

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: January 02, 2018

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB16-0098
411 West 41st Street

The applicant, Tzvi "Steve" Bogomilski on behalf of Jewish Learning Center / Ohr Menachem Mendel, Inc., is requesting Design Review Board approval for the construction of a second floor addition to an existing three-story building in the rear of a property, including a variance to eliminate the required pedestal rear setback.

RECOMMENDATION:

Approval of the variance with conditions.

LEGAL DESCRIPTION:

Lots 16 and 17 Block 4, of Orchard Subdivision No. 4, According to the Plat Thereof, as recorded in Plat Book 25 at Page 30, of the Public Records of Miami-Dade County, Florida.

HISTORY:

On January 25, 2011, the Planning Board approved a Conditional Use Permit for a Public Assembly (Planning Board File No. 1989) where religious services and related classes and meetings would be conducted.

SITE DATA:

Zoning: CD-3
Future Land Use: CD-3
Lot Size: 5,000 SF
Existing FAR: 1.82 | 9,146 SF
Proposed FAR: 2.01 / 10,094 SF as identified by the applicant
Maximum FAR: 2.25 | 11,250 SF
Existing Rear Setback: 14'-10"
Required Rear Setback: 5'-0"
Proposed Rear Setback: 0 ***VARIANCE REQUESTED**
Existing Height: 33'-0"
Proposed Height: 33'-0"
Maximum Height: 75'-0"

LAND USES:

East: 2-story commercial (Citibank)
North: 5-story City parking garage
South: 5-story office building
West: 2-story commercial

THE PROJECT:

The applicant has submitted plans entitled "JLC Rear Addition/Trellis 411 W 41st St: Design Review Board Final Submittal 10/16/2017" as prepared by **Reines & Straz LLC** signed, sealed and dated October 16, 2017.

The applicant is proposing the following variance(s):

1. A variance to reduce the minimum required rear setback of 5'-0" in order to construct a multistory addition to an existing three-story building at 0'-0" setback from the rear property line.

- Variance requested from:

Sec. 142-338. - Setback requirements.

(a) The setback requirements for the CD-3 commercial, high intensity district are as follows:

Pedestal and tower (non-oceanfront), Rear: 5 feet

A three-story addition is proposed at the rear of the site, abutting the alley. The addition of 670 sf of floor area is proposed up to the property line, following the setback of several other buildings along the alley. The practical difficulties associated with this variance request are the available space at the rear, versus constructing a 4th-story addition that would impose an undue hardship on the applicant and could potentially impact the building structure constructed in 1950. Staff recommends that the Board approves the variance as requested.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of the requested 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 also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

- That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
- That the special conditions and circumstances do not result from the action of the applicant;
- That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;
- That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;
- 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.

CONSISTENCY WITH COMPREHENSIVE PLAN:

A preliminary review of the project indicates that the proposed **religious facility is consistent** with the Future Land Use Map of the 2025 Comprehensive 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 in addition to the requested variances:

1. There are no additional parking requirements; however, increase of the occupant load would require Planning Board approval for a modification to the existing CUP.

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.

CONCURRENCY DETERMINATION:

In accordance with Chapter 122 of the Code of the City of Miami Beach, the Transportation and Concurrency Management Division has conducted a preliminary concurrency evaluation and determined that the project does meet the City's concurrency requirements and level-of-service standards. The City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division will make the determination of the project's fair-share mitigation cost.

A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.

ACCESSIBILITY COMPLIANCE

Additional information will be required for a complete review for compliance with the Florida Building Code 2001 Edition, Section 11 (Florida Accessibility Code for Building Construction.) These and all accessibility matters shall require final review and verification by the Building Department 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
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 proposed project requires a variance from the Design Review Board.
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 proposed project requires a variance from the Design Review Board.
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.
Not Satisfied; the proposed project requires a variance from the Design Review Board.
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.
Not 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 Applicable

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 Applicable
10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.
Not 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).
Not Satisfied; the proposed project requires a variance from the Design Review Board.
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 Applicable
- (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.
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:

DESIGN REVIEW

The applicant is proposing a new addition to an existing three-story building in the rear of a property abutting the alley. Sec. 118-260 of the land development regulations identifies those applications that can be reviewed and approved at an administrative review procedure level. Among those are ground level additions to existing structures, not to exceed two stories in height, that are not substantially visible from the public right-of-way, any waterfront or public park. The proposal meets all of these benchmarks.

However, the rear of the property abuts an alley, Arthur Godfrey Court, and the CD zoning district requires a rear setback of 5'-0". Where otherwise the proposal could be approved administratively, in order to maximize the amount of interior programmable space on a site that is already developed; the proposal encroaches within the setback to the zero property line, thus requiring DRB review and approval.

The proposal includes an elevated enclosed 670 SF second floor space above a new electrical room and garbage room, and a covered terrace area. An outdoor rooftop area is proposed above the new story, designed with perforated metal panels and wood trellises at a height that can accommodate Sukkahs during the high holy day of Sukkot. Staff has no outstanding design concerns and recommends approval of the design as proposed.

VARIANCE REVIEW

The existing building provides religious and learning services to the community including school programs and synagogue needs. The center is licensed for a religious institution holding a Conditional Use Permit, CUP File No.1989 approved in 2011. As noted in the applicant's letter of intent, due to the increase and variety of the services, the need for additional floor space has become a necessity in order to accommodate different age groups. A fourth story area technically could be added to the building; however, it could have an adverse impact on the existing structure and roof, as likely a new elevator would be required. A fourth story addition also would be less compatible with other buildings in the same block with lower height. The proposed addition is placed in the most convenient location as to minimize further impact on the existing building structure and has resulted in the need for the variance requested. As such, the applicant is requesting a variance to build a new addition up to a zero setback along the alley.

The addition along the alley is also compatible with the rear setback of other existing buildings in the area. Of the ten buildings that abut Arthur Godfrey Court along this block between Sheridan Avenue and Royal Palm Avenue, six buildings extend to the zero setback line. This includes the abutting corner property to the east, currently a Citibank location, built in 1972.

The project will certainly enhance the conditions on the alley, including a new air-conditioned trash room and the relocation of an existing FPL pole in the rear of the property, approved by the FPL and the City's Public Works Department, as noted in emails provided by the applicant. Staff finds that practical difficulties associated with the setbacks of the building and available area exists that justify the need for the variance requested. In this instance, staff recommends approval of the variance as proposed.

RECOMMENDATION:

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

TRM/JGM/IV

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**DESIGN REVIEW BOARD
City of Miami Beach, Florida**

MEETING DATE: January 02, 2018

FILE NO: DRB16-0098

PROPERTY: **411 West 41st Street**

APPLICANT: Tzvi “Steve” Bogomilski on behalf of Jewish Learning Center / Ohr Menachem Mendel, Inc.,

LEGAL: Lots 16 and 17 Block 4, of Orchard Subdivision No. 4, According to the Plat Thereof, as recorded in Plat Book 25 at Page 30, of the Public Records of Miami-Dade County, Florida

IN RE: The Application for Design Review Board approval for the construction of a second floor addition to an existing three-story building in the rear of a property, including a variance to eliminate the required pedestal rear setback.

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, and 5 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, 5, and 10 in Section 133-50(a) of the Miami Beach Code.
- D. The project would be consistent with the criteria and requirements of Section 118-251 and/ or Section 133-50(a) if the following conditions are met
 - 1. Revised elevation, site plan and floor plan drawings for the proposed addition at 411 West 41st Street shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:

- a. The trash room shall be fully enclosed and air conditioned
- b. Final details of the perforated metal panel; screen shall be required, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- c. Any new 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.
- d. 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.
- e. 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.

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.

I. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):
 1. A variance to reduce all minimum required rear setback of 5'-0" in order to construct a multistory addition to an existing three-story building at 0'-0" setback from the rear property line.
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of the variances 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 also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code, as it relates to the variances as noted above:

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 to the adjacent alley.
- 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 "JLC Rear Addition/Trellis 411 W 41st St: Design Review Board Final Submittal 10/16/2017" as prepared by **Reines & Straz LLC** signed, sealed and dated October 16, 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 the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code, the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project shall expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

