

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: November 06, 2018

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB18-0332
4747 North Bay Road

DRB18-0332, 4747 North Bay Road. The applicant, GaGa Holdings 4747 Joint Trust, is requesting Design Review Approval for the construction of a new two-story single-family residence to replace an existing two-story architecturally significant pre-1942 residence including a variance to reduce the required rear setback in order to construct a pool and deck at a higher elevation than allowed.

RECOMMENDATION:

Continue to a future date

Denial of the variance.

LEGAL DESCRIPTION:

Lot 8 and the south half of Lot 7, Block 3 of Nautilus Subdivision of the Miami Beach Bay Shore Co., According to the Plat Thereof, as Recorded in Plat Book 8 at Page 95, of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Zoning: RS-4
Future Land Use: RS
Lot Size: 9,000 SF
Lot Coverage:
Existing: 2,984 SF / 33%
Proposed: 2,155.5 SF / 23.9%
Maximum: 2,700 SF / 30%

Unit size:
Existing: 3,132 SF / 35%
Proposed: 3,983.5 SF / 44.2%
Maximum: 4,500 SF / 50%
2nd Floor Volume to 1st: **N/A**

Height:

Proposed: 24'-0" flat roof
Maximum: 24'-0" flat roof
Grade: +4.0' NGVD
Base Flood: +8.00' NGVD
Adjusted Grade: +6.0' NGVD
30" (+2.5') Above Grade: +6.5' NGVD
First Floor Elevation: +13.00' NGVD (BFE +5')

SURROUNDING PROPERTIES:

North: Two-story 1930 residence
South: Two-story 1933 residence
West: Two-story 1929 residence
East: One-story 1956 residence

EXISTING STRUCTURE:

Year: 1926
Contractor: Gano
Vacant: No
Demolition: Total

THE PROJECT:

The applicant has submitted plans entitled "4747 Residence" as designed by **Domo Architecture + Design**, signed, sealed, and dated September 07, 2018.

The applicant is proposing to construct a new two-story residence on an interior lot that will replace an existing two-story architecturally significant pre-1942 residence, including a variance from the required rear setback to construct a pool, deck and raised lawn at a higher elevation than permitted.

The applicant is requesting the following variance(s):

1. A variance to reduce by 12'-6" the minimum required rear setback of 20'-0" in order to construct a two-story residence with an elevated pool, deck and raised lawn at 7'-6" from the rear property line.

- Variance requested from:

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

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

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

Pools and associated pool decks are commonly located in the required rear yards of single-family residences at a setback distance of 6'-0" to the rear property line for the deck and 7'-6" to the water's edge for interior, dry lots when elevated at a height no greater than adjusted grade. The applicant is requesting a variance from the required rear setback to construct a pool, deck and raised lawn at a higher elevation than allowed. This variance is related to the elevated pool deck and raised lawn along the rear of the site within the required rear yard (20'-0") when it is located at a greater elevation than adjusted grade. For waterfront properties, the required rear yard can be elevated up to the proposed elevation of the new finished floor of the residence (including maximum freeboard); however, for single family properties with abutting rear yards, the minimum and maximum elevation is 6.56' NGVD in order to mitigate the impact of new construction on the adjacent properties. The project proposes a pool elevated up to 12.5' NGVD, which is 6" lower than the elevated residence's first floor and approximately 6'-0" higher than the maximum height allowed and a raised lawn elevated up to 10.5' NGVD, approximately 4'-0" above the maximum elevation allowed, is also proposed. The Code allows variance requests for additional height up to 3'-0". Because the structures exceed more than 3'-0" in height, a rear setback must be analyzed for the elevated pool structure as would pertain to the principal structure. Staff cannot find any practical difficulties associated with the variance request and, if approved the structures may likely have a negative impact on the abutting property. As such, staff recommends **denial** of the variance request.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

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.

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. Section 142-105(b)(8)b1. The proposed project does not comply with the minimum yard elevations required.
2. Section 142-105(b)(5)c. Lot coverage calculations shall be revised. The SF area of outdoor kitchen counts towards the lot coverage calculation for the project.

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; applicant is seeking a rear yard variance.
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; applicant is seeking a rear yard variance.
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; applicant is seeking a rear yard variance.
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; applicant is seeking a rear yard variance.
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; applicant is seeking a rear yard variance.
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; applicant is seeking a rear yard variance.
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.
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.
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 Satisfied; a lighting plan has not been submitted.
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).
Not Satisfied; applicant is seeking a rear yard variance.
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.
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 Satisfied
A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department.
2. Windows that are proposed to be replaced shall be hurricane proof impact windows.
Satisfied
3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied
4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Satisfied
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.
Satisfied
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.
Satisfied
7. Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
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 Satisfied; as part of the civil engineering design to be provided at time of permit.

STAFF ANALYSIS:

DESIGN REVIEW

The applicant is proposing to construct a new two-story residence that will replace an existing pre-1942 architecturally significant one-story residence. The proposed elevated 2-story residence will be designed in a contemporary style with a warm color palette and complimentary materials of stone, lime finish stucco, and metallic elements. The overall design depicts a residence with unique architectural style that is quickly gaining in commonality as more architects configure coastal residential structures in a more resilient manner. And while the proposed residence is elevated at BFE + maximum freeboard, +13.00' NGVD, the structure complies with all of the Code requirements for open space, lot coverage, and unit size requirements; in fact the proposed residence contains a unit size of 44.26% and lot coverage of 23.95%. However, one variance is requested as part of the application.

Currently, single-family districts have a maximum height limit measured in feet from base flood elevation plus allowable freeboard (maximum of BFE plus five feet). Additionally, the RS districts have a story limit of two habitable floors above base flood elevation plus allowable freeboard.

As more new residences in the City are expected to be built well above existing grade in all RS districts and in some cases older or historic residences may be raised as well, further study of the current regulations limiting the height of allowable 'non air-conditioned' space has been undertaken. In this regard, factors such as the future raising of roads and sidewalks, the relationship of allowable non air-conditioned space to elevated yards and the need to provide tangible transition spaces in order to access the main level of a residence, have been taken into consideration.

The City Commission recently adopted the "understory ordinance", which includes modifications to the single-family regulations regarding non-air-conditioned 'understory space', created by new, elevated single-family residences. Prior to this, when the first habitable level of a residence is more than six feet above grade, due to minimum base flood elevation and freeboard requirements, the RS district regulations permit 'non air-conditioned space' below the first habitable floor. Currently, this non air-conditioned space is limited to a maximum interior height of 7'-6", and is not counted toward the overall height limit of the building in feet, nor is it counted in allowable unit size. Additionally, up to, but not exceeding, 600 square feet may be used for parking cars. When originally adopted in 2014, this provision was only applicable to the lowest areas of the City, as the overall height of a residence was measured from base flood elevation. Now that single family residence height is measured from BFE plus up to 5 feet of additional freeboard, there have been increasing instances where one- and two-story residences are being located above allowable 'non air-

conditioned space’.

Absent this ‘non air-conditioned space’ below the first habitable level, a residence owner proposing BFE + 5’ for new construction would be forced to use fill and place a new residence on top of a large, elevated berm. While such an approach is permitted, it may create environmental, water retention, drainage and water run-off issues that would affect the site, the neighboring properties and adjacent rights of way. Further, to incorporate the rear yard at an equivalent height, while permitted for waterfront properties without concern of adjacent rear neighbors, will result in architectural and compatibility issues with the built context of the surrounding area. In this regard, staff recommends redesign of the rear yard area.

The new two-story residence is designed in a contemporary architectural style. The front elevation is highlighted with skewed geometric rectangles framed predominately with white stucco that contrast against the warm coral stone cladding. Overall, staff is supportive of the general design of the residence, but does have a significant concern with the rear ground floor elevation. Staff maintains that the architect has presented a “missed opportunity” in showcasing a resilient design with forward thinking program and environmental concerns but falls short in other design features, most notably the height of the rear yard and the large amounts of “fill” for the site. The recently adopted “incentive ordinance” may prove to be a beneficial zoning tool for this design that is currently floating somewhere between the new and old methodology of contemplating the location of single-family residences and their relationship with the ground plane.

Staff recommends that the design of the replacement home be continued to a future meeting date in order to allow for the applicant to refine the rear yard of the home, which may result in an overall reconfiguration of the residence and its relationship to the site.

VARIANCE ANALYSIS:

As noted in the ‘Project’ section of the staff report, the variance request is not the minimum necessary to make a reasonable use of the property, as it is associated with the proposed design of the residence. The applicant is requesting a variance to construct a pool, deck and raised lawn higher than the maximum elevation permitted for allowable structures in the rear yard. The maximum elevation in required yards is determined by two site elevations: CMB grade for the lot and base flood elevation. The relationship between these points results in higher or lower yard elevations. The Code has an established minimum yard elevation of 6.56’ NGVD in required yards of single family districts with the exception of driveways and transition areas. In this instance, because the site is not waterfront and grade elevation for the site is relatively low at 4.0’, the minimum and maximum elevation required in the rear yard is the same at 6.56’ NGVD. The elevation of the first floor is proposed at the maximum elevation allowed of 5’-0” above flood elevation. The existing grade at the front is 4.0’ NGVD and the finish floor of the residence is at 13.0’ NGVD. The pool is proposed slightly below the first finish floor and the lawn about 2’ below the finish floor. The water surface of the pool and lawn will be at a higher elevation than the maximum height of 7’-0” from grade required for an interior and rear fence. Therefore, the entire structure can be potentially visible from the adjacent properties. This type of scenario is only allowed on waterfront properties, not for interior lots.

Considering that the site contains a lot area of 9,000 SF which is larger by 50% than most

lots in the RS-4 district (minimum lot area of 6,000 SF) a new two-story structure complying with the underlying zoning regulations may be successfully designed without variances. The raised pool and lawn is a self-imposed condition based on the applicant's design and does not satisfy the practical difficulties or hardship criteria for the granting of a variance. Therefore, staff recommends **denial** of the rear setback variance.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the application be continued to a future date, in order to substantiate the practical difficulty and hardship criteria. In the event the Board find that the variance request satisfies 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 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/IV

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DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: November 06, 2018

FILE NO: DRB18-0332

PROPERTY: **4747 North Bay Road**

APPLICANT: GaGa Holdings 4747 Joint Trust.

LEGAL: Lot 8 and the south half of Lot 7 , Block 3 of Nautilus Subdivision of the Miami Beach Bay Shore Co., According to the Plat Thereof, as Recorded in Plat Book 8 at Page 95 of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for the construction of a new two-story single-family residence to replace an existing two-story architecturally significant pre-1942 residence including a variance to reduce the required rear setback in order to construct a pool and deck at a higher elevation than allowed.

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, 6, 9, 12, 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 1 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 new home at 4747 North Bay Road shall be submitted, at a minimum, such drawings shall incorporate the following:

- a. The residence shall be designed to comply with the rear setback requirements.
 - b. The required rear yard shall be redesigned to comply with the 70% open space requirement.
 - c. All required yards shall comply with the minimum yard elevations.
 - d. The stone cladding proposed along the façades of the residence shall consist of a natural keystone or other natural stone, 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 design details and color selection of the vertical “ornamental wood” cladding proposed finish 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 final design details of the exterior materials and finishes 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
 - g. 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.
 - h. 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 plans 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 plans shall comply with Chapter 26-Landscape Requirements of the Miami Beach Code and 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. Prior to any site demolition work, a tree protection fence following the City standard shall be installed for trees scheduled to remain subject to the review and approval of the City Urban Forester.
- d. Any necessary root and tree branch pruning with a diameter at breast height (DBH) of 2" or greater shall be approved by the City Urban Forester prior to any tree work.
- e. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.
- f. 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.
- g. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.
- h. Street trees shall be required within the swale 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.
- i. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- j. 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.
- k. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- l. 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.

- m. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right-of-way shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
- n. 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 reduce by 12'-6" the minimum required rear setback of 20'-0" in order to construct a two-story residence with an elevated pool, deck and raised lawn at 7'-6" from the rear property line.
- 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)**, and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.
2. The structure shall be redesigned to comport with all of the required setbacks.

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. 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.
- B. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board, and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.
- C. During construction work, the applicant will maintain gravel at the front of the construction site within the first 15'-0" of the required front yard to mitigate disturbance of soil and mud by related personal vehicles exiting and entering the site, and with an 8'-0" high fence with a wind resistant green mesh material along the front property line. All construction materials, including dumpsters and portable

toilets, shall be located behind the construction fence and not visible from the right-of-way. All construction vehicles shall either park on the private property or at alternate overflow parking sites with a shuttle service to and from the property. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.

- D. If applicable, a Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- E. A recycling/salvage plan shall be provided as part of the submittal for a demolition/building permit, in a manner to be reviewed and approved by staff.
- F. All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street.
- G. 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.
- 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 Finding of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "4747 Residence" as designed by **Domo Architecture + Design**, signed, sealed, and dated September 07, 2018, 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.

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

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

The foregoing instrument was acknowledged before me this _____ day of _____ 20____ by James G. Murphy, Chief of Urban Design, 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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