE PUBLIC RECORDS OFMIAMI-DADE COUNTY, FLORIDA

HISTORY:
On March 22, 2024, the Planning Board approved a Conditional Use Permit (CUP) for a Neighborhood Impact Structure (NIS) for the subject property (File No. PB23-0635).

SITE DATA:

Zoning:	CD-3
Future Land Use:	CD-3
Parking Tier:	3b
Lot Size:	20,882 SF
Existing FAR:	~17,006 SF / 0.81
Proposed FAR:	45,567 SF /2.25d*
Maximum FAR:	46,845 SF/ 1.0
*As represented by the applicant	
Height:	
Proposed:	80'-0" from BFE +1
Maximum:	80'-0"
CMB Grade:	5' NGVD
Base Flood Elevation:	8.0' NGVD
Existing Use:	Office/Commercial
Proposed Use:	Office/Commercial
Required Parking:	102 Spaces
Provided Parking:	117 Spaces

EXISTING STRUCTURE:

Year Constructed:	1938-1952
Floors:	1 to 2

SURROUNDING PROPERTIES

North:	Commercial
South:	Religious Institution/Residential
West:	Religious Institution/Residential
East:	Commercial

THE PROJECT:
The applicant has submitted plans entitled "Giller Tower", as designed by **Giller & Giller, Inc.**, signed, sealed, and dated April 7, 2024.

The applicant is requesting Design Review Approval for the construction of a new 7-story commercial building with parking and ground level retail/restaurants to replace three existing one and two-story commercial buildings.

The applicant is requesting the following waiver(s):

1. A waiver of the Short Frontage Standards for new construction with non-residential uses on the ground floor, per sec. 7.1.2.2.f.1. of the City Code.

2. A waiver of the Long Frontage Standards for new construction with non-residential uses on the ground floor, per sec. 7.1.2.2.f.2. of the City Code.

The applicant is requesting the following variance(s):

1. A variance from Sec. 7.2.12.3. to reduce the rear setback from 5 feet to 0 feet.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that partially indicate the following, 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;

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the requirements of the City Code with the exception of the variance(s) requested.

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.

CONSISTENCY WITH COMPREHENSIVE PLAN:

A preliminary review of the project indicates that the proposed **commercial use** appears to be **consistent** with the Future Land Use Map of the 2025 Comprehensive Plan.

COMPLIANCE WITH DESIGN REVIEW CRITERIA:

Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, 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; However, the applicant is requesting from the Board two waivers and a variance regarding the rear setback which includes the access drives and the frontage standards.

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; However, the applicant is requesting one variance from the board.

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 Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Satisfied; However, the applicant is requesting from the Board one variance.

f. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Satisfied; However, the applicant is requesting from the Board two waiver and one variance.

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

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 safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.
Satisfied

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 improvements.
Satisfied

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 city Code shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights-of-way.
Not Applicable

s. The structure and site complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.
Partially 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.
To be satisfied at time of building permit.

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.
Not Applicable

9. When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.
Not Applicable

10. In all new projects, water retention systems shall be provided.
To be satisfied at time of building permit

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

12. The project design shall minimize the potential for a project causing a heat island effect on site.
Satisfied

ANALYSIS:
DESIGN REVIEW
The applicant is proposing a new seven-story commercial building to replace three existing one and two-story commercial buildings that contain retail, office, and restaurant uses. The irregularly shaped lots are located at the intersection of Alton Road and West 41st Street with access from an alley to the rear of the property. The ground floor will consist of commercial uses, including retail and restaurants and the upper levels will contain office uses. Parking will be located on the second through fourth levels, with access from the rear alley. The proposed building will include 4,614 square feet of retail, 3,811 square feet of restaurant space and 31,759 square feet of office use. The rooftop will have an amenity deck with a trellis structure.

The location of the building makes it a prominent gateway into Miami Beach and the 41st Street corridor. The design is contemporary and includes eyebrows, a rounded corner, and sharp edges. The parking levels are proposed to be screened with a tile mosaic that consists of bright colors, consistent with the Giller Building (built in 1957) across the street. Overall, staff is

supportive of the design.

The maximum height in the underlying CD-3 zoning district is 75 feet, and an additional 5 feet of height is allowed if the nonresidential first habitable level is at least 14 feet in height, as measured from DFE to the top of the second-floor slab for resiliency purposes. The project incorporates 14 feet of interior height within the ground floor, thereby allowing for the height limit of 80 feet.

The applicant is also requesting a waiver for the short and long frontage standard that is required for new construction with nonresidential uses on the ground floor. Given the minimal frontage on Alton Road and the curved nature of the property line, both standards apply to the building's primary frontages. Pursuant to the long standard regulations, the applicant is required to provide a circulation area, parallel to a raised sidewalk with a landscape zone, which the applicant is requesting be waived.

It is anticipated that the 41st Street corridor will be undergoing a revitalization project that includes rebuilding the sidewalks and developing a uniform streetscape. An application for advisory review of the plans for the larger 41st Street project is scheduled for review by the DRB at the July meeting (DRB24-1023). Accordingly, full compliance with the current frontage standards is not practical at this time. Furthermore, the front of the building has an elevated plaza that can accommodate any future raising of the sidewalk. Given that both Alton Road and 41st Street have wide sidewalks at this location, pedestrian paths will be more than sufficient to accommodate the expected increase in pedestrian traffic. As a result, staff is supportive of the requested waivers.

In summary, staff recommends that the application be approved, including the requested waivers.

VARIANCE REVIEW
The applicant is requesting the following variance(s):

1. A variance from the rear setback requirements:

- Variance requested from 7.2.12.3 Development Regulations (CD-3):

Rear Setback Ⓓ	
Subterranean	5 feet (1) 10 feet - when abutting a residential district not separated by a street or waterway (1) 0 feet - when abutting a residential district separated by a street or waterway (1)
Pedestal	
Tower	

Due to the irregular shape of the property, the applicant is requesting a variance of the rear setback requirement. The shape of the property and the need to transition between the base flood elevation and the sidewalk elevation has resulted in the building having to be set back towards the rear of the lot and encroaching into the required rear setback. Specifically, the

driveway ramps, loading zones, and parking levels are proposed to encroach into the setback. The upper office levels comply with the setback requirement.

The encroachment is adjacent to an alley where the back of house activities take place, such as garbage pickup and loading. Currently, garbage storage, pickup, and loading occur in open areas and the proposed building would move these uses into an enclosed area, which is a significant improvement. Furthermore, the encroachment would not be noticeable from adjacent streets, and negative impacts are not expected on adjacent properties.

The irregular shape of the property, as well as the required transition between base flood elevation and sidewalk elevation create practical difficulties that justify the approval of the requested variance. As such, staff has no objection to the requested variance.

RECOMMENDATION:

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

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: June 4, 2024

PROPERTY/FOLIO: 3907 Alton Road / 02-3222-019-0020
3915 Alton Road / 02-3222-019-0030
976 West 41st Street / 02-3222-019-0040

FILE NO: DRB24-1016

IN RE: An application has been filed requesting Design Review Approval for the construction of a new seven story commercial building, to replace existing commercial buildings. Specifically, the application includes a variance to reduce the required rear setback and including one or more waivers.

LEGAL: LOTS 2, 3, 4, AND 5, BLOCK 1, 41ST STREET BUSINESS SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 34, PAGE 92 OF THE PUBLIC RECORDS OFMIAMI-DADE COUNTY, FLORIDA

APPLICANT: Gateway Associates, LTD., Gateway I & II, LTD

O R D E R

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 b, h, 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 7-Story Commercial building at 976 West Alton Road shall be submitted, at a minimum, such drawings shall incorporate the following:

    a. The final design, details, and materials of the garage screening mosaic shall be provided, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

    b. The Long Frontage Standards for new construction with non-residential uses on the ground floor on Alton Road, per sec. 7.1.2.2.g.2, of the Resiliency Code are waived as proposed.

    c. The Short Frontage Standards for new construction with non-residential uses on the ground floor on West 41st Street and, per sec. 7.1.2.2.g.1 of the Resiliency Code are waived as proposed.

    a. The final design and details of all exterior and interior lighting shall be provided, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board. Interior lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding area. No florescent or intensive 'white' lighting (or similar intensive lighting) visible from the adjacent public rights or way or adjacent properties shall be permitted.

    b. The final details of all exterior surface finishes and materials, 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.

    c. The final details of all proposed storefront systems and associated details shall be provided for all of the structures on the project site, 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 shall be chased through the interior of the building to the roof. No exhaust ducts or vents shall be permitted on any building elevations.

    e. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall screened from view on all sides, 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 rooftop light poles located along the perimeter of the building edge shall be eliminated or replaced with a lighting fixture that is affixed to, and no higher than, the rooftop parapet wall. All rooftop light poles shall be limited to a maximum height of 10'-0". All roof-top lighting fixtures shall be designed to preclude light from spilling over to adjacent properties, 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 internal garage lighting shall be shielded to inhibit direct views of all internal light sources, subject to the review and approval of staff.

h. The final design details, dimensions material and color of all exterior handrails shall be made part of the building permit plans and shall be subject to the review and approval of staff.

i. A high quality finish for the loading area roll-down door, as well as for the trash compactor area, shall be required; the location of all housing, as well as the dimensions of the door shall be subject to the review and approval of staff.

j. All electrical conduits, interior lighting elements and sprinkler lines and sprinkler heads located within the proposed parking garage levels shall be contained within the concrete structure of the building and shall not be surface mounted wherever visible from the public right of way or wherever they may otherwise have an adverse aesthetic impact upon the design integrity the structure, 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. 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.

m. 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.

n. 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 shall be prepared by and bear the seal of a Landscape Architect licensed to practice in the State of Florida. The corresponding landscape plans shall be submitted to and approved by staff. At a minimum, landscape plans shall comply with Chapter 46 Tree Preservation and Protection Ordinance of the City Code and Chapter 4, Landscape Requirements of the Land Development Regulations and shall incorporate the following:

    a. Any existing canopy shade tree(s) on site with a caliper size of 4” of greater being impacted by the construction shall be carefully root pruned, protected and/or relocated. This shall not apply to prohibited tree species. A Tree

Disposition Plan shall be provided for Planning staff review and approval prior to the issuance of a Building Permit.

b. The design of the exterior landscaping area located on the corner of Alton Road and West 41st Street shall be subject to the approval of the Public Works Department and shall be subject to a maintenance agreement with the City.

c. Prior to the issuance of a building permit, the applicant shall submit a tree survey and tree disposition plan that includes the approved tree protection fencing detail for existing mature trees and palms to remain. Such plans shall be subject to the review and approval of staff. A tree work permit shall be obtained prior to the removal of any existing trees and palms.

d. In new construction projects, street trees are required within the public right of way. Street trees are in addition to the required lot trees according to the Chapter 2 Landscape Ordinance. All proposed street tree plantings shall be reviewed and approved by the Public Works Department and a right of way permit shall be obtained prior to any plantings in the right of way.

e. Suspended paver systems such as Silva Cells or equal shall be installed where street trees are planted in right of way sidewalk and other hardscape areas in a manner to be reviewed and approved by staff. Suspended paver systems shall be clearly delineated in the landscape plans. Structural soils may be considered where proposed trees are located immediately adjacent to large open space areas.

f. Root guards or barriers shall be installed to protect utilities and structures within close proximity of proposed tree plantings. The root guards shall be clearly delineated in the landscape plans and shall be reviewed and approved by staff.

g. Irrigation systems shall be designed and installed corresponding to the water requirements of the proposed plantings and as required in the Chapter 2 Landscape Ordinance. The irrigation system shall be extended into the public right of way. A rain shut off device is required to be installed as part of the irrigation system.

a. 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.

b. 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.

h. Prior to the issuance of a Certificate of Occupancy, the Project Landscape 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), which were either approved by the Board or Denied:

1. A variance from the rear setback requirements as specified in 7.2.12.3. Specifically, the rear setback is reduced from 5 feet to 0 feet.

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 request**, 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. 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 or post a bond, pursuant Section 7.1.3.2 of the Land Development Regulations. This fee is set as a percentage of the cost of construction.

B. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.

C. All allowable construction signage shall be in accordance with Section 6.3.2 of the Land Development Regulations.

D. 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.

E. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.

F. The contractor(s) shall ensure that the street and the alley 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 alley areas before leaving at the end of each day.

G. This order shall be enforced by the Building, Planning, Parking and Code Compliance Departments.

H. 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.

I. 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.

J. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

K. 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.

L. 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.

M. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

N. 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 revised plans, entitled "Giller Tower", as prepared by **Giller & Giller, Inc.**, dated April 7, 2024, 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:_____
Rogelio A. Madan, AICP
Development & Resiliency Officer
For the Chair

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

The foregoing instrument was acknowledged before me this _____ day of _____ 20___ by Rogelio A. Madan, Development & Resiliency 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: _____ ( )