

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: March 05, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: DRB18-0335
6800 Indian Creek Drive

DRB18-0335, 6800 Indian Creek Drive. An application has been filed requesting design modifications to a previously issued Design Review Approval for the construction of a new twelve-story (140' high) multi-family building on a vacant site including variances to eliminate the residential or commercial use requirement for all floors of a building containing parking spaces at the ground level along every facade facing a street and a variance to reduce the required pedestal front setback for a stair and associated railings. Specifically, new variances are requested to eliminate the required residential use at the ground level when parking is provided facing the waterway and to eliminate the required loading space.

RECOMMENDATION:

Approval of the variance

LEGAL DESCRIPTION:

Lots 35-37 of Block 3, of "2 Oceanfront Amended No.3", according to Plat thereof as recorded in Plat Book 28, Page 28, of the Public Records of Miami-Dade County, Florida.

HISTORY:

On January 15, 2016, the Design Review Board reviewed and approved a new twelve-story (140' high) multi-family building on a vacant site, pursuant to DRB 23194. At the December 01, 2015 DRB meeting, the Board granted a requested variance to eliminate the active residential use requirement at the ground level along every facade facing the street for the portion of the building containing parking spaces. The Board accepted the applicant's landscaped "mound" design that screened the partially-subterranean parking level.

In doing so, any proposed entrance stairs or planters that were configured in the front yard needed to achieve a higher elevation than typically found within required front yards in order to clear the mound and meet the ground plane of the building. On March 01, 2016, the DRB approved modifications to the exterior ground level of the project, including variances from the front setback requirements, to increase and expand the stairwells and create a more inviting and pedestrian-friendly front yard through the introductions of larger walkways, steps, and planters in the front yard.

On February 05, 2019, the Design Review Board reviewed modifications to the previously approved plan that included two variance requests –to allow for a loading space to not be enclosed, and to eliminate the residential liner component along the rear waterfront facing facade. The Board approved the loading space variance and continued the liner component to the March 05, 2019 meeting in order for the applicant to further refine the proposal.

SITE DATA:

Zoning: RM-2
Future Land Use: RM-2
Lot Size: 48,273 SF
Approved FAR: 95,420 SF (2.0)
Approved Height: 140'-0" / 12-Story (Highest Projection: 163'-0")
Proposed Height: 137'-6" (measured from 13.0' NGVD)
Residential Units: 30 units approved | **39 units proposed**
Parking: 66 spaces approved | **66 spaces proposed***
(6 Guest Spaces) approved | **(9 Guest Spaces) proposed, 9 required**

***no change due to revised parking ordinance for RM1 and RM2 properties**

Loading spaces: 0 approved | **0 proposed, 1 required VARIANCE GRANTED 02/05/19**
LT Bicycle Parking: 34 approved spaces | **34 proposed, 39 required**

Grade: +5.76' NGVD

Flood: +8.00' NGVD

Difference: 2.24' NGVD

Adjusted Grade: +6.88' NGVD

Lobby Floor Elevation:

Approved: +9.00' NGVD (BFE +1' fb) LOWER | +14.00' NGVD (BFE +5' fb + 1') UPPER

Proposed +9.00' NGVD (BFE +1' fb) LOWER LOBBY | +14.00' NGVD (BFE +5' fb + 1') UPPER LOBBY

+14.00' NGVD (BFE +5' fb + 1') RESIDENTIAL | +14.00' NGVD (BFE +5' fb + 1') UPPER LOBBY

SURROUNDING PROPERTIES:

East: Eight-story Residential Building
North: Ten-story Residential Building
South: Fifteen-story Residential Building
West: Indian Creek Canal

THE PROJECT:

The applicant has submitted plans entitled "6800 Indian Creek Drive: Revised for Submission", as prepared by **Arquitectonica** dated, signed, and sealed 02/11/2019.

The applicant is proposing the elimination of a lower ground floor component at the rear of the lobby / gym spa area, which served as the required active liner along Indian Creek. Additionally, the applicant is seeking the elimination of a loading space resulting with the interior reconfiguration of 9 additional units.

The applicant was granted the following variance on February 05, 2019:

1. A variance to eliminate the requirement to provide one (1) off-street loading space for a residential building or hotel building over 36 units but not more than 50 units.

The applicant is requesting the following variance:

1. A variance to eliminate the residential or commercial use requirement at the first floor of a building containing parking spaces along a facade facing the waterway.

- Variance requested from:

Sec. 142-219. - Regulations for new construction

In the RM-2, residential district, all floors of a building containing parking spaces shall incorporate the following:

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

This variance pertains to the elimination of active uses at the first level along the waterfront facade. The prior version of the submitted plans proposed the raising of the structure in its entirety along Indian Creek from an interior floor elevation of 9' NGVD (BFE +1 fb) to +14.00' NGVD (BFE +5' fb + 1'). This would create a "flush" level, as the front facing portion of the lobby space is already elevated at this level. Staff had very serious concerns with the precedent that this type of request would establish for future developments, specifically for buildings fronting on waterways, since the proposed modification would result in a solid wall, almost 9'-0" in height along the bay walk at the back of the property. At the February 05, 2019 meeting, the Board affirmed staff's concerns and continued this portion of the application to the March 05, 2019 meeting with direction to modify the request and retain portions of the areas at the previously approved elevation of 9.0' NGVD, except for the residential unit space.

Revised plans include the portion of the rear façade containing the lobby to remain at the approved condition, including the habitable liner, and will remain located at BFE +1 (9 NGVD). The portion of the first floor containing the residential unit facing Indian Creek will be raised to BFE +6 (14 NGVD). The residential unit is located in the northwest corner of the site and wraps around the curvilinear base of the tower. The revised plans still include 120'-0" of the ground floor linear rear frontage along the canal that successfully screens the parking level, while the elevated residential unit spans approximately 60'-0" in width. The revised request is for a lessening of only 1/3 of the active liner. Further, the applicant has revised the Bay walk area and expanded the amenity from the previously approved status of 10'-0" in width to 12'-0"-15'-0" and added a waterside buffer zone that includes added greenspace in order to further mitigate the portion of the liner that will be raised to the higher finished floor elevation. With these modifications, staff recommends approval of variance #2.

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.

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.
- The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

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:

1. The total number of required bicycle parking spaces has increased to 39. 34 spaces are proposed. **39 spaces are required. A variance is required NOT REQUESTED.** Zoning information note that 43 racks are provided, but the location is not indicated on plans.

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.
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 project requires one 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; the project requires one 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.
Satisfied
5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.
Not Satisfied; the project requires one 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; the project requires one 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.
Not Satisfied; the project requires one variance.

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; lighting plans not included
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; the project requires one 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.
Not Satisfied; Residential uses are required at the first level along every facade facing a street, sidewalk or waterway.
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).
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 Satisfied; Residential uses are required at the first level along every facade facing a street, sidewalk or waterway.
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.

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.

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.

Satisfied

- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 126 of the City Code.

Satisfied

- (5) The project applicant shall consider the 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. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.

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 and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.

Satisfied

- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.

Satisfied

- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.

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) In all new projects, water retention systems shall be provided.

Not Satisfied

- (11) Cool pavement materials or porous pavement materials shall be utilized.

Not Satisfied

- (12) The project design shall minimize the potential for a project causing a heat island effect on site.

Not Satisfied

STAFF ANALYSIS:

DESIGN REVIEW

The project was originally approved by the Design Review Board on January 15, 2016 (DRB 23194) for a new twelve-story (140' high) multi-family building on a vacant site including variances from the required front setback and to eliminate the residential use liner requirement along the street side of the project. A public baywalk has been proffered as part of the development and has been approved by the Biscayne Bay Shoreline Development Review Committee, pursuant to B2016000003.

Staff's major design concern with the proposed revision pertains to the requested elimination of the active liner along the waterway. The original design of the building incorporated a two-tiered lobby component, consisting of a ground level with a finished floor at nine feet (9') NGVD (BFE +1) and the upper lobby level with a finished floor at 14' NGVD (BFE +6). This was originally arranged and configured in order to accommodate the raised parking mound with semi-subterranean parking, while still adhering to the code regulation requiring parking levels to be screened with an active use component along the street and waterway façades.

As previously mentioned, the applicant submitted revised plans that address staff and Board concerns. The revised plans still include 120'-0" of the ground floor linear rear frontage along the canal that successfully screens the parking level, while the elevated residential unit spans approximately 60'-0" in width. The revised request is for a lessening of only 1/3 of the active liner. As noted in the letter of intent, the portion of wall facing the waterway and containing the residential unit 'will be attractively configured with a combination of landscaping and structural elements which complement the building design and enhance the appearance of the rear of the structure'. Although the finish details of the wall were not provided, staff is confident that a successful treatment can be approved administratively at

the time of the building permit. With this condition, staff recommends the approval of the modifications.

VARIANCE REVIEW

As outlined in the 'Project' section of this report, staff recommends approval of the variance pertaining to the proposed modifications to the rear waterfront facing ground floor façade. The elimination of the residential liner is for a reduced portion of the building and additional treatment will be provided to enhance the appearance of the higher façade as seen from the bay walk. As proposed, the building will reduce sea level rise impact in the future and contribute to higher resiliency in the area. In summary, staff recommends approval of the variance.

RECOMMENDATION:

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

TRM/JGM/IV

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: March 05, 2019

FILE NO: DRB18-0335

PROPERTY: **6800 Indian Creek Drive**

APPLICANT: 6800 Indian Creek LLC

LEGAL: Lots 35-37 of Block 3, of "2 Oceanfront Amended No.3", according to Plat thereof as recorded in Plat Book 28, Page 28, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for the construction of a new twelve-story (140' high) multi-family building on a vacant site including variances to eliminate the residential or commercial use requirement for all floors of a building containing parking spaces at the ground level along every facade facing a street and a variance to reduce the required pedestal front setback for a stair and associated railings. Specifically, new variances are requested to eliminate the required residential use at the ground level when parking is provided facing the waterway and to eliminate the required loading space.

SUPPLEMENTAL 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, 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 the Sea Level Rise Criteria 10, 11, and 12 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. All of the original conditions of approval by this Board shall remain in full force and effect under the prior Final Orders dated February 05, 2019 for DRB18-0335 except as modified herein.
2. Revised elevation, site plan, and floor plan drawings for the proposal at 6800 Indian Creek Drive shall be submitted, at a minimum, such drawings shall incorporate the following:
 - a. The raised floor elevation of the residential component along the rear of the property at the ground level shall be approved as proposed.
 - b. The final details of the exterior surface finishes and materials, including samples, of the wall facing the Baywalk, specifically the portion containing the residential unit, shall be submitted at the time of the building permit, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - c. 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.
 - d. 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):

The following variance(s) were **approved** by the Board:

1. A variance to eliminate the residential or commercial use requirement at the first floor of a building containing parking spaces along a facade facing the waterway.
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, as noted above 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, 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 #1, as noted 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 comply with the long term bicycle parking requirements of the City Code.
- B. The applicant shall comply with the electric vehicle parking requirements, pursuant to Sec. 130-39 of the City Code.
- C. Where one or more parcels are unified for a single development, the applicant 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.
- 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 "6800 Indian Creek Drive: Revised for Submission", as prepared by **Arquitectonica** dated, signed, and sealed 02/11/2019, and as approved by the Design Review Board, as determined by staff.

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

