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: **DRB23-0982**
1100 5th Street

An application has been filed requesting Design Review Approval for the construction of a new 5-story commercial office building, including one or more waivers, and a variance from the open court requirements for lots greater than 100 feet in width, ~~and a variance to exceed the maximum allowed building height,~~ on a site containing two (2) existing 2-story buildings and a surface parking lot, to be demolished.

RECOMMENDATION:
Approval of the landscape plan.

HISTORY:
On May 7, 2024, the Design Review Board reviewed and approved the design, waivers, and requested variance, with the exception of the landscape plan. The landscape plan was continued to the June 4, 2024 meeting.

LEGAL DESCRIPTION:
See Exhibit "A"

SITE DATA:

Zoning:	CPS-2
Future Land Use:	CPS-2
Lot Size:	+/- 32,650 SF
Proposed FAR:	65,274 SF / 1.00
Maximum FAR:	65,300 SF / 2.0
Height:	
Proposed:	76'-4" / 5-Story **
Maximum:	75'-0"
Highest Projection:	91'-6" **

** as measured from BFE + 5' freeboard

Grade: +3.98' NGVD

Base Flood Elevation: +8.00' NGVD
Adjusted Grade:+5.99' NGVD
Finished Floor Elevation: +31-'10" NGVD (BFE+ 23'-10")
First Floor Clearance: 18'-2" measured from BFE +5

Surrounding Properties:
East: Five-story mixed-use building
North: Five-story hotel
South: South Point Elementary
West: Icon, 40-story residential building

THE PROJECT:
The applicant has submitted plans entitled "1100 5th Street", as prepared by **Souto Moura Arquitectos S.A.** and **Zyscovich**, dated March 10, 2024. Additionally, the applicant submitted updated landscape The proposed five-story building contains over 50,000 square feet of commercial, office and restaurant space and 105 parking spaces, and will replace an existing one-story, 8,556 square foot commercial office space that was once a Pier One retail

store, surface parking and another one-story 5,143 square foot commercial building that is currently a Burger King restaurant.

All commercial uses are proposed to front 5th Street, with the vehicular entrance, loading and drive isle sited along Lenox Avenue. The proposed uses are restaurant, office and mechanical parking.

In accordance with section 7.2.10.2 of the City Code, new construction of structures 50,000 square feet and larger in the C-PS2 zoning district are required to obtain a Conditional Use approval from the Planning Board for a neighborhood impact structure. The project also requires Conditional Use approval for mechanical lift parking. The Planning Board is expected to review the project on April 25, 2024 (PB23-0636). Staff will update the DRB on the Planning Board's actions.

A breakdown of the project's development plan is delineated hereto:

Proposed Use:

Restaurant: +/- 7,204 SF
Office: +/- 48,000 SF

The applicant is requesting the following waiver(s):

1. A waiver from additional requirements for Long Frontage Standards for new construction with non-residential uses on the ground floor, per sec. 7.1.2.2.g.2. of the Resiliency Code.

The applicant is requesting the following variance(s):

1. A variance to not provide an open court on a lot with a width greater than 100 feet.

~~2. A variance to exceed by 1'-4" the maximum allowed building height of 75'-0" in order to construct a new mixed use building up to 76'-4" as measured from +13.0' NGVD.~~

Note: The plans indicate that the building height is measured from +13' NGVD. 18'-6" of height has been provided between +13' NGVD and the top of the nonresidential first habitable floor. Section 7.2.13.3.f of the Resiliency Code provides that "*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.*" As a result, the maximum height limit is increased from 75 feet to 80 feet. The proposed building has a height of 76'-4" measured from DFE. The applicant has therefore withdrawn the request for a variance to exceed the maximum allowable building height.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following requirements of the City Code, including the requested waivers and variances:

- A Conditional Use Permit is required, pursuant to Chapter 7, Section 7.2.10 of the Miami Beach Resiliency Code, for the construction of a commercial development exceeding 50,000 square feet, including parking. (PB23-0636).

- A Conditional Use Permit is required for the construction of mechanical parking garages, pursuant to Chapter 5, Article II, Section 5.2.11. (PB23-0636)

- The sidewalk shall be raised to the future crown of road elevation on long frontages except for transition areas, as per sec. 7.1.2.2.f.2.

- The sidewalk shall contain a "circulation zone" with a minimum dimension of 10 feet in width, pursuant to the following standards, as per sec. 7.1.2.2.f.1. The design of the circulation zone shall be consistent with the city's public sidewalk requirements. The circulation zone shall remain free from obstructions created by landscaping, signage, utilities, stairs, ramping, handrails, and lighting fixtures.

- The elevators and stairs on Level 1 Mezzanine shall be included in the F.A.R. calculation.

- Minimum street tree requirements are not satisfied.

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 2040 COMPREHENSIVE PLAN

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

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; However, the applicant is requesting from the Board one waiver related to required sidewalk transitions.

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 from the Board one waiver and one variance.

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 waiver and two variances.

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 one 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.
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.
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.
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.
Not Satisfied; additional information will be required at the time of building permit in order to demonstrate compliance.

STAFF ANALYSIS:

LANDSCAPE PLAN

As initially proposed, the landscape plan did not comply with the requirements of Chapter 4 of the Resiliency Code. Most significantly, the minimum street tree requirements were not satisfied. Staff has had productive meetings with the applicant with regards to the landscaping. Subsequently, the applicant submitted updated landscape plans dated April 7, 2024 and presented the updated plans at the May 7, 2024 hearing. Since the revised plans were not part of the final submittal, it was recommended that the landscape component of the project be continued to the June 4, 2024 meeting.

The revised plans reflect compliance with the minimum street tree requirements in Chapter 4 of the Resiliency Code. Additionally, the selected plant types are more consistent with the street trees on the opposite site of 5th Street and Alton Road. Staff is supportive of the modified plans.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the landscape plan, be **approved**.

"Exhibit A"

PARCEL 1:
The East 100 feet of Lot 3, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 2:
Lot 3, less the East 100 feet thereof and less that portion thereof which lies within the external area formed by a 10-foot radius arc concave to the Southeast tangent to the North line of said Lot 3 and tangent to the Southwesterly line of said Lot 3, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 3:
Lot 4, less the East 145.6 feet thereof, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 4:
The East 145.6 feet of Lot 4, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 5:
Lots 5, 6, 7, 8, and 9 of Resubdivision Lots 5 and 6, Block 103, THE OCEAN BEACH REALTY CO.'S OCEAN BEACH ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 26, at Page 62, of the Public Records of Dade County, Florida. ALL OF ABOVE DESCRIBED PARCELS 1, 2, 3, 4, AND 5 BEING NOW KNOWN AS: All of Lots 3 and 4, in Block 103, of OCEAN BEACH FLA., ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida; LESS and EXCEPT that portion of Lot 3 which lies within the external area formed by a 10 foot radius arc concave to the Southeast and tangent to both the North and Southwesterly lines of said Lot 3;

TOGETHER WITH;
Lots 5, 6, 7, 8 and 9, of RESUBDIVISION OF LOTS 5 AND 6, BLOCK 103 OF THE OCEAN BEACH REALTY CO.'S OCEAN BEACH ADDITION NO. 3, according to the plat thereof, recorded in Plat Book 26, at Page 62, of the Public Records of Dade County, Florida.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: May 7, 2024 & June 4, 2024

PROPERTY: **1100 5th Street 02-4203-009-8190**

FILE NO: DRB23-0982

IN RE: An application has been filed requesting Design Review Approval for the construction of a new 5-story commercial office building, including one or more waivers, and a variance from the open court requirements for lots greater than 100 feet in width, and a variance to exceed the maximum allowed building height, on a site containing two (2) existing 2-story buildings and a surface parking lot, to be demolished.

LEGAL: See Exhibit "A"

APPLICANT: Gateway MB LLC

CONSOLIDATED ORDER

This document consolidates the conditions of the previously issued order for DRB23-0982 dated May 7, 2024, and this current order, dated June 4, 2024, which incorporates changes related to an updated landscape plan. Note: Underline denotes added language and ~~strikethrough~~ denotes stricken language from the previous 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 b, d, e, g, I, j, m, 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 and 4 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 multi-use commercial building shall be submitted to and approved by staff, or the Board, as noted; at a minimum, such drawings shall incorporate the following:

    a. The plans shall be further detailed to show compliance with the Resilience and Adaptation Standards as outlined in Section 7.1.2.2, subject to the review and approval of staff.

    b. The Long Frontage Standards for new construction with non-residential uses on the ground floor on 5th Street and , 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 Alton Road and, per sec. 7.1.2.2.g.1 of the Resiliency Code are waived as proposed.

    d. The parallel transition areas between the raised circulation zone and lower-level sidewalks, street crossings, intersections, and driveways shall be approved as proposed on Lenox Avenue.

    e. The final lighting design of the vehicular drop-off shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

    f. The final design and details of the garage screening 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.

    g. 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.

    h. 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.

    i. All internal garage lighting shall be shielded to buffer views of all direct light sources from outside of the structure, as well as on the roof deck, in a

manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

j. Consistent with the plans presented, all rooftop lighting shall consist of a lighting fixture that is affixed to, and no higher than, the rooftop parapet wall. 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.

k. The final design details and pattern of the hardscape and exterior walkways 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.

l. Final details of all proposed storefront systems and associated details shall be provided for all ground floor elevations 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.

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 ~~the Board~~ 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 ~~the Board~~ staff. At a minimum, such plans shall comply with Chapter 4-Landscape Requirements of the Resiliency Code and shall incorporate the following:

a. The revised plans shall comply with the requirements of section 4.2.3 of the Resiliency Code.

b. All existing overhead utility lines abutting the alley shall be relocated underground and all utility poles shall be removed.

c. 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.

d. 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.

e. 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.

f. 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.

g. The proposed and existing trees located within the right of way shall be subject to the review and approval of Green Space and CIP.

h. 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.

i. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.

j. 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.

k. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.

l. 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.

m. 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.

n. 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 to not provide an open court on a lot with a width greater than 100 feet as required by section 7.2.15.3 of the Resiliency Code.

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(s), and imposes the following conditions 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 and Waivers'* noted above.

A. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.

B. All new construction over 7,000 square feet shall comply with the "Green Building" requirements in section 7.1.3.2 of the Resiliency Code.

C. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.

D. 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.

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

F. 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.

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

H. 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.

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

J. 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.

K. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit and shall be located immediately after the front cover page of the permit plans.

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

M. 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.

N. 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.

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

P. 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 "1100 5th Street", prepared by **Souto Moura Arquitectos S.A. and Zyscovich**, dated March 10, 2024, with the landscape plans, entitled "1100 5th Street Landscape Plan", prepared by **Souto Moura Arquitectos S.A. and Zyscovich**, 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:
{NOTARIAL SEAL] Commission Number:

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

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

"Exhibit A"

PARCEL 1:
The East 100 feet of Lot 3, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 2:
Lot 3, less the East 100 feet thereof and less that portion thereof which lies within the external area formed by a 10-foot radius arc concave to the Southeast tangent to the North line of said Lot 3 and tangent to the Southwesterly line of said Lot 3, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 3:
Lot 4, less the East 145.6 feet thereof, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 4:
The East 145.6 feet of Lot 4, of Block 103, of OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida.

PARCEL 5:
Lots 5, 6, 7, 8, and 9 of Resubdivision Lots 5 and 6, Block 103, THE OCEAN BEACH REALTY CO.'S OCEAN BEACH ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 26, at Page 62, of the Public Records of Dade County, Florida. ALL OF ABOVE DESCRIBED PARCELS 1, 2, 3, 4, AND 5 BEING NOW KNOWN AS: All of Lots 3 and 4, in Block 103, of OCEAN BEACH FLA., ADDITION NO. 3, according to the Plat thereof, recorded in Plat Book 2, at Page 81, of the Public Records of Dade County, Florida; LESS and EXCEPT that portion of Lot 3 which lies within the external area formed by a 10 foot radius arc concave to the Southeast and tangent to both the North and Southwesterly lines of said Lot 3;

TOGETHER WITH;
Lots 5, 6, 7, 8 and 9, of RESUBDIVISION OF LOTS 5 AND 6, BLOCK 103 OF THE OCEAN BEACH REALTY CO.'S OCEAN BEACH ADDITION NO. 3, according to the plat thereof, recorded in Plat Book 26, at Page 62, of the Public Records of Dade County, Florida.