

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: January 02, 2019

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: DRB18-0341
2324 North Bay Road

An application has been filed requesting exterior design modifications to a previously issued Design Review Approval for the construction of a new second floor addition to an existing two-story residence including one or more waivers and variances to reduce the required interior side and sum of the side setbacks requirements.

RECOMMENDATION:

Approval with conditions

Approval of the variances

HISTORY:

On July 06, 2010, the Design Review Board reviewed and approved a new two-story residence, pursuant to DRB File No. 22823. Plans and construction were approved for a new single family two-story residence pursuant to building permit B1100165.

LEGAL DESCRIPTION:

Lot 2 of Block 12 of Sunset Lake Subdivision Amended Plat, as Recorded in Plat Book 8, Page 52, of the Public Records of Miami-Dade County, Florida.

SITE DATA:

Folio: 02-3227-008-0680

Zoning: RS-2

Future Land Use: RS

Lot Size: 20,000 SF

Lot Coverage

Approved: 6,800 SF / 34%
5,684 SF / 28.5%

Proposed: no change 34%

Maximum: 6,000 SF / 30%

Unit size:

Approved: 7,400 SF / 37%

Proposed: 9,981 (49.9%)

Maximum: 10,000 SF / 50%
2nd Floor Volume to 1st: 98% **5371/5234**
***DRB waiver**

Height:

Approved: 13'-4" flat roof

Proposed: 26'-4" flat roof

Maximum: 28'-0" flat roof

Surrounding Properties:

North: Two-story 2000 residence

South: Two-story 2009 residence

West: Biscayne Bay

East: Two-story 1925 residence

THE PROJECT:

The applicant has submitted plans entitled "2324 North Bay Rd", as prepared by **Choeff Levy Fischman Architecture + Design** dated 08/03/18.

The applicant is proposing an new second floor addition to an existing one-story portion of an existing two story residence.

The applicant is requesting the following design waiver(s):

1. The second floor's physical volume exceeds 70% of the first floor in accordance with Section 142-105(b)(4)(c).
2. A two-story side elevation in excess of 60'-0" in length in accordance with Section 142-106(2)(d).
3. A modification of the existing side open space in accordance with Section 142-106(2)(d).

The applicant is requesting the following variance(s):

1. A variance to reduce up to 7" the required interior side (north) setback of 12'-6" in order to retain the existing side setback at the ground floor and construct a second-floor addition up to 11'-11" on the north side of the existing building.
2. A variance to reduce up to 7" the required sum of the side setback of 25'-0" in order to retain the existing sum of the side setbacks and construct a second-floor addition and provide a sum of the side setbacks of 24'-5".

- Variances requested from:

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

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

(2) Side yards:

a. The sum of the required side yards shall be at least 25 percent of the lot width.

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

The applicants are requesting two variances specific to the new second floor addition that is proposed above an existing one-story portion with nonconforming setback distances. Variance requests #1 and #2 are triggered by a construction error that resulted in an irregular setback at the north side. According to the building permit plans B1100165, the residence was designed complying with all zoning requirements, including side and sum of the side setbacks. The two-story residence was sited balanced in the 100'-0" wide waterfront side with 12'-6" side setbacks at both sides.

Upon review of the current survey, submitted as part of this application, it was revealed that the house was constructed slightly closer on the northwest corner to the north property line than what was shown on the approved plans, and not complying with the minimum side setback of 12'-6". Consequently, any second-floor addition to this portion of the residence requires a variance to retain and build onto the nonconforming setback. Staff would also note that the opposite corner at the southwest corner exceeds the required setback of 12'-6", as it is setback 13'-11". However, for zoning analysis, the sum of the side setbacks is the result of adding the closest setback on both sides, which in this case results in a deficit of 7".

The applicant is proposing to add onto the existing one story portion of the residence on the

north side with an irregular setback ranging from 11.93' to 12.39' (where 12.5' is required). In this instance, staff finds that the existing site conditions, location of the structure and the construction error create the practical difficulties that justify the variances. As such, staff recommends approval of the variance requests.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

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

Additionally, staff has concluded that the plans and documents with the application 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.

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.

- The proposed addition may result in a residence that exceeds unit size. New addition may need to be reduced. Total unit of 10,000SF cannot be exceeded.
- A-2.1 (revised) Unit size must include Covered areas exceeding 10'-0" from the building walls count in unit size. Area of open terrace exceeding 10'-0" in the rear

counts in unit size and open area with floating steps surrounded by water that exceeds 10'-0" from the walls counts in unit size. Stair at the roof counts in unit size.

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 be found 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 applicant is requesting two (2) variances and three (3) waivers from the Board.
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 applicant is requesting two (2) variances and three (3) waivers from the Board.
4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.
Not Satisfied; the applicant is requesting two (2) variances and three (3) waivers from the Board.
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 applicant is requesting two (2) variances and three (3) waivers from the Board.
6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.
Not Satisfied; the applicant is requesting two (2) variances and three (3) waivers from the Board.

7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.

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).

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.
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 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 comply with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.
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 Satisfied
- (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.
Not Applicable
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Not Applicable
- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.
Not Applicable
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

Not Applicable

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

Not Applicable

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

Not Applicable

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Not Applicable

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

Not Satisfied

STAFF ANALYSIS:

DESIGN REVIEW

A two-story residence was constructed on the subject property pursuant to Permit No. B1100165 and in accordance with the approved plans by the DRB on July 06, 2010, pursuant to DRB File No. 22823. The waterfront site contains 20,000 SF of lot area and the residence was finished in 2011 containing a footprint of 4,200 SF, which translates to a lot coverage of 28.5% and unit size of 7,400 or 37%. The recorded final order for the DRB approval does not bind the residence to these lower thresholds. The design also requires two (2) variances and three (3) waivers to be sought from the Board.

Since the original construction, the City's single family zoning regulations have undergone multiple revisions and modifications, including the measurement as to how lot coverage is calculated. The code now requires that any exterior area facing a front or rear property line that is contained by three contiguous walls must have that square footage be counted towards the overall lot coverage, as open air courtyards. Although approved and constructed with a lot coverage of 28.5%, due to this 2014 code change the existing lot coverage would now be calculated at 34%. The proposal does not alter this number, as the proposed addition goes directly over the existing first floor and exterior areas that been taken into consideration when calculating the lot coverage. The applicant is proposing a new, 2,127 SF second floor addition over the existing one-story portion on the north side of the residence and a new elevator is also proposed, internal to the property.

The first design waiver pertains to the second floor to first floor ratio. Since the proposed home has a lot coverage that under today's code is 34%, the volume of the second floor is limited to 70% of the first floor, unless a waiver is approved by the DRB. While this section of the City's single family regulations was not adopted at the time of the original construction, for analysis purposes, the second floor currently is configured to the first floor by 60%. With the addition of a 2,127 SF second floor addition to the one-story portion of the residence, this ratio increases to 97%. Staff believes that the greater 2nd to 1st floor ratio request proposed is commensurate with the style and design of the home and will not be visible from the right-of-way since the addition will be obscured by the existing two-story residence. Further, the additional bedrooms will be less impactful to the neighboring property to the north since it will replace an existing outdoor flat roof area that could

potentially be used as a recreational sundeck. Staff does recommend eliminating the balcony/walkway that projects and extends into the required side setback at the second level as it may impact the privacy of the abutting property. With this modification, staff is supportive of this requested waiver.

The applicant is also requesting a waiver of the open space requirement for two-story elevations that exceed 60'-0" in length. Currently the one-story portion of the residence contains the three car garage separated by a side open space yet connected by an enclosed hallway to the guest quarters, laundry and large kitchen and dining area. In all, the proposed second floor addition will require two waivers for the uninterrupted lengths.

The first portion of the open space waiver pertains to the proposed new addition along the western side that will span uninterrupted 79'-8" in length, which includes a 5'-6" balcony facing Biscayne Bay. The architect has designed the volume with sliding doors that open onto an outdoor walkway overlooking the neighboring property and within the nonconforming side setback. As previously mentioned, staff recommends the complete removal of the outdoor walkway component of the second floor within the side setback in order to minimize any potential negative impact on the neighbor, or at least to reduce the encroachments to multiple, independent smaller balconies. The applicant has met with the abutting property owner to the north to discuss the design proposal and has submitted documentation identifying neighbor support. Given that the original construction was initially prepared for a second floor addition in this location and that there are limited areas in which to place any additions without triggering lot coverage variances, staff recommends approval of the waiver.

The first portion of the open space waiver pertains to the area proposed above the three car garage and all of the existing improvements within the existing one-story open space courtyard. The second-floor connection would require this open space to be modified to comport with all of the requirements of Section 142-106(2)(d) including but not limited to the area being 70% landscaped. The existing conditions of the area are 100% paved and programmed with a generator and AC equipment. Staff is supportive of the waiver for this portion of the open space.

Without seeking a variance for lot coverage, the architect's sole option of increasing the habitable square footage of the residence is to build upon one-story areas of the structure so as to not increase the footprint. The neighboring property to the north, the only property that would be impacted, was built in 2000 (building permit number B9803873) without DRB review. The neighboring structure is designed in a manner intended to reflect a Mediterranean Revival style of architecture with multiple roof lines, and articulated façades. The 30,000 SF site was designed with a residence that is sited compactly towards the front of the site and provides an expansive rear yard with a regulation sized basketball court sited to the south portion of the site. The new second floor addition will most affect this outdoor amenity. The proposed height of the new addition will extend the 13'-0" high one-story portion to 26'-4", nearly 2'-0" under the allowable 28'-0" allowance for two story structures in the RS-2 district.



In this instance, staff is supportive of the two design waivers along the north side elevation with all of the proposed staff modifications and maintains the approval will not have an adverse impact on the neighboring property. Staff recommends that the design of the addition be approved, including the all of the requested design waivers and variances.

VARIANCE ANALYSIS:

As identified under the 'Project' description of the analysis, the variances being requested pertain primarily to the retention of the nonconforming setback in portions of the existing single-family residence and the construction of a floor above following the existing building walls below. The applicant is requesting two associated setback variances that staff is supportive as the portion with reduced setback was built incorrectly and the new construction vertically adds onto the nonconforming walls.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends **approval** of the design and variances subject to the following conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review criteria, Sea Level Rise criteria, and Practical Difficulty and Hardship criteria, as applicable.

TRM/JGM/IV

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: January 02, 2019

FILE NO: DRB18-0341

PROPERTY: **2324 North Bay Road**

APPLICANT: E. Isaias

LEGAL: Lot 2 of Block 12 of Sunset Lake Subdivision Amended Plat, as Recorded in Plat Book 8, Page 52, of the Public Records of Miami-Dade County, Florida

IN RE: An application requesting exterior design modifications to a previously issued Design Review Approval for the construction of a new second floor addition to an existing two-story residence including one or more waivers and variances to reduce the required interior side and sum of the side setbacks 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 2, 3, 5, 6, 9, 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. A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department, in a manner to be reviewed and approved by staff.

2. Revised elevation, site plan, and floor plan drawings for the proposed new home at 2324 North Bay Road shall be submitted, at a minimum, such drawings shall incorporate the following:
 - a. The maximum unit size shall not exceed 10,000 SF.(50% of the lot area).
 - b. The 70% limitation for the second floor volume shall be waived as proposed.
 - c. The (north) side open space requirement shall be waived as proposed.
 - d. The proposed balcony/walkway at the second level within the (north) side yard shall be eliminated.
 - e. Any proposed outdoor balcony facing westward along the new addition shall have a privacy wall along the north side.
 - 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.
3. A revised landscape plan, and corresponding site plan, shall be submitted to and approved by staff. The species, type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
 - a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. 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 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.

- d. 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.
- e. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.
- f. 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.
- g. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- h. 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.
- i. The utilization of root barriers and Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- j. 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.
- k. 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.
- l. 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 up to 7" the required interior side (north) setback of 12'-6" in order to retain the existing side setback at the ground floor and construct a second floor addition up to 11'-11" on the north side of the existing building.
2. A variance to reduce up to 7" the required sum of the side setback of 25'-0" in order to retain the existing sum of the side setbacks and construct a second floor addition and provide a sum of the side setbacks of 24'-5".

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 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 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 **Approves** the Variance requests 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. 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.
- B. 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.
- C. 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.
- D. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.

- E. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- F. 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.
- G. 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.
- H. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- I. Nothing in this order authorizes a violation of 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 "2324 North Bay Rd", as prepared by **Choeff Levy Fischman Architecture + Design** dated 08/03/18, 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

Dated this _____ day of _____, 20_____.

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

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.

Approved As To Form:

City Attorney's Office: _____ ()

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