


MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP 
Planning Director

DATE: December 01, 2017 Meeting

RE: File No. ZBA17-051
1831 West 23rd Street – Single Family Residence

The applicant, David B Haber, as trustee of the David B. Haber revocable trust dated 1/29/2002, is requesting variances to exceed the maximum height of gates and walls within required yards, to reduce the required rear, interior side and street side setbacks for a structure, and to reduce the required interior side and rear setbacks for a pool and pool deck, as part of the renovations to the two-story single family home.

STAFF RECOMMENDATION:

Approval of variances #2, #4 and #5 with conditions.

Denial of variances #1, #3, #6, #7, #8 and #9.

LEGAL DESCRIPTION:

Lot 1, Block 3F, of "3rd Revised Plat of Sunset Island", According to the Plat Thereof, as recorded in Plat Book 40 at Page 8 of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning -	RS-3
Future Zoning-	RS
Lot Size -	10,941 SF
Lot Coverage	
Existing-	2,414 SF / 22%*
Maximum-	3,282 SF / 30%
Unit size	
Existing-	3,785 SF / 34.5%*
Maximum-	5,470 SF / 50%
Height-	
Existing-	two-story – sloped roof
Proposed-	same

EXISTING STRUCTURE:

Year Constructed: 1937
Architect: V. H. Nellenbogen
Vacant Lot: No
Demolition: Partial

Grade: + 5.26' NGVD
Flood: + 8.0' NGVD

* As representing by the applicant.

THE PROJECT:

The applicant has submitted plans entitled "Haber Residence", as prepared by ENEA Garden Design, signed and sealed October 19, 2017.

The applicant is proposing the partial demolition and exterior renovation of the existing two-story single family home, to include the construction of access gates, two open structures, a pool, pool deck, and driveways, including variances to exceed the maximum height of gates and walls within required yards, to reduce the required rear, interior side and street side setbacks for a structure, and to reduce the required interior side and rear setbacks for pool and pool deck.

The applicant is requesting the following variance(s):

1. A variance to exceed by 1'-3" the maximum height of 5'-0" (10.26' NGVD) for columns and gates located at the property line in order to construct columns, a pedestrian gate and two vehicular gates up to 6'-3" (11.51' NGVD) in height as measured from a grade elevation of 5.26' NGVD facing Bay Avenue and West 23rd Street.
 2. A variance to exceed by 2'-9" the maximum height of 7'-0" (12.26' NGVD) for walls located in the rear yard in order to construct walls up to 9'-9" (15'-0" NGVD) in height as measured from a grade elevation of 5.26' NGVD within the rear yard of the property.
- Variances requested from:

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

(h) Fences, walls, and gates. Regulations pertaining to materials and heights for fences, walls and gates are as follows:

(1) All districts except I-1:

a. Within the required front yard, fences, walls and gates shall not exceed five feet, as measured from grade.

b. Within the required rear or side yard, fences, walls and gates shall not exceed seven feet, as measured from grade, except when such yard abuts a public right-of-way, waterway or golf course, the maximum height shall not exceed five feet.

The applicant is proposing a perimeter barrier that includes a continuous hedge on the front and street side of the property, combined with one vehicular gate with columns at the front and a pedestrian and vehicular gates with columns on the street side. Variance #1 pertains to the columns and gates that exceed the maximum 5'-0" height allowed when located at the property line by 1'-3". The height of the columns and gates are 6'-3" in height and the hedges are 5'-0" in height. Staff recommends denial of this variance, as there is no hardship or practical difficulty for the proposed work. The columns and gates can easily be modified to comply with the code requirements.

Variance #2 is for walls up to 9'-9" in height enclosing the area for new mechanical equipment located within the required rear yard. Fences and freestanding walls in the rear yard cannot exceed 7'-0" from grade elevation. The new walls provide a buffer for the air conditioning unit and pool equipment and also contain a water feature associated with the new pool. The walls are perpendicular with respect to the rear property line and the area abutting the neighboring property is minimal which should not cause a negative impact.

Because the Code allows attached screening of mechanical equipment up to 10'-0" in height from grade with similar impact as the proposed walls, staff recommends approval of variance #2.

3. A variance to reduce by 6'-0" the minimum setback of 10'-0" for a wall constructed up to 10'-6" (15.75' NGVD) in height and located at 4'-0" from the north side property line.

- Variance requested from:

Sec. 142-106. Setback requirements for a single-family detached dwelling.

The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

(2) Side yards:

c. Interior sides. For lots greater than 60 feet in width any one interior side yard shall have a minimum of ten percent of the lot width or ten feet, whichever is greater.

A new wall is proposed on the north side yard adjacent to the pool deck. The wall is 10'-0" in length, and 10'-6" in height which requires a side setback variance for a structure. This variance is associated with the excess height of the wall. As a 7-foot high wall is allowed without a variance, staff could not find practical difficulties related to the additional height proposed and recommends that the variance request be denied.

4. A variance to reduce by 1'-0" the minimum required 6'-0" setback from the rear property line to the pool deck in order to allow a setback of 5'-0" from the rear property line to the pool deck.
5. A variance to reduce by 1'-1" the minimum required 7'-6" setback from the rear property line to the water's edge of the pool in order to allow a setback of 6'-5" from the rear property line to the water's edge of the pool.
6. A variance to reduce by 2'-6" the minimum required 7'-6" setback from the interior side property line to the pool deck in order to allow a setback of 5'-0" from the north side property line to the pool deck.
7. A variance to reduce by 1'-0" the minimum required 9'-0" setback from the interior side property line to the water's edge of the pool in order to allow a setback of 8'-0" from the north property line to the water's edge of the pool.

- Variances 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:

(1) Rear yard setback. A six-foot minimum setback from rear property line to swimming pool deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure associated or not associated with a swimming pool,

provided, however, that swimming pool decks may extend to the property line and be connected to a dock and its related decking when abutting upon any bay or canal. There shall be a minimum seven and one-half-foot setback from the rear property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.

(2) Side yard setback. A seven and one-half-foot minimum required setback from the side property line to a swimming pool deck, or platform, the exterior face of an infinity edge pool catch basin, or screen enclosures associated or not associated with a swimming pool. Nine-foot minimum required setback from side property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.

The existing pool and deck will be demolished and a new pool and deck are proposed in the rear and interior yards of the property. Four variances are requested for the new pool. As the site features a reasonably large side yard, staff finds that there are no practical difficulties associated with variances #6 and #7, to encroach on the interior side yard. The compliance with the required setbacks would allow a pool and deck with a reasonable size that does not interfere with the existing structures. The reduction of the pool and pool deck side setbacks are self-imposed conditions that do not warrant the approval of any variances. Therefore, staff recommends that these variances be denied.

In regard to the variances #4 and #5, staff finds that the area constraints of the existing rear yard impose practical difficulties that limit the area for a pool, and that restrict the applicant's ability to delineate a reasonable walking area and reasonable landscaping around the pool. In this case, staff recommends that variance #4 and #5 be approved.

8. A variance to reduce by 10'-3" the minimum required street side setback of 15'-0" in order to construct an open structure at 4'-9" from the street side property line facing West 23rd Street.
9. A variance to reduce by 16'-5" the minimum required rear setback of 21'-6" in order to construct an open structure at 5'-1" from the rear property line.

- Variances requested from:

Sec. 142-106. Setback requirements for a single-family detached dwelling.

The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

(2) Side yards:

b. Side, facing a street. Each required side yard facing a street shall be no less than ten percent of the lot width or 15 feet, whichever is greater.

(3) Rear: The rear setback requirement shall be 15 percent of the lot depth, 20 feet minimum, 50 feet maximum.

A structure is proposed in the street side yard to provide shading for a new parking area. The Code allows carports in required yards with an area not larger than 20' x 20' and the limitation that it be constructed of pipe and canvas. In this case, the structure proposed is larger than the minimum area required and is composed of concrete columns and walls with a wood trellis roof. As such, it cannot be reviewed and approved as an allowable encroachment for its significant deviation from the City's carport requirements. As

proposed, two variances are necessary to reduce the minimum rear and street side yards.

Staff was unable to find practical difficulties for the variances requested, as a similar structure can be constructed without variances. Staff concludes that the variances requested are self-imposed and design-driven, therefore, we recommend that the Board deny variances #8 and #9.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

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

Additionally, staff has concluded that the plans and documents with the application that also **partially** indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

- That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

Satisfied for variances #2, #4 and #5;

Not satisfied for variances #1, #3, #6, #7, #8 and #9;

- That the special conditions and circumstances do not result from the action of the applicant;

Satisfied for variances #2, #4 and #5;

Not satisfied for variances #1, #3, #6, #7, #8 and #9;

- 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;

Satisfied for variances #2, #4 and #5;

Not satisfied for variances #1, #3, #6, #7, #8 and #9;

- 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;

Satisfied for variances #2, #4 and #5;

Not satisfied for variances #1, #3, #6, #7, #8 and #9;

- That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

Satisfied for variances #2, #4 and #5;

Not satisfied for variances #1, #3, #6, #7, #8 and #9;

- 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

Satisfied for variances #2, #4 and #5;

Not satisfied for variances #1, #3, #6, #7, #8 and #9;

- 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.

Satisfied

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 142-1132(o)(7). Roof overhangs cannot exceed 25% of encroachment into the required yards. Trellis on top of carport area exceeds the maximum encroachment within the proposed street side setback of 4'-9".

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 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 Applicable
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Not Applicable
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Not Applicable
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Not Applicable
- (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 Applicable

- (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 Applicable

- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

Not Applicable

- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

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) Where feasible and appropriate, water retention systems shall be provided.

Not Applicable

STAFF ANALYSIS:

The subject site is a corner lot containing a two-story residence constructed in 1937. Based on the City's Building Department records, the house has not been significantly altered throughout the years from its original construction. The structure, unlike most homes constructed in the 1930's and 1940's, exceeds the minimum setbacks required in all yards. The applicant is proposing demolition of two driveways, pool, deck, and columns facing the street side for new exterior improvements to the property that include two driveways, two open structures, reconstruction of columns on the street side, and pool and deck within the side and rear yards. Nine (9) variances are requested for the proposed work.

Staff is supportive of variances #2, #4 and #5, as they are related to the pool location and compatibility with allowable screening of mechanical equipment. However, regarding variances #1, #3, #6, #7, #8, and #9, staff was unable to make a conclusive determination regarding the satisfaction of practical difficulties or hardship for the granting of these variances. Although the renovation and retention of pre-1942 single family homes is encouraged by the City's Land Development Regulations, and several incentives and exceptions are in place for this purpose, in this particular case, staff finds that the requests for variances #1, #3, #6, #7, #8, and #9, are triggered by the actions of the applicant, are not associated with the retention of the existing home, and are not related to any other practical difficulties associated with the property. The elements associated with the variances requested can be constructed in a manner that is consistent with the requirements of the Code, without any impact on the existing structure or the reasonable use of the property.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **denial** of variance requests #1, #3, #6, #7, #8, and #9, and **approval** of variances #2, #4 and #5, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Practical Difficulty and Hardship criteria, as applicable.

TRM:MAB:IV

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

PROPERTY: 1831 West 23rd Street

FILE NO. ZBA17-0051

IN RE: The application for variances to exceed the maximum height of gates and walls within required yards, to reduce the required rear, interior side and street side setbacks for a structure, to reduce the required interior side and rear setbacks for a pool and pool deck, as part of the renovations to the two-story single family home.

LEGAL

DESCRIPTION: Lot 1, Block 3F, of "3rd Revised Plat of Sunset Island", According to the Plat Thereof, as recorded in Plat Book 40 at Page 8 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: December 1, 2017.

ORDER

The applicant, David B Haber trustee, filed an application with the Planning Department for the following variances which were either approved by the Board, or denied:

The following variances were approved by the Board:

2. A variance to exceed by 2'-9" the maximum height of 7'-0" (12.26' NGVD) for walls located on the rear yard in order to construct walls up to 9'-9" (15'-0" NGVD) in height as measured from grade elevation of 5.26' NGVD within the rear yard of the property.
4. A variance to reduce by 1'-0" the minimum required 6'-0" setback from the rear property line to the pool deck in order to allow a setback of 5'-0" from the rear property line to the pool deck.
5. A variance to reduce by 1'-1" the minimum required 7'-6" setback from the rear property line to the water's edge of the pool in order to allow a setback of 6'-5" from the rear property line to the water's edge of the pool.

The following variances were denied by the Board:

1. A variance to exceed by 1'-3" the maximum height of 5'-0" (10.26' NGVD) for columns and gates located at the property line in order to construct columns, a pedestrian gate and two vehicular gates up to 6'-3" (11.51' NGVD) in height as measured from grade elevation of 5.26' NGVD facing Bay Avenue and West 23rd Street.
3. A variance to reduce by 6'-0" the minimum setback of 10'-0" for a wall constructed up to 10'-6" (15.75' NGVD) in height and located at 4'-0" from the north side property line.

6. A variance to reduce by 2'-6" the minimum required 7'-6" setback from the interior side property line to the pool deck in order to allow a setback of 5'-0" from the north side property line to the pool deck.
7. A variance to reduce by 1'-0" the minimum required 9'-0" setback from the interior side property line to the water's edge of the pool in order to allow a setback of 8'-0" from the north property line to the water's edge of the pool.
8. A variance to reduce by 10'-3" the minimum required street side setback of 15'-0" in order to construct an open structure at 4'-9" from the street side property line facing West 23rd Street.
9. A variance to reduce by 16'-5" the minimum required rear setback of 21'-6" in order to construct an open structure at 5'-1" from the rear property line.

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, only as it relates to variance(s) #2, #4, and #5, as noted. Accordingly, the Board of Adjustment has determined the following as to variances #2, #4, and #5:

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.

- B. The Board hereby **Approves** the requested variances #2, #4, and #5, as noted and **Denies** the requested variances #1, #3, #6, #7, #8, and #9, as noted 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. The existing chain link fence and hedges located in the public right-of way shall be removed.
 3. A revised landscape plan, 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. Hedge material with a minimum height of 8 feet at the time of installation along the new mechanical equipment and extending toward the west and east side at least 5 feet beyond the units shall be provided, in a manner to be reviewed and approved by staff. The height of the plant material at the time of planting may be modified at the discretion of staff depending upon the type of plant material.
 - c. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - d. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.
 - e. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction

materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.

- f. Canopy shade trees as required by code should be provided in the public ROW subject to the review and approval of the Urban Forestry Division and the Planning Department
 - g. 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.
 - h. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
 - i. 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.
 - j. 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-way shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
 - k. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
- 4. 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.
 - 5. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 - 6. The applicant shall comply with all conditions imposed by the Public Works Department.
 - 7. 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.

8. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
9. 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.
10. 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.
11. 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. 1-11, 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 "Haber Residence", as prepared by ENEA Garden Design, signed and sealed October 19, 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

Dated this _____ day of _____, 2017.

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

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

Filed with the Clerk of the Board of Adjustment on _____ ()

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

PROPERTY: 1831 West 23rd Street

FILE NO. ZBA17-0051

IN RE: The application for variances to exceed the maximum height of gates and walls within required yards, to reduce the required rear, interior side and street side setbacks for a structure, to reduce the required interior side and rear setbacks for a pool and pool deck, as part of the renovations to the two-story single family home.

LEGAL

DESCRIPTION: Lot 1, Block 3F, of "3rd Revised Plat of Sunset Island", According to the Plat Thereof, as recorded in Plat Book 40 at Page 8 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: December 1, 2017.

ORDER

The applicant, David B Haber trustee, filed an application with the Planning Department for the following variances:

1. A variance to exceed by 1'-3" the maximum height of 5'-0" (10.26' NGVD) for columns and gates located at the property line in order to construct columns, a pedestrian gate and two vehicular gates up to 6'-3" (11.51' NGVD) in height as measured from grade elevation of 5.26' NGVD facing Bay Avenue and West 23rd Street.
2. A variance to exceed by 2'-9" the maximum height of 7'-0" (12.26' NGVD) for walls located on the rear yard in order to construct walls up to 9'-9" (15'-0" NGVD) in height as measured from grade elevation of 5.26' NGVD within the rear yard of the property.
3. A variance to reduce by 6'-0" the minimum setback of 10'-0" for a wall constructed up to 10'-6" (15.75' NGVD) in height and located at 4'-0" from the north side property line.
4. A variance to reduce by 1'-0" the minimum required 6'-0" setback from the rear property line to the pool deck in order to allow a setback of 5'-0" from the rear property line to the pool deck.
5. A variance to reduce by 1'-1" the minimum required 7'-6" setback from the rear property line to the water's edge of the pool in order to allow a setback of 6'-5" from the rear property line to the water's edge of the pool.
6. A variance to reduce by 2'-6" the minimum required 7'-6" setback from the interior side property line to the pool deck in order to allow a setback of 5'-0" from the north side property line to the pool deck.

7. A variance to reduce by 1'-0" the minimum required 9'-0" setback from the interior side property line to the water's edge of the pool in order to allow a setback of 8'-0" from the north property line to the water's edge of the pool.
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9. A variance to reduce by 16'-5" the minimum required rear setback of 21'-6" in order to construct an open structure at 5'-1" from the rear property line.

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 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 variances 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. Revised elevation drawings of the gates with a 50% transparency shall be submitted to and approved by staff.
3. Roof of the trellis structures shall be substantially open with no less than 50% openness.
4. The existing chain link fence and hedges located in the public right-of way shall be removed.
5. 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 structure to the public right-of-way.
6. A revised landscape plan, 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. Hedge material with a minimum height of 8 feet at the time of installation along the new mechanical equipment and extending toward the west and east side at least 5 feet beyond the units shall be provided, in a manner to be reviewed and approved by staff. The height of the plant material at the time of planting may be modified at the discretion of staff depending upon the type of plant material.
 - c. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - d. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall

be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.

- e. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.
 - f. Canopy shade trees as required by code should be provided in the public ROW subject to the review and approval of the Urban Forestry Division and the Planning Department
 - g. 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.
 - h. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
 - i. 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.
 - j. 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-way shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
 - k. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
- 7. 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.
 - 8. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 - 9. The applicant shall comply with all conditions imposed by the Public Works Department.

10. 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.
11. The conditions of approval herein are binding on the applicant, the property's owners and all successors in interest and assigns.
12. 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.
13. 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.
14. 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. 1-14, 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 "Haber Residence", as prepared by ENEA Garden Design, signed and sealed October 19, 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.

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