

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: June 7, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: Design Review File No. 23265
340 West 42nd Street, 4100-4120 Pine Tree Drive and 301 West 41st Street

The applicant, Caton Owner LLC, is requesting Design Review Approval for the construction of a new seven-story residential building including a variance to eliminate the residential or commercial use requirement for all floors of a building containing parking spaces at the ground level along every facade facing a street. This item will also require a Conditional Use application to be reviewed and approved by the Planning Board.

RECOMMENDATION:

Approval of the site plan and design with conditions

Denial of the variance request

LEGAL DESCRIPTION:

Lots 4, 5, 6, 7, 8 and 9, Block 3, "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.

SITE DATA:

Zoning: CD-3 (Commercial, High Intensity)
Future Land Use: CD-3 (Commercial, High Intensity)
Lot Size: 46,809 SF
Existing FAR: 40,034 (Office Building)
Proposed FAR: 128,592 SF as represented by the applicant
Maximum FAR: 2.75 = 128,725 SF
Maximum Height: 75'-0" / 7 stories
Proposed Height: 75'-0" / 7 stories
Highest Projection: 91'-6"
Residential Units: 49
Parking spaces provided: 131 spaces (76 spaces utilize mechanical lifts)
(25 relocated bank parking spaces+ 10 guest spaces + 96 residential spaces)
Parking spaces required: 131 spaces
Loading spaces required: 1
Grade: + 5.1' NGVD
Base Flood Elevation (BFE): +9.00' NGVD
Difference: Varies 3.9' NGVD
Adjusted Grade: 7.05' NGVD
First Floor Elevation: +5.1' Lobby | +9.1' residential units

SURROUNDING PROPERTIES:

East: 18-story residential building 'Tower 41'
North: Single-family residences

Two-story residential building
South: 10-story office building
West: 5-story City parking garage

BACKGROUND:

On April 5, 2007, after a series of continuances, an application was approved for a new 7-story multi-story residential project consisting of 42 townhouse units, pursuant to DRB File No. 19646. This project never came to fruition.

THE PROJECT

The applicant has submitted plans entitled "340 West 42nd Street", as prepared by Arquitectonica, dated, signed and sealed April 29, 2016. The proposal consists of a new 7-story, multifamily building with 49 units, a drive-thru bank teller and the retention of the existing 6-story office building, which is part of the development site.

In accordance with section 142-333 of the City Code, new construction of structures 50,000 SF and over in the CD-3 zoning district and in accordance with section 130-38 the use of the mechanical parking systems must receive a Conditional Use approval from the Planning Board, whose review shall be the first step in the approval process prior to the review of the Design Review Board. The item is scheduled to be reviewed by the Planning Board on May 24, 2016 (PB File No. 2327).

The applicant is requesting the following variance(s):

1. A variance to eliminate the residential or commercial use requirement for all floors of a building containing parking spaces along the ground level facing a street.
 - Variance requested from:

Sec. 142-339. - Regulations for new construction

In the CD-3 district, all floors of a building containing parking spaces shall incorporate the following:

- (1) Residential or commercial uses, as applicable, at the first level along every facade facing a street, sidewalk or waterway.

This variance pertains to the elimination of active residential or commercial uses at the first level along Sheridan Avenue. The applicant is proposing to contain the loading space within the shell of the building perpendicular to the street in the southwest corner of the site and screen it with the exterior wall. The Code requires that all floors of a building containing parking spaces must be screened with active residential or commercial uses. The surrounding area has an intense pedestrian activity and the elimination of this requirement would negatively detriment on the urban character of this part of the City. Staff has concerns with the precedent that this type of request would establish for future developments. The Planning Department has consistently recommended denial of any variance that seeks to eliminate this component of the Code, particularly when a vacant site has nearly 46,809 of SF of lot area and contains three street frontages. The size of the lot is larger than most properties in the area and the granting of this variance would confer on the applicant a special benefit not available for other properties in the same zoning district. Staff recommends that this variance be **denied** due to a lack of hardship.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents submitted with the application **DO NOT** 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.

CONSISTENCY WITH COMPREHENSIVE PLAN:

A preliminary review of the project indicates that the proposed **residential use** 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, aside from the requested variances as noted herein this application:

1. A Conditional Use Permit is required, pursuant to Article IV Section 118, and Article II Section 142 of the Miami Beach City Code, for the construction of a commercial building exceeding 50,000 square feet, including mechanical parking. **(PB File No. 2327)**.
2. Sec.130-38. The proposed mechanical parking will require review and approval by the

Planning Board. (PB File No. 2327).

3. The proposed elimination of the on-street parking spaces will require the review and approval of the Parking Department. The costs-associated with the permanent removal of the parking spaces will be the responsibility of the developer.
4. FPL transformers or vault rooms; such transformers and vault rooms, and all other related devices and fixtures, shall not be permitted within any required yard or any area fronting a street or sidewalk.

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.

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.

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 not meet the City's concurrency requirements and level-of-service standards. However, 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.

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 is 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 proposed project requires a variance pertaining to the elimination of active uses that has a negative impact on the project.

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 pertaining to the elimination of active uses that has a negative impact on the project.

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 pertaining to the elimination of active uses that has a negative impact on the project.

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.

Not Satisfied; the proposed project requires a variance pertaining to the elimination of active uses that has a negative impact on the project.

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 proposed project requires a variance to be granted by the Design Review Board. Additionally, the curb cuts proposed for the drive-thru tellers is excessive.

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; a lighting plan has not been provided

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).
Not Applicable
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.
Not 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.
Not Satisfied; the location of all of the required loading spaces and delivery of goods have been arranged along Sheridan Avenue and is internal to the building envelope, but requires a variance to be granted from the Board. Staff is not supportive of the proposed location of the loading space.

STAFF ANALYSIS:

DESIGN REVIEW

The applicant is proposing to develop a 7-story, 49-unit residential building to replace a parking lot. The subject site currently consists of a commercial surface parking lot with 44 parking spaces, a drive-thru bank teller structure with 6 drive-thru stations, and a 6-story office and bank building on the ground floor. The residential development consists of 7 multi-story townhouses at street level facing 42nd Street, Sheridan Avenue and Pine Tree Drive with a double-height lobby for accessing the 42 apartment levels above. A new drive-thru teller is part of the development program and will be accessed from Pine Tree Drive, while the parking garage will be accessed from Sheridan Avenue. The 1963 Charles Giller designed 6-story office building will remain unchanged. The parking garage contains 131 spaces, 38 of which utilize mechanical parking systems. The subject application is scheduled to be reviewed by the Planning Board on May 24, 2016.

Overall, staff is very supportive of the modern design vocabulary of the residential development. The design features strong movement in the massing and heightened setbacks along all street frontages that greatly reduces the impact of a residential building of this size that spans nearly 250'-0" of street frontage along 42nd Street. The proposed structure steps back from the north property line as it rises in height. It is significantly shorter than the 18-story Tower 41 condominium across from the street on Pine Tree Drive and is equal in height and compatible with the higher office buildings to the south, along West 41st Street.

The development has been designed as a series of stacked cubes of varying materials and alternating projections. The exterior design scheme proposed by the applicant has been well executed and does a good job of minimizing the width and girth of the upper levels of the project through an effective array of vertical glass and projecting balconies and boxy bay windows. These recessed upper floors allow the more pedestrian scaled and contextually compatible ground floor townhomes to be the main focal point of the project, particularly when viewed from the sidewalk across the street.

The development has two 'front yards' for zoning purposes, Sheridan Avenue and Pine Tree Drive, which contain greater setback requirements than 42nd Street. Regardless, the development has been designed in a way to maximize the articulation in the facades and the setbacks from 42nd Street, which is a 'side yard facing a street' for zoning purposes. Although the minimum required setback from 42nd Street is 12'-9" which is what is provided for the first three (3) floors; the setbacks provided on floors four through seven are increased and exceed this minimum amount. The fourth and fifth floors are setback almost 24'-0" and the sixth (6th) and seventh (7th) floors are setback nearly 30'-0" resulting in a stepped back massing. The additional setbacks, combined with the varied articulation in the façade provides for a north facing façade that attempts to diminish the mass and height of the building at the upper levels and is respectful to the lower scale residential neighborhood to the north.

While supportive of the scale and massing of the proposed project, staff does have a major concern pertaining to the ground floor component along the vehicular entrances. The seven (7) townhouses fronting 42nd Street have been arranged with private yards that create a cohesive sidewalk context. Contrarily, the project does not succeed at portions of the ground level along Sheridan Avenue and Pine Tree Drive.

Along Pine Tree Drive, a 22'-0" wide entry drive and 30'-0" wide egress drive have been arranged for the new drive-through teller, resulting in a 52'-0" wide curb cut. Staff recommends

that the entry and exit drives be reduced to a maximum width of 12'-0" as a one-way entry cut. Additionally staff recommends decorative pavers and concrete banding be utilized for the entire entry drive-thru areas and that the interior areas of the driveways, including the exterior walls of the teller, be finished in high quality material. Staff would also recommend the architect further explore additional articulation and refinement to this area. Another layout concern is the location of the three parking spaces located adjacent to entry drive that may create an unsafe vehicular configuration. Staff would recommend a complete redesign of this area.

Along Sheridan Avenue, a 22'-0" wide entry drive is proposed as the main entrance to the parking garage. Staff would recommend the same condition pertaining to the ground paving. This is also the proposed location of the loading space (and the variance request), which is proposed as a perpendicular space to the entrance. Staff would recommend relocating the loading space to an alternate location that is more directly accessed and does not require the approval of the variance for the elimination of the active liner. However, should the Board find merit in the variance request, staff would recommend that further articulation and improved materials be applied to the exterior of the wall that screens the loading space.

Staff recognizes the conflicts and challenges that exist when the development rights of a high intensity zoning district collide with an adjacent low density single family district. On balance, staff believes that the overall scale, massing and design scheme proposed is compatible with the established character of the south side of 42nd Street, as tall office buildings, a public parking garage and a large multi-family structure flank the proposed building. Additionally, the design elements noted above help reduce the impact of the structure on the lower scaled areas to the north.

In summary, staff is confident that with further study and refinement the ground floor elevations along Sheridan Avenue and Pine Tree Drive will establish a more successful architectural relationship to the immediate streetscape. The changes to the exterior of the project suggested herein can be easily addressed administratively, as indicated in the recommendation.

VARIANCE REVIEW

Planning staff is not supportive of the requested variance and finds that, in this instance, the applicant's alleged hardship is self-imposed. The elimination of the residential liner is a self-imposed hardship since this is a completely new construction project consisting of three parcels with ample lot width and lot area. The granting of this variance would set a negative precedent since the elimination of this required active space is not supported under the Hardship Criteria.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **denied** as it pertains to the variance request and the design be **approved** subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review criteria and Practical Difficulty and Hardship criteria, as applicable.

TRM/JGM

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DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: June 7, 2016

FILE NO: 23265

PROPERTY: **340 West 42nd Street, 4100-4120 Pine Tree Drive and 301 West 41st Street**

APPLICANT: Caton Owner LLC

LEGAL: Lots 4, 5, 6, 7, 8 and 9, Block 3, 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 Approval for the construction of a new seven-story residential building including a variance to eliminate the residential or commercial use requirement for all floors of a building containing parking spaces at the ground level along every facade facing a street. This item will also require a Conditional Use application to be reviewed and approved by the Planning Board.

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 a 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, 5-9, and 16 in Section 118-251 of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-251 if the following conditions are met:
 - 1. Revised elevation, site plan and floor plan drawings for the proposed development shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. The loading zone shall not be permitted as proposed and shall be relocated in the building shell and lined with active residential uses, in a manner to be reviewed and approved by staff.

- b. The architect shall further refine the ground floor elevations adjacent to the vehicular entrances along the east and west elevations, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the direction from the Board.
- c. The applicant shall explore incorporating eyebrows above certain windows along the top residential level of the project, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the direction from the Board.
- d. Any fence or gate at the front of the property shall be designed in a manner consistent with the architecture of the new structure, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- e. The final details of the metal louvers screening the parking, 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. The architect shall redesign the drive-thru bank teller component of the project to better engage the street and create a more prominent and attractive street presence and improved vehicular entrance, 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 curb-cuts for the drive-thru bank teller along Pine Tree Drive shall be reduced to one-way (maximum width of 12 feet), in-bound and out-bound traffic only, drives in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- h. The interior walls of the first level of the drive-thru bank teller entrance, drives and interior walls, shall be fully detailed on revised plans. Such interior areas shall consist of high quality, non-stucco surface materials which have a well finished appearance commensurate with the primary façade of the building, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- i. The three parking spaces located within the access drive for the drive-thru bank teller shall be removed and relocated within the parking garage component of the project.
- j. Final details of all exterior surface finishes and materials shall be required, including the Resysta wall cladding, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

- k. 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.
 - l. 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.
 - m. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding 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 application, 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. A true "green" roof shall be incorporated that encompasses 25% of the rooftop area(s) with plant beds of sufficient size to accommodate trees and landscaping. Sufficient depth of soil shall be provided for all proposed roof deck and second level landscaping to ensure the proper health and growth of all landscape materials, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

- e. Pavers and concrete banding shall be utilized for the entire entry drives along Sheridan Avenue and Pine Tree Drive, including alternate colors of concrete banding in place of painted striping, 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 paving areas configured adjacent to the south of the garage driveway shall be eliminated and the hardscape shall be replaced with additional landscaping with the exception of a 44" wide pathway in the southern area that connects the traffic area to the sidewalk, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- g. If technically feasible, the overhead utility lines shall be relocated underground.
- h. All exterior walkways and drives shall consist of decorative pavers, set in sand or other semi-pervious material, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- i. 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.
- j. The Backflow prevention device shall not be permitted within any area fronting a street or sidewalk, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- k. Street trees shall be required within the sidewalk 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.
- l. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- m. 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.
- n. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- o. 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.

- p. 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.
- q. 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 to eliminate the residential or commercial use requirement for all floors of a building containing parking spaces at every level along every facade facing a street.~~ (Variance denied)

- B. The applicant has submitted plans and documents with the application that the Board has concluded do not satisfy Article 1, Section 2 of the Related Special Acts.

The applicant has submitted plans and documents with the application that the Board has concluded do not 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 **Denies** the Variance the requested variance(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.
 - a. The loading zone shall not be permitted as proposed and shall be relocated in the building shell and lined with active residential uses, in a manner to be reviewed and approved by staff.

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 proposed elimination of the on-street parking spaces will require the review and approval of the Parking Department. The costs associated with the removal of the parking spaces will be the responsibility of the developer.
- B. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- C. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.
- D. 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.

- E. In the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, subject to the review and approval of staff based upon the design review or appropriateness criteria, and/or directions received from the Board.
- F. 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.
- G. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- H. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- I. 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.
- J. 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.
- K. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- L. 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 Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "340 West 42nd Street", as prepared by **Arquitectonica**, dated signed and sealed April 29, 2016 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 set forth in this Order. 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 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 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 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 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), 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.

Dated this _____ day of _____, 20_____.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
DEBORAH J. TACKETT
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by Deborah J. Tackett, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

NOTARY PUBLIC
Miami-Dade County, Florida

My commission expires: _____

Approved As To Form:

City Attorney's Office: _____ ()

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

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