

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: October 03, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: DRB17-0165
6881 Indian Creek Drive

The applicant, 6881 Indian Creek LLC, is requesting Design Review Approval for exterior alterations and modifications to an existing two-story building and the construction of a new outdoor bar and storage area and pool, including variances to reduce the minimum required front and side facing a street setbacks, from the maximum projection allowed for a porch and roof overhang, from the minimum hotel unit size required, and to allow encroachments closer to property lines adjacent to streets than permitted.

RECOMMENDATION:

Approval with conditions

Approval of the variances #1, #2, #3, #4, #5, #6, #7, #8 and #9 with modifications.

LEGAL DESCRIPTION:

All of Block K of "Atlantic Heights", according to the plat thereof filed for record and recorded in Plat Book 9 at Page 14 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning:	TC-3 Town Center Residential Office
Future Land Use:	TC-3
Lot Size:	11,751 SF
Existing FAR	9,513 SF / 0.81
Proposed FAR:	9,830 SF / 0.84
Maximum FAR:	14,688.75 SF / 1.25
#Hotel Units:	30 (no change)
#Parking spaces:	0
#Seats:	30
CMB Grade:	3.74' NGVD*
Base Floor Elevation:	8' NGVD
Difference:	4.26'
Adjusted Grade Elevation:	5.87' NGVD
30" (+2.5') Above:	+ 8.37' NGVD
Finished First Floor:	5.35' NGVD

*As indicated on submitted survey.

EXISTING STRUCTURE:

1939 Russell Pancoast | *Devon Hotel* | 2-story residential building | 30 units

Surrounding Properties:

East: Two-story 1951 residential building

North: Two-story 1951 residential building

South: City of Miami Beach Police North Shore Sub-station

West: City of Miami Beach Fire Station #4

THE PROJECT:

The applicant has submitted plans entitled "The Devon Hotel", as prepared by **DNB Design Group** dated, signed and sealed August 11, 2017.

The applicant is proposing to renovate and remodel the existing structure on the site for adaptive re-use as a hotel. The proposal also seeks to add an outdoor pool and ancillary structure including an outdoor bar.

The applicant is requesting the following variance(s):

1. A variance from the minimum required hotel unit size: 15% of the hotel units shall be between 300-335 SF and 85% of units shall be 335 SF or larger, in order to permit 29 hotel units (96.6%) at less than 300 SF (the smallest at 203 SF), and 1 hotel unit between 300 SF and 335 SF (3% of the units).

- Variance requested from:

Sec. 142-737. - Development regulations.

(a) The development regulations in the TC-1, TC-2 and TC-3 town center districts are as follows:

*TC-3 Town Center Residential Office, Minimum Apartment Unit Size (square feet),
Hotel units 15%: 300—335 | 85%: 335+*

The building was originally constructed in 1939 with 30 hotel rooms. As the interior rooms are reconstructed, a variance is required for the undersized rooms. The renovation of the existing building and the exterior and interior improvements with the same number of hotel room units proposed at the first and second floor do not comply with today's hotel room size required. Of the existing 30 rooms, one is sized to that standard at 318 SF. Overall, the average room size for the 30 hotel units is 248 SF. The applicant is not seeking to increase the number of rooms over what is existing within the building envelope, as such, staff recommends approval of variance #1. The existing substandard room size and the location of electrical and plumbing lines and exterior windows create practical difficulties for the interior renovation of the building that result in the variance requested.

2. A variance to reduce by 11'-8" the minimum required front setback of 15'-0" in order to construct a new exterior stair at 3'-4" from the front property line facing Byron Avenue.
3. A variance to reduce by 14'-9" the minimum required front setback of 15'-0" in order to construct a new exterior stair at 3" from the front property line facing Indian Creek Drive.

- Variances requested from:

Sec. 142-737. Development regulations.

(b) Setback requirements: The minimum setback requirements for the TC-1, TC-2 and TC-3 districts are as follows. This includes all buildings, regardless of use, and subterranean parking structures. The minimum setbacks define the buildable area of the lot.

TC-3 Town Center Residential Office, Front : 15'-0"

The building was originally constructed with non-conforming front setbacks on Byron Avenue and Indian Creek Drive. Two existing stairs on the north and south side are replaced with a new improved stairs to address egress and safety requirements. They are proposed in similar location as the original stairs. Due to the retention of the existing 1939 building with its non-conforming setbacks, the reconstruction of the stairs within the existing limited area creates practical difficulties that justify the variances requested.

4. A. A variance to reduce by 4'-10" the minimum required street side setback of 10'-0" in order to construct a new exterior stair at 5'-2" from the street side property line facing 69th Street.
- B. A variance to reduce by 4'-9" the minimum required street side setback of 10'-0" in order to construct a new detached accessory structure at 5'-3" from the street side property line facing 69th Street.

- Variances requested from:

Sec. 142-737. Development regulations.

(b) Setback requirements: The minimum setback requirements for the TC-1, TC-2 and TC-3 districts are as follows. This includes all buildings, regardless of use, and subterranean parking structures. The minimum setbacks define the buildable area of the lot.

TC-3 Town Center Residential Office, Side facing a Street : 10 feet for lots greater than 50 feet in width

The existing two-story apartment building's footprint contains non-conforming setbacks on all sides. The renovation of the existing building and its adaptive re-use into a hotel as seen herein this proposal will be a wonderful asset to the neighborhood and conform to the scale, massing and architecture of the area. Variances #2, #3 and #4A pertain to the reconstruction of existing exterior access stairs in the northeast portion and southwest portion of the triangular site. Both stairs are existing conditions with nonconforming setbacks but are not compliant with life safety egress regulations. As such, the applicant is proposing to reconstruct the stairs in accordance with applicable building and fire codes in the same location. The existing building setbacks create practical difficulties that result in the variance requested.

As the request pertains to variance 4B, a reduced setback in order construct a new detached accessory structure that contains storage, trash and outdoor bar services, staff is also supportive as proposed. The applicant is proposing a modest 25'-0" x 11'-6" (287 SF) detached structure along the northern portion of the triangular site, at its widest section. Separated from the existing building by 9'-6", the accessory structure would screen the pool area from street view, which also might help contain any noise from the pool area into the

neighborhood. The footprint nearly follows the nonconforming setback of the existing building at 5'-3". The amenity will be more thoroughly reviewed for its use and impact on the neighborhood at the Planning Board stage of review. Staff would recommend additional architectural detailing be expanding to the northern (street facing) elevation, and that the enclosure be fully air-conditioned—including the trash room. Staff finds that practical difficulties exist to retain the existing building, create additional amenities to adapt it to the new hotel use.

As the FAR proposed is well below the maximum allowed and no additional area is increased within the building envelope, staff is supportive of the variance 4B requested.

5. A variance to reduce by 4'-6" the minimum required front setback of 10'-0" in order to construct a new detached monument sign at 5'-6" from the front property line facing Byron Avenue.
6. A variance to reduce by 4'-3" the minimum required front setback of 10'-0" in order to construct a new detached monument sign at 5'-9" from the front property line facing Indian Creek Drive.

- Variances requested from:

Sec. 138-9. Yard requirements.

(c) Detached signs shall have the following setback requirements:

(1) Front yard: 10 feet.

Variances #5 and #6 pertain to the same proposed monument sign located in the southern portion of the triangular site. The property, as platted is of a triangular shape, and the proposed development involves the renovation of an existing two-story building that occupies the entire block with non-conforming setbacks. A triangular parcel with three street frontages naturally produces challenges involving setback requirements and conflict with its inherent geometry. These existing conditions create the practical difficulties that trigger the variances requested. The sign is located at a slight angle, where it would be most visible for both vehicular and pedestrian traffic. Compliance with the required 10 foot setback from all streets would push the sign back right into the existing landscaped space. Another monument sign is also proposed at the northwest corner that complies with the setback requirements.

The proposed location has also been reviewed by Public Works and confirmed that there will be no line of site obstruction. Staff has reviewed and approved the design, and the size complies with the area limitations. The applicant will improve the existing overgrown landscaping currently on site. In summary, staff recommends approval of variances #5 and #6.



Southern Corner of the site where monument sign is proposed.

7. A. A variance to exceed by 6" (12.5%) the maximum allowed projection of 1'-0" (25%) for roof overhangs within the existing front yard of 4'-0" in order to construct a new roof with a roof overhang of 1'-6" (37.5%) into the front yard facing Indian Creek Drive.
 - B. A variance to exceed by 3" (4%) the maximum allowed projection of 1'-3" (25%) for roof overhangs within the existing front yard of 5'-2" in order to construct a new roof with a roof overhang of 1'-6" (29%) into the front yard facing Byron Avenue.
- Variances requested from:

Sec. 142-1132. - Allowable encroachments within required yards.

- (o) Projections. In all districts, every part of a required yard shall be open to the sky, except as authorized by these land development regulations. The following may project into a required yard for a distance not to exceed 25 percent of the required yard up to a maximum projection of six feet.
- (7) Roof overhangs.

The roof overhang of the new roof is directly associated with the retention of the existing 1939 exterior walls and non-conforming setbacks that result in the variances requested. The applicant is not seeking to increase the extent of the existing roof overhang for the new roof.

The variances are necessary to improve the property and guarantee a weather-proof roofing structure that matches the look, proportion, material and scale of the original roof; as such staff recommends approval of variance #7A and #7B.

8. A variance to reduce by 11'-0" the minimum required side setback of 15'-0" in order to construct a pool deck at 4'-0" from the front property line facing Indian Creek Drive.

- Variance requested from:

Sec. 142-1133. Swimming pools.

This section applies to swimming pools in all districts, except where specified. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:

- Supplementary section:

Sec. 142-737. Development regulations.

(b) Setback requirements: The minimum setback requirements for the TC-1, TC-2 and TC-3 districts are as follows. This includes all buildings, regardless of use, and subterranean parking structures. The minimum setbacks define the buildable area of the lot.

TC-3 Town Center Residential Office, Front : 15'-0"

The existing two-story apartment building is non-conforming regarding setbacks on all sides. A new pool is proposed in the only open area existing on the property, facing Indian Creek Drive. Due to the excessive decking proposed in conjunction with the outdoor pool, a variance is required in order to provide this amenity for the hotel guests. The proposed pool deck is not permitted within the front yard of 15'-0" and is proposed to be constructed with a setback of 4'-0" from the front property line. Although challenged with the constraints of the triangular parcel and footprint of the existing building, staff recommends a reduction and reorientation of the pool and deck to comply with a minimum setback of 10'-0" for the pool deck, particularly in the light of resiliency and on-site water retention. Due to the limited area on site and the conditions of the property surrounded by three streets, staff acknowledges the design challenges to place the new pool; as such we are supportive of the variance requested conditioned to a modification of the variance to "reduce by 5'-0" the minimum required side setback of 15'-0" in order to construct a pool deck at 10'-0" from the front property line facing Indian Creek Drive".

9. A variance to allow the construction of new stairs encroaching within the first 5'-0" from the property lines facing Byron Avenue and Indian Creek Drive.

- Variance requested from:

Sec. 142-737.- Development regulations.

(g) Encroachments. No encroachments shall be allowed in the required setback areas except as follows; otherwise, encroachments shall be governed by section 142-1142:

(2) In the TC-3 district, no encroachment shall be allowed in the first five feet of setback area measured from the property line adjacent to all streets

The applicant is reconstructing two exterior stairs to comply with life safety requirements. Staff is supportive of the reconstruction of these circulation elements, including this associated variance. Both stairs require setback variances also for their proximity to the property lines, as noted on variances 2, 3 and 4A. Because the existing non-conforming building is retained and the construction of the new stairs is within the same location of the existing stairs, staff finds that practical difficulties exist for the granting of this variance.

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 with the application satisfy compliance 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.

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, aside from the requested variances.

1. Section 142-736(c)(2). The conditional uses in the TC-3 district are **hotel**, adult congregate living facility; day care facility; nursing home; religious institutions; private and public institutions; schools; and commercial or noncommercial parking lots and garages. (PB17-0153).
2. Section 142-736(c)(3)b. Hotels in the TC-3(c) district may include accessory restaurants or alcoholic beverage establishments pursuant to the regulations set forth in Chapter 6 when approved as part of the conditional use. Such accessory restaurants or bars that serve alcohol shall be limited to a maximum of 1.25 seats per hotel or apartment unit for the entire site. Proposed seats: 30 | Existing Hotel Units: 30
3. Section 118-395(b)(2)e. Development regulations for buildings not located within a designated historic district and not an historic site.
Buildings constructed prior to 1965 and determined to be architecturally *significant by the planning director, or designee, may retain the existing floor area ratio, height, setbacks and parking credits, if the following portions of the building remain intact and are retained, preserved and restored:*
 - i. *At least 75 percent of the front and street side facades;*
 - ii. *At least 75 percent of the original first floor slab;*
 - iii. *At least 50 percent of all upper level floor plates; and*
 - iv. *At least 50 percent of the interior sidewalls.*

A separate approval from the Planning Board for the proposed hotel use shall be required, prior to the issuance of any building permit.

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:

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Satisfied
2. 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.
Not Satisfied; the project requires several variances
3. 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.

Not Satisfied; the project requires several variances

4. 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 118-252.

Satisfied

5. 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.

Not Satisfied; the project requires several variances

6. 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

7. 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

8. 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.

Not Satisfied; the project requires several variances

9. 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; lighting plans not included

10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.

Satisfied

11. 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
12. 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
13. 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
14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.
Satisfied
15. 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).
Satisfied
16. 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
17. 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
18. 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
19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.
Not Satisfied; see below

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development 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 will be provided as part of the submittal for a demolition permit to the building department.
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Satisfied
All windows will be replaced with hurricane proof impact windows.
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied
Windows are operable.
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Satisfied
All new landscaping will consist of Florida friendly plants.
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.
Not Satisfied
Sea Level Rise projections were taken into account.
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.
Not Satisfied
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
Not Satisfied
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
Not 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 Satisfied
- (10) Where feasible and appropriate, water retention systems shall be provided.
Not Satisfied

STAFF ANALYSIS:
DESIGN REVIEW

The applicant is proposing to renovate and remodel the existing structure on the site for adaptive re-use as a hotel. The proposal also seeks to add an outdoor pool and ancillary structure including an outdoor bar. Occupying an entire block, the subject property is a 11,751 SF triangular-shaped lot with three street frontages lines along the convergence of Indian Creek Drive and Byron Avenue. It is located in the Town Center Residential Office District, or TC-3, of North Beach. The TC-3 district is intended as a transition district between high-intensity town center core and low-intensity residential multi-family districts. While the main permitted uses in this district are single-family detached dwellings, townhomes, apartments and offices, the district allows for hotels as a conditional use. The applicant has submitted an application to the Planning Board, PB17-0153, but has not been scheduled for a Planning Board meeting.

Planning staff is supportive of the renovation and adaptive re-use of an existing two-story building. Built in 1939 by noted architect Russell Pancoast, the *Devon Hotel* consists of thirty room rooms in a relatively nondescript but well-proportioned building. The main entrance to the hotel is accessed directly from Byron Avenue, but there is also another entrance that is located off of Indian Creek Drive.

All of staff's concerns have been expressed in the 'Project' section of the recommendation.

VARIANCE REVIEW

The subject property is an irregular rhomboid-shaped interior lot containing an existing two-story, thirty room apartment building with non-conforming setbacks on all sides. Staff is supportive of all the variances with modification of variance #8 as they are the minimum necessary to develop the site and make a reasonable use of the land. The project is well below the maximum FAR allowed and based on the existing building footprint, non-conforming setbacks and site location with three fronts, as outlined in the project section of this report, staff finds that there are practical difficulties that justify the granting of the variances.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the design and variance requests, subject to the following 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, as applicable.

TRM/JGM/IV

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DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: October 03, 2017

FILE NO: DRB17-0165

PROPERTY: **6881 Indian Creek Drive**

APPLICANT: 6881 Indian Creek LLC

LEGAL: All of Block K of "Atlantic Heights", according to the plat thereof filed for record and recorded in Plat Book 9 at Page 14 of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for exterior alterations and modifications to an existing two-story building and the construction of a new outdoor bar and storage area and pool, including variances to reduce the minimum required front and side facing a street setbacks, from the maximum projection allowed for a porch and roof overhang, from the minimum hotel unit size required, and to allow encroachments closer to property lines adjacent to streets than permitted.

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 118-252(a) of the Miami Beach Code. 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 2, 3, 5, 8, 9, and 19 in Section 118-251 of the Miami Beach Code.
- 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, 2, 3, 5, 6, 7, 8, 9, and 10 in Section 133-50(a) of the Miami Beach Code
- D. The project would remain consistent with the criteria and requirements of Section 118-251 and/or Section 133-50(a) if the following conditions are met:

1. The proposed hotel use and the accessory bar shall be subject to a Conditional Use Permit approval by the Planning Board and subject to the conditions enumerated in the Final Order for the conditional use.
2. Revised elevation, site plan and floor plan drawings for the proposed hotel building located at 6881 Indian Creek Drive shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department, in a manner to be reviewed and approved by staff.
 - b. The final color selection of the exterior elements shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.
 - c. 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.
 - d. The color of the monument sign shall not be the brightly colored or lit and that the base of the monument should have landscaping, No exterior disconnect switches shall be allowed. Any required electric switchbox shall be placed inside the structure not visible from the right-of-way
 - e. 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.
 - f. All window frames shall be composed of silver, white or natural color anodized aluminum frames. All windows shall consist of clear glass and incorporate the minimum tint required by the energy code, 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 architect shall further refine the street side elevation of the accessory building and shall be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - h. The final design details and material sample of the trash room security door/gate located at the street side of the accessory building 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 exterior handrails and support posts shall incorporate a flat profile. 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 consistent with the Design Review Criteria and/or the directions from the Board.

- j. The final color selection of the exterior stucco elements shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.
 - 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. 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.
3. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, 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 plan shall incorporate the following:
- a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. The architect shall substantially increase the amount of native canopy shade trees within the site, 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 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.
- 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. 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.
- l. 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.
- m. 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 118-262, the applicant, or the city manager on behalf of the City Administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by 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 the minimum required hotel unit size: 15% of the hotel units shall be between 300-335 s.f. and 85% of units shall be 335 s.f. or larger, in order to permit 29 hotel units (96.6%) at less than 300 s.f. (the smallest at 203 s.f.), and 1 hotel unit between 300 s.f. and 335 s.f. (3% of the units).
 2. A variance to reduce by 11'-8" the minimum required front setback of 15'-0" in order to construct a new exterior stair at 3'-4" from the front property line facing Byron Avenue.
 3. A variance to reduce by 14'-9" the minimum required front setback of 15'-0" in order to construct a new exterior stair at 3" from the front property line facing Indian Creek Drive.
 4. A. A variance to reduce by 4'-10" the minimum required street side setback of 10'-0" in order to construct a new exterior stair at 5'-2" from the street side property line facing 69th Street.

B. A variance to reduce by 4'-9" the minimum required street side setback of 10'-0" in order to construct a new detached accessory structure at 5'-3" from the street side property line facing 69th Street.
 5. A variance to reduce by 4'-6" the minimum required front setback of 10'-0" in order to construct a new detached monument sign at 5'-6" from the front property line facing Byron Avenue.
 6. A variance to reduce by 4'-3" the minimum required front setback of 10'-0" in order to construct a new detached monument sign at 5'-9" from the front property line facing Indian Creek Drive.
 7. A. A variance to exceed by 6" (12.5%) the maximum allowed projection of 1'-0" (25%) for roof overhangs within the existing front yard of 4'-0" in order to construct a new roof with a roof overhang of 1'-6" (37.5%) into the front yard facing Indian Creek Drive.

B. A variance to exceed by 3" (4%) the maximum allowed projection of 1'-3" (25%) for roof overhangs within the existing front yard of 5'-2" in order to construct a new roof with a roof overhang of 1'-6" (29%) into the front yard facing Byron Avenue.
 8. A variance to reduce by ~~11'-0"~~ 5'-0" the minimum required side setback of 15'-0" in order to construct a pool deck at ~~4'-0"~~ 10'-0" from the front property line facing Indian Creek Drive. (Modified Variance)
 9. A variance to allow the construction of new stairs encroaching within the first 5'-0" from the property lines facing Byron Avenue and Indian Creek Drive.

- B. The applicant has submitted plans and documents with the application that satisfies 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 the Board has concluded 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.

- C. The Board hereby **Approves** the Variance request(s), and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:
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. The applicant shall submit a Hold Harmless Covenant Running with the Land to the City Attorney's Office in a form acceptable to the City Attorney indemnifying and holding harmless the city against any claim or loss in the event of an accident involving a motor vehicle or other instrumentality due to the proximity of the building structures and monument sign to the public right-of-way.
- B. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- C. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- D. 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.
- E. 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.
- F. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- G. 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 "The Devon Hotel", as prepared by **DNB Design Group** dated, signed and sealed August 11, 2017 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

