

**BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 1736 West 28th Street

FILE NO. ZBA17-0040

IN RE: The application for a variance to exceed the maximum allowable projection into the waterway for the construction of a new dock, boatlift and mooring piles for the single family property.

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DESCRIPTION: Lots 3, 4 and 5, Block 1-H, of "3rd Revised Plat of Sunset Islands Subdivision", According to the Plat Thereof, as recorded in Plat Book 34 at Page 73 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: October 6, 2017.

ORDER

The applicant, Sunset Aqua 1736, LLC c/o Anthony Tamer, filed an application with the Planning Department for the following variances:

1. A variance to exceed by 26'-9" the maximum allowed 37'-1" projection into the waterway of 247'-6" in width in order to permit the construction of a boat lift, dock and mooring piles with a total projection of 63'-10" from the wet face of the seawall into the waterway.

The City of Miami Beach Board of Adjustment 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:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the Planning Department Staff Report, the project as submitted satisfies the requirements of Section 118-353(d) of the Miami Beach Code. Accordingly, the Board of Adjustment has determined the following:

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

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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.

B. The Board hereby **Approves** the requested variance 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.
2. Where one or more parcels are unified for a single development, the applicant 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.
3. The applicant shall comply with the following standards and operational conditions, which shall be submitted to and approved by staff as part of the permitting process:
 - a. All marine vessels shall be required to meet the required side yard setbacks at all times, and shall not impede upon the R.E.R. D-5 boundary as shown on page S-3B of the plans submitted.
 - b. The Board of Adjustment shall maintain jurisdiction of this file. Within ninety (90) days after the issuance of a Certificate of Completion for the new marine structures, the applicant shall make a progress report to the Board. The Board reserves the right to modify the conditions of this approval at the time of a progress report, in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports.
 - c. The maximum length of any vessel moored along the subject property shall not exceed 88 feet.
 - d. The maximum beam of any vessel shall not exceed 22 feet.
 - e. The mooring of any type of vessel or watercraft shall be prohibited along either the side of the walkway leading from the seawall to the boat dock.
 - f. Pursuant to Section 66-113 of the City Code, a vessel shall not be docked or moored so that its projection into the waterway would be beyond the

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maximum permissible linear projection of 63'-10" from the wet face of the seawall approved herein.

- g. The dockage, mooring, storage, launching, beaching or servicing of personal watercraft (such as Jet-Skis, Wave Runners, and other similar types of personal watercraft) shall be prohibited unless such personal watercraft contains a 4-stroke or smaller engine.
 - h. The only lights permitted shall be those required by Miami Dade County Department of Regulatory and Economic Resources, Environmental Resources Management (RER), the U.S. Coast Guard, and any other permitting agency for navigational safety, including but not limited to navigational reflectors on the mooring piles. One electric light equipped with a motion sensor may be installed at the terminal platform for security purposes. Any required lights and reflectors shall be indicated on the permit plans and shall be subject to the review and approval of staff prior to the issuance of a building permit.
 - i. The design of any handrails shall be submitted to staff for review and approval prior to the issuance of a building permit.
 - j. All lighting associated with, but not limited to, the deck, vessel or marine structures shall be installed in such a manner so as to minimize glare and reflection on surrounding properties and not to impede navigation. All lighting shall be erected so as to direct light only on the premises on which they are located, and shall be contained within the subject area.
- 4. The project shall receive final approval by all county, state or federal permitting agency as may be required.
 - 5. If applicable, a Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
 - 6. 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.
 - 7. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 - 8. The applicant shall comply with all conditions imposed by the Public Works Department.
 - 9. 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.

10. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
11. 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.
12. 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, except to the extent of the variance(s) granted herein.
13. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

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.

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 staff recommendations, as modified by the Board of Adjustment, that the application for Variance(s) Approval is GRANTED for the above-referenced project, subject to those certain conditions specified in Paragraph B (Condition Nos. 1-13, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Board of Adjustment, as determined by staff, entitled "1736 W 28th Street Dock & Boat Lift Project" as prepared by Dynamic Engineering Solutions, Inc., and John H. Omslaer, P.E., signed and sealed July 26, 2017, modified in accordance with the conditions set forth in this Order and staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of this Order 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 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 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 Variance Approval was granted, the subject Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on

any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), and not reinstated by the Building Official or designee, the Variance Approval will expire and become null and void.

Dated this 10th day of OCTOBER, 2017.

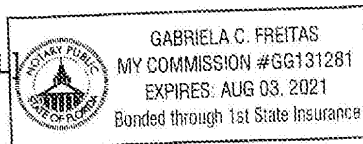
BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, AICP
Chief of Planning and Zoning
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 10th day of October, 2017, by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]



Notary Gabriela C. Freitas
Print Name: Gabriela C. Freitas
Notary Public, State of Florida
My Commission Expires: 8-3-2021
Commission Number: GG131281

Approved As To Form:
City Attorney's Office (Nick Kallergis) 10/6/2017

Filed with the Clerk of the Board of Adjustment on 10/10/17

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