

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: June 05, 2018

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB18-0251

959 West Avenue—TESLA charging stations

The applicant, TESLA, is requesting Design Review Board Approval for the construction of a new FPL vault and circuitry cabinet including variances to reduce the minimum rear and side facing street setback requirements.

RECOMMENDATION:

Denial of the application

LEGAL DESCRIPTION:

Lots 8 thru 18 of Block 2 of the "Fleetwood Subdivision" according to the plat thereof filed for record and recorded in Plat Book 28 at Page 34 of the Public Records of Miami-Dade County, Florida.

HISTORY:

On February 22, 2001, the Design Review Board (DRB) reviewed and approved the construction of a five (5) story parking structure with ground floor accessory retail space, pursuant to DRB File No. 14084. On March 02, 2001, the Board of Adjustment reviewed and approved a variance application for the parking garage and was granted the following three variances, pursuant to BOA File No. 2792:

- A variance to waive ~~23.28'~~ **15.28'** of the minimum required 31.28' side yard setbacks in order to construct the above garage 8'-0" from the property line along 9th Street and 8' **16'-0"** from the property line along 10th Street (modified).
- A variance to waive 7'-0" of the minimum required 15'-0" rear yard setback in order to construct the above garage 8'-0" from the rear property line facing the alley.
- A variance to exceed by 10'-0" the maximum allowable depth of 40'-0" for commercial spaces located in garages permitted as main uses in a residential zoning district, in order to provide commercial spaces 50'-0" deep facing West Avenue.

SITE DATA:

Zoning:	RM-2 (Residential, Multifamily Low Intensity)
Future Land Use:	RM-2 (Residential, Multifamily Low Intensity)
Lot Size:	58,463SF
Retail Space:	21,000SF
Existing Spaces:	751 spaces
Proposed Spaces:	733 spaces
	18 Tesla charging spaces

Surrounding Properties:

East: One and two-story commercial/office and surface parking lots
North: Surface parking lot (Whole Foods)
South: Eight-story residential Bay Court Towers
West: Fourteen-story South Gate Towers

THE PROJECT:

The applicant has submitted plans entitled "TESLA Charging Station: 959 West Avenue", as prepared by **Tesla and GPD Group Inc.** dated, signed and sealed 04/04/18.

The applicant is proposing to install Tesla electric vehicle charging stations within the existing parking structure to accommodate the powering of eighteen (18) electric vehicles. The equipment that is associated with this project include nine (9) Tesla charging cabinets, eighteen (18) Tesla charging posts, one (1) QED switchgear assembly, two (2) sub-panels, nine (9) NLTC transformers and one (1) utility transformer. The Tesla charging cabinets, charging posts, sub-panels and NLTC transformer will all be installed within the second level of the parking structure. The utility transformer and QED switchgear are proposed to be installed outside of the parking structure near the intersection of 10th Street and the alley (Alton Court), in the northeastern portion of the subject property within the required side and rear setbacks.

The applicant is requesting the following variance(s):

1. A variance to reduce by 11'-2" the minimum required 16'-0" side facing street setback in order to construct the above ground electrical transformers and associated concrete pad at 4'-10" from the property line along 10th Street.
 2. A variance to reduce by 6'-11" the minimum required 8'-0" rear setback in order to construct the above ground electrical transformers and associated concrete pad at 1'-1" from the property line along the alley (Alton Court).
- Variances requested from:

Sec. 142-218 Setback requirements.

The setback requirements for the RM-2 residential multifamily, medium density districts are as follows:

Subterranean and Pedestal, Side Facing a Street: Lots equal or greater than 65 feet in width: Minimum 10 feet or 8% of lot width, whichever is greater, and sum of the side yards shall equal 16% of lot width.

Subterranean and Pedestal, Rear: Non-oceanfront lots: 10% of lot depth.

The applicant is proposing a 7'-8" high switchgear cabinet and 5'-10" high transformer vault within the rear and side facing street yards of the subject property. In 2001, the minimum side street setback was reduced to 16'-0" from the property line along the street side and minimum rear yard setbacks were reduced to 8'-0" from the rear property line along the alley, pursuant to BOA File No. 2792.

Staff is highly supportive of the Tesla charging stations within garages throughout the City, as they will provide greater opportunities to charge vehicles within the City. However, staff

believes that the equipment that is the subject of this variance application should be located within the interior area of the garage.

Additionally, based upon the submitted application, staff cannot conclude that the variance requests meet the minimum practical difficulties criteria for the granting of a variance. In this regard, the applicant has not substantiated why the installation of the equipment outside of the garage qualifies as a practical difficulty. The letters supplied by FPL and the property owner, the Gumenick Properties, do not substantiate this practical difficulty, nor the hardship criteria.

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** indicate the following hardship criteria, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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

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

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

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

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the following sections of the City Code, aside from the requested variances. The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

COMPLIANCE WITH DESIGN REVIEW CRITERIA:

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

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Not Satisfied; the project requires two variances.
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
Not Satisfied; the project requires two variances.
3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
Not Satisfied; the project requires two variances.
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Not Satisfied; the project requires two variances.
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Not Satisfied; the project requires two variances.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Satisfied
7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.
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 Satisfied

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.

Not Applicable

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).

Not 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.

Not Applicable

14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Not Applicable

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

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 Applicable

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 Applicable

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

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 Satisfied
- (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.

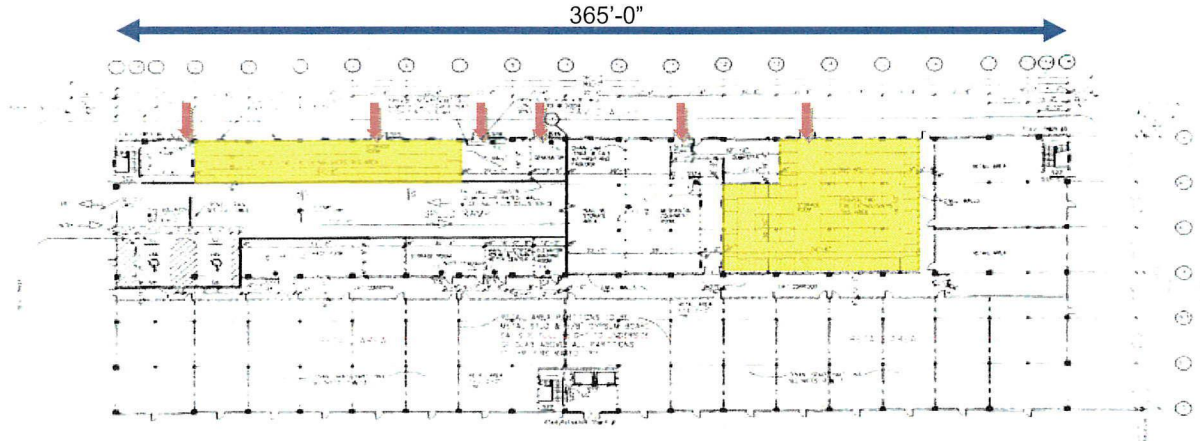
Not Applicable

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

Not Applicable

STAFF ANALYSIS:
DESIGN REVIEW

The existing building is constructed with approximately 365'-0" of linear feet abutting the alley. Along this extensive liner are two generous interior spaces, as highlighted below, which are identified as storage rooms, one measuring over 81'-0" in width and 18'-0" in depth and the other nearly a square measuring 74'-0" wide by 59'-0" deep. The applicant has an unusual amount of flexibility within the existing building to accommodate the electrical transformer within its shell without compromising interior spaces or parking stalls. As proposed, the electrical transformer and QED switchgear would be located in the limited sodded area along 10th Street that is barely 16'-0" wide. While the design does include landscape to buffer the transformer from the adjacent pedestrian sidewalk, the nearly 6'-0" cubed transformer and associated switchgear that is 7'-7" high will be difficult to conceal. Additionally, existing permeable area would be removed within a low lying area of the city.



Ground floor 959 West Avenue, permit plans B0103241

Staff recommends that the utility transformer and QED switchgear be relocated into the shell of the ground floor of the garage. Permit plans indicate multiple access doors from areas of the garage identified as "storage", "FPL vault", "fire pump room" or "storage" onto direct access to the alley via the 8'-0" wide rear yard. Furthermore, the presence of the mechanical equipment within the yards facing a street does not comply with the Design Review Criteria, as it is inconsistent with the established residential context.

VARIANCE REVIEW

As noted in the 'Project' section of the staff report, the variances requested are not the minimum necessary to make a reasonable use of the property. Staff finds that the new variance requests do not meet the practical difficulties or hardship criteria, and

recommends that the variances be **denied**.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be **denied**. However, should the Board find that the variance(s) requested 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, staff recommends that any approval of the project be subject to the conditions enumerated in the attached Draft Order which address the inconsistencies with the aforementioned Design Review criteria, Sea Level 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 05, 2018
FILE NO: DRB18-0251
PROPERTY: **959 West Avenue**
APPLICANT: TESLA
LEGAL: Lots 8 thru 18 of Block 2 of the "Fleetwood Subdivision" according to the plat thereof filed for record and recorded in Plat Book 28 at Page 34 of the Public Records of Miami-Dade County, Florida.
IN RE: The Application for Design Review Board Approval for the construction of a new FPL vault and circuitry cabinet including variances to reduce the minimum rear and side facing street setback requirements.

ORDER

The City of Miami Beach Design Review Board makes the following FINDING 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:

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 1, 2, 3, 4, 5, 7, 8, and 19 in Section 118-251 of the Miami Beach Code and the reasons set forth at the June 05, 2018 Design Review Board meeting.

IT IS HEREBY ORDERED, based upon the foregoing finding 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 recommendation, that the Application is **DENIED WITHOUT PREJUDICE** for the above-referenced project.

Dated this _____ day of _____, 20_____.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
JAMES G. MURPHY
CHIEF OF URBAN DESIGN
FOR THE CHAIR

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: June 05, 2018

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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 1, 2, 3, 4, 5, 7, 8, and 19 in Section 118-251 of the Miami Beach Code.
- C. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Sea Level Rise Criteria 7 in Section 133-50(a) of the Miami Beach Code.
- D. The project would remain consistent with the criteria and requirements of Section 118-251 and/ or Section 133-50(a) if the following conditions are met
 1. Revised elevation, site plan, and floor plan drawings for the proposed new home at 959 West Avenue shall be submitted, at a minimum, such drawings shall incorporate the following:

- a. electrical transformer and QED switchgear, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- b. 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.
- c. 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.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):
 1. A variance to reduce by 11'-2" the minimum required 16'-0" side facing street setback in order to construct the above ground electrical transformers and associated concrete pad at 4'-10" from the property line along 10th Street.
 2. A variance to reduce by 6'-11" the minimum required 8'-0" rear setback in order to construct the above ground electrical transformers and associated concrete pad at 1'-1" from the property line along the alley (Alton Court).
- 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 equipment to the adjacent roadways.
- 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 adopted by the Board, that the Application for Design Review approval 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 approved by the Design Review Board, as determined by staff, entitled "TESLA Charging Station: 959 West Avenue", as prepared by **Tesla and GPD Group Inc.** dated, signed and sealed 04/04/18, and as approved by the Design Review Board, 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 Design Review 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 Design Review Approval was granted, the Design Review Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the Design Review Approval will expire and become null and void.

Dated this _____ day of _____, 20_____.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: June 05, 2018

FILE NO: DRB18-0251

PROPERTY: **959 West Avenue**

APPLICANT: TESLA

LEGAL: Lots 8 thru 18 of Block 2 of the "Fleetwood Subdivision" according to the plat thereof filed for record and recorded in Plat Book 28 at Page 34 of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Board Approval for the construction of a new FPL vault and circuitry cabinet including variances to reduce the minimum rear and side facing street setback requirements.

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 1, 2, 3, 4, 5, 7, 8, and 19 in Section 118-251 of the Miami Beach Code.
- C. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Sea Level Rise Criteria 7 in Section 133-50(a) of the Miami Beach Code.
- D. The project would remain consistent with the criteria and requirements of Section 118-251 and/ or Section 133-50(a) if the following conditions are met
 1. The location of the utility transformer and QED switchgear shall not be permitted as proposed in the northeast portion of the site (in private property setbacks) adjacent to intersection of Alton Court and 10th Street and shall be relocated within the existing envelope of the parking garage.

2. The site plan shall be redesigned to comport with all setback requirements found within Chapter 142 of the Land Development Regulations.

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):

The following variances were **denied** by the Board:

1. A variance to reduce by 11'-2" the minimum required 16'-0" side facing street setback in order to construct the above ground electrical transformers and associated concrete pad at 4'-10" from the property line along 10th Street.
 2. A variance to reduce by 6'-11" the minimum required 8'-0" rear setback in order to construct the above ground electrical transformers and associated concrete pad at 1'-1" from the property line along the alley (Alton Court).
- B. The applicant has submitted plans and documents with the application that **DO NOT** 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.

The applicant has submitted plans and documents with the application that also **DO NOT** 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.

- C. The Board hereby **Denies** the requested variance(s), as noted and imposes the following condition 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.

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 for the above-referenced project subject to those certain conditions specified in Paragraph I and II of the Findings of Fact, to which the applicant has agreed, that the variance application is DENIED WITHOUT PREJUDICE.

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: _____
JAMES G. MURPHY
CHIEF OF URBAN DESIGN
FOR THE CHAIR

