

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: October 13, 2020

FROM: Thomas R. Mooney, AICP  
Planning Director

SUBJECT: HPB20-0422, **828 4<sup>th</sup> Street.**

An application has been filed requesting a Certificate of Appropriateness for the partial demolition, renovation and restoration of the existing home, the construction of a garage addition, one or more waivers and variances to reduce the front setback, the rear setback for a pool and variances to exceed the maximum allowable projection for a roof overhang.

#### **STAFF RECOMMENDATION**

Approval of the Certificate of Appropriateness with conditions  
Approval of the variances with conditions

#### **EXISTING STRUCTURE**

Local Historic District:	Ocean Beach
Classification:	Contributing
Original Construction Date:	1922
Original Architect:	A. R. Ogle

#### **ZONING / SITE DATA**

Legal Description:	East 50 feet of Lot 16, Block 76 of Ocean Beach Addition No. 3, according to the plat thereof recorded in Plat Book 2, Page 81 of the public records of Miami Dade County, Florida.
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Zoning:	RPS-2, Residential performance standard, medium density
Future Land Use Designation:	RPS-2, Residential performance standard, medium density
Lot Size:	2,500 S.F. / 1.50 Max FAR
Existing FAR:	1,155 S.F. / 0.46 FAR
Proposed FAR:	1,445 S.F. / 0.57 FAR
Existing Height:	~15'-0" / 1-story
Proposed Height:	No change
Existing Use/Condition:	Single family residential
Proposed Use:	No change

## **THE PROJECT**

The applicant has submitted plans entitled “828 4<sup>th</sup> Street”, as prepared by Kaller Architecture, dated August 10, 2020.

The applicant is requesting the following variances:

1. A variance to reduce by 2'-9" the minimum required pedestal front setback of 5'-0" in order to construct an addition following the existing setback of 2'-3" facing 4<sup>th</sup> Street.
2. A variance to eliminate the minimum required pedestal rear setback of 5'-0" in order to construct a pool abutting the rear property line.

- Variances requested from:

### **Sec. 142-697. – Setback requirements in the RPS-1, 2, 3, 4 districts.**

*(a) The setback requirements in the RPS-1, 2, 3, 4 are as follows:*

*Pedestal and subterranean, Front: 5'-0".*

*Pedestal and subterranean, Rear: 10% of lot depth.*

The applicant is proposing renovations to the existing structure with minor additions. New walls to enclose the front porch and a garage addition are proposed following the existing building line with a setback of 2'-3". The retention of most of the existing building creates practical difficulties for the addition of floor area in order to make a reasonable use of the property on such a small lot. A new pool is also proposed immediately adjacent to the rear property line where a 5'-0" setback is required. Based on the limited size of the property and the existing non-conforming conditions, including the substantial retention and restoration of the existing contributing building, staff recommends approval of variances #1 and #2.

3. A variance to exceed by 64% (1'-6") the maximum allowable projection of 25% (0'-6") in order to construct a new roof with overhang encroachment of 89% (2'-0") into the existing front yard of 2'-3" facing 4<sup>th</sup> Street.
4. A variance to exceed by 19.4% (0'-7") the maximum allowable projection of 25% (0'-9") in order to construct a new roof with overhang encroachment of 44.4% (1'-4") into the existing east side yard of 3'-0".

- Variances requested from:

### **Sec. 142-1132. Allowable encroachments within required yards for districts other than single-family districts.**

*The following regulations shall apply to allowable encroachments in all districts except single-family residential districts, unless otherwise specified in this Code.*

*(o) Projections. Every part of a required yard shall be open to the sky, except as authorized by these land development regulations. The following may project into a required yard for a distance not to exceed 25 percent of the required yard up to a maximum projection of six feet, unless otherwise noted.*

*(7) Roof overhangs.*

The new roof overhangs, as proposed, exceed the maximum allowable projection of 25% into the existing non-conforming front and east interior side yards. The new roof configuration and design is consistent with the existing roof that also has non-conforming encroachments into the required yards. As the contributing structure will be retained and renovated to comply with the certificate of appropriateness review criteria, the existing location of the main building with non-conforming setbacks results in the requested variances. As the variances are associated with the existing building and the roof overhangs are consistent with the existing conditions, staff has no objection to the applicant's request and recommends approval of the variances # 3 and #4.

#### **PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

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.
- 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**

The application, as proposed, is inconsistent with the following requirements of the City Code:

1. Section 142-704. Minimum required yards in relation to minimum open space ratio. Up to 50 percent of the open space required by these land development regulations may be fulfilled by payment of an in-lieu-of fee into the South Pointe Streetscape Fund. Notwithstanding the above, in no case shall the open space provided at grade be less than the total area resulting from the required setbacks. The in-lieu-of payment as described above shall be made at the rate as provided in appendix A per square foot of open space not provided. Such fee shall be paid in full at the time of application for the building permit. The fee shall be refunded if construction does not commence prior to the expiration of the building permit.
2. Section 142-1132 (o)(7). The maximum roof overhang into the required west side yard is 1'-3" for a 5'-0" setback. The maximum roof overhang into the existing rear yard of 4'-10" is 1'-2".

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.

#### **CONSISTENCY WITH 2025 COMPREHENSIVE PLAN**

A preliminary review of the project indicates that the proposed **single-family** use is **consistent** with the Future Land Use Map of the Comprehensive Plan.

#### **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**  
**The demolition plan should be further developed during the building permit process.**
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.  
**Satisfied**  
**The windows proposed to be replaced will be impact resistant.**
- (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.

**Not Applicable**

- (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.

**Satisfied**

**The existing finish building is located above required base flood elevation.**

- (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.

**Satisfied**

**A flood proofing plan will be required for any area that is located below base flood elevation plus freeboard during the building permit process.**

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

**Satisfied**

**Additional information shall be provided at the time of building permit review.**

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

**Satisfied**

**Additional information shall be provided at the time of building permit review.**

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

**Satisfied**

**COMPLIANCE WITH CERTIFICATE OF APPROPRIATENESS CRITERIA**

A decision on an application for a Certificate of Appropriateness shall be based upon the following:

- I. Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable, compliance with the following criteria pursuant to Section 118-564(a)(1) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):

- a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time.

**Satisfied**

- b. Other guidelines/policies/plans adopted or approved by Resolution or Ordinance by the City Commission.  
**Satisfied**
- II. In determining whether a particular application is compatible with surrounding properties, the Board shall consider the following criteria pursuant to Section 118-564(a)(2) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
  - a. Exterior architectural features.  
**Satisfied**
  - b. General design, scale, massing and arrangement.  
**Satisfied**
  - c. Texture and material and color.  
**Satisfied**
  - d. The relationship of a, b, c, above, to other structures and features of the district.  
**Satisfied**
  - e. The purpose for which the district was created.  
**Satisfied**
  - f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.  
**Satisfied**
  - g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.  
**Satisfied**
  - h. The original architectural design or any subsequent modifications that have acquired significance.  
**Satisfied**
- III. The examination of architectural drawings for consistency with the criteria pursuant to Section 118-564(a)(3) of the Miami Beach Code and stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community. The criteria referenced above are as follows (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
  - a. 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.  
**Satisfied**

- b. 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**

**See Compliance with Zoning Code**

- c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the city identified in section 118-503.

**Satisfied**

- d. The proposed structure, and/or additions to an existing structure is appropriate to and compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties, or the purposes for which the district was created.

**Satisfied**

- e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces 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 preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

**Satisfied**

- f. 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 any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

**Satisfied**

- g. 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 and consistent with a City master plan, where applicable.

**Satisfied**

- h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

**Satisfied**

- i. 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**
- j. Any proposed new structure shall have 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**
- k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, 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 sidewalk street, or streets shall have residential or commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.  
**Satisfied**
- l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.  
**Not Applicable**
- m. Any 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**
- n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.  
**Satisfied**
- o. 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**

#### **CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION EVALUATION CRITERIA**

Section 118-564 (f)(4) of the Land Development Regulations of the Miami Beach Code provides criteria by which the Historic Preservation Board evaluates requests for a Certificate of Appropriateness for Demolition. The following is an analysis of the request based upon these criteria:

- a. The Building, Structure, Improvement, or Site is designated on either a national or state level as a part of an Historic Preservation District or as a Historic Architectural Landmark or Site, or is designated pursuant to Division 4, Article X, Chapter 118 of the Miami Beach Code as a Historic Building, Historic Structure or Historic Site, Historic Improvement, Historic Landscape Feature, historic interior or the Structure is of such



historic/architectural interest or quality that it would reasonably meet national, state or local criteria for such designation.

**Satisfied**

**The existing structure is designated as Contributing within the Ocean Beach Local Historic District.**

- b. The Building, Structure, Improvement, or Site is of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense.

**Satisfied**

**The building is of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense.**

- c. The Building, Structure, Improvement, or Site is one of the last remaining examples of its kind in the neighborhood, the country, or the region, or is a distinctive example of an architectural or design style which contributes to the character of the district.

**Satisfied**

**The existing building is a distinctive of an architectural style which contributes to the district.**

- d. The building, structure, improvement, or site is a contributing building, structure, improvement, site or landscape feature rather than a noncontributing building, structure, improvement, site or landscape feature in a historic district as defined in section 114-1, or is an architecturally significant feature of a public area of the interior of a historic or contributing building.

**Satisfied**

**The subject building is classified as a Contributing building in the Miami Beach Historic Properties Database.**

- e. Retention of the Building, Structure, Improvement, Landscape Feature or Site promotes the general welfare of the City by providing an opportunity for study of local history, architecture and design or by developing an understanding of the importance and value of a particular culture and heritage.

**Satisfied**

**The retention of the building is critical to developing an understanding of an important Miami Beach architectural style.**

- f. If the proposed demolition is for the purpose of constructing a parking garage, the Board shall consider it if the parking garage is designed in a manner that is consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, U.S. Department of the Interior (1983), as amended, and/or the design review guidelines for that particular district.

**Not Applicable**

**The demolition proposed in the subject application is not for the purpose of constructing a parking garage.**

- g. In the event an applicant or property owner proposes the total demolition of a contributing structure, historic structure or architecturally significant feature, there shall be definite plans presented to the board for the reuse of the property if the proposed demolition is approved and carried out.

**Not Applicable**

**The applicant is not proposing total demolition.**

- h. The Dade County Unsafe Structures Board has ordered the demolition of a Structure without option.

**Not Applicable**

**The Miami Dade County Unsafe Structures Board has not ordered the demolition of the structure.**

**STAFF ANALYSIS**

The existing bungalow structure located at 828 4<sup>th</sup> Street was constructed in 1922 concurrently with a second bungalow (demolished in 1995) located at the corner of Jefferson Avenue and 4<sup>th</sup> Street (361 Jefferson Avenue). The building permit card lists A. R. Ogle as the general contractor and architect for both buildings.

Although no original building permit plans have been located for the existing home, staff has determined through examination of available historical documentation that the bungalow structure has remained relatively intact from its original construction. Modifications include the enclosure of the front porch, the replacement of windows and doors and the installation of Perma-Stone cladding on the exterior of the entire structure.

The applicant is currently proposing the partial demolition, renovation and restoration of the bungalow and the construction of an attached garage addition. In order to construct the addition, the applicant is proposing to demolish the covered carport and construct a new attached enclosed garage.

Staff is supportive of the proposed project and would note that the restoration plans presented by the architect are substantially consistent with the bungalow typology. Additionally, staff has no objection to the proposed garage addition which is essentially an expansion of the existing carport by 5'-0" in width. Further, staff would note that even with the construction of the modest garage addition, the proposed FAR for the site (0.57 FAR) remains significantly below the maximum 1.50 FAR permitted.

Finally, the applicant is requesting a waiver related to the retention of non-conforming setbacks and the reconstruction of the roof structure. The thresholds for retaining non-conforming floor area, height, setbacks and parking credits are outlined in Section 118-395(b) of the City Code. If the Board finds that the criteria outlined in Section 118-395 of the City Code below are satisfied, a waiver may be granted.

Sec. 118-395. - Repair and/or rehabilitation of nonconforming buildings and uses.

\* \* \*

- (b) *Nonconforming buildings.*

\* \* \*

- (2) Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official shall be subject to the following conditions:

\* \* \*

- d. Development regulations for buildings located within a designated historic district or for an historic site:

1. The existing structure's floor area, height, setbacks and any existing parking credits may remain, if the following portions of the building remain substantially intact, and are retained, preserved and restored:
  - i. At least 75 percent of the front and street side facades;
  - iii. For structures that are set back two or more feet from interior side property lines, at least 66 percent of the remaining interior side walls; and
  - iv. All architecturally significant public interiors.
2. For the replication or restoration of contributing buildings, but not for noncontributing buildings, the historic preservation board may, at their discretion, waive the requirements of subsection(b)(2)d. 1. above, and allow for the retention of the existing structure's floor area, height, setbacks or parking credits, if at least one of the following criteria is satisfied, as determined by the historic preservation board:
  - i. The structure is architecturally significant in terms of design, scale, or massing;
  - ii. The structure embodies a distinctive style that is unique to Miami Beach or the historic district in which it is located;
  - iii. The structure is associated with the life or events of significant persons in the City;
  - iv. The structure represents the outstanding work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;
  - v. The structure has yielded or is likely to yield information important in prehistory or history; or
  - vi. The structure is listed in the National Register of Historic Places.

Staff has found that Criteria i. & ii., above are satisfied and recommends in favor of the requested waiver.

### **VARIANCE ANALYSIS**

It appears that the subject property was originally platted as part of Lot 16, Block 76 and later subdivided as two separate properties in 1999, as per Dade-County property records. Both subdivided parcels are non-conforming regarding lot area. The parcel to the west was developed as a four-unit apartment building and the structure on the subject property remained as a single family residence. The applicant is proposing renovations to the existing structure with minor additions for which variances are requested. Staff finds that the retention of the structure, the existing size of the lot and existing non-conforming setbacks, establish the practical difficulties that justify the approval of the variances requested.

### **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 Certificate of Appropriateness criteria and Hardship and Practical Difficulties criteria, as applicable.

**HISTORIC PRESERVATION BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: October 13, 2020

PROPERTY/FOLIO: 828 4<sup>th</sup> Street / 02-4203-009-5290

FILE NO: HPB20-0422

IN RE: An application by Christopher Sankowski and Jacquelyn Sankowski for a Certificate of Appropriateness for the partial demolition, renovation and restoration of the existing home, the construction of a garage addition, one or more waivers and variances to reduce the front setback, the rear setback for a pool and variances to exceed the maximum allowable projection for a roof overhang.

LEGAL: East 50 feet of Lot 16, Block 76 of Ocean Beach Addition No. 3, according to the plat thereof recorded in Plat Book 2, Page 81 of the public records of Miami Dade County, Florida.

**ORDER**

The City of Miami Beach Historic Preservation 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. Certificate of Appropriateness**

- A. The subject site is located within the Ocean Beach Local Historic District.
- 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:
  - 1. Is consistent with Sea Level Rise and Resiliency Review Criteria in Section 133-50(a) of the Miami Beach Code.
  - 2. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
  - 3. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code.
  - 4. Is not consistent with Certificate of Appropriateness Criteria 'b' in Section 118-564(a)(3) of the Miami Beach Code.
  - 5. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(f)(4) of the Miami Beach Code.

C. The project would be consistent with the criteria and requirements of section 118-564 and 133-50(a) if the following conditions are met:

1. Revised elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
  - a. Final details of all exterior surface finishes and materials, including samples, shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
2. In accordance with Section 118-395(b)(2) of the City Code, the requirement pertaining to an existing structure's setbacks and parking credits, is hereby waived.
3. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
  - a. Prior to issuance of a Building Permit, the applicant shall provide a Tree Report prepared by a Certified Arborist for any existing canopy shade trees with a DBH of 3" or greater located in public or private property, which may be scheduled for removal or relocation for the review and approval of the City of Miami Beach Urban Forester.
  - b. 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.
  - c. The project design shall minimize the potential for a project causing a heat island effect on site.
  - d. Cool pavement materials or porous pavement materials shall be utilized.

**In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City 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 2'-9" the minimum required pedestal front setback of 5'-0" in order to construct an addition following the existing setback of 2'-3" facing 4<sup>th</sup> Street.

2. A variance to eliminate the minimum required pedestal rear setback of 5'-0" in order to construct a pool abutting the rear property line.
  3. A variance to exceed by 64% (1'-6") the maximum allowable projection of 25% (0'-6") in order to construct a new roof with overhang encroachment of 89% (2'-0") into the existing front yard of 2'-3" facing 4<sup>th</sup> Street.
  4. A variance to exceed by 19.4% (0'-7") the maximum allowable projection of 25% (0'-9") in order to construct a new roof with overhang encroachment of 44.4% (1'-4") into the existing east side yard of 3'-0".
- 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 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.

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.

C. The Board hereby **Approves** the requested variances 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 project shall comply with minimum open space required, as per section 142-704.

**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. *Certificate of Appropriateness*' and 'II. *Variances*' noted above.**

- A. The applicant agrees and shall be required to provide access to areas subject to this approval (not including private residences or hotel rooms) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the plans approved by the Board and conditions of this order.
- B. The issuance of a building permit is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed. No building permit may be issued unless and until the applicant obtains a written finding from Miami-Dade County Public Schools that the applicant has satisfied school concurrency.
- C. The relocation of any tree shall be subject to the approval of the Environment & Sustainability Director and/or Urban Forester, as applicable.
- D. 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.
- E. 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.
- F. 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.

- G. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- H. 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.
- I. 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.
- J. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- K. 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.
- L. 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.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the application is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "**828 4<sup>th</sup> Street**", **as prepared by Kaller Architecture, dated August 10, 2020**, as approved by the Historic Preservation Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.



Meeting Date: October 13, 2020

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

HISTORIC PRESERVATION BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
DEBORAH TACKETT  
CHIEF OF HISTORIC PRESERVATION  
FOR THE CHAIR

STATE OF FLORIDA                 )  
COUNTY OF MIAMI-DADE       )SS

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Deborah Tackett, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She 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 Historic Preservation Board on \_\_\_\_\_ ( )