

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: February 9, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: HPB20-0431, **880 71st Street.**

An application has been filed requesting a Certificate of Appropriateness for the construction of a mixed use development project on a vacant lot and variances from the requirements to provide residential or commercial use to screen parking at the ground level, from the required rear setback, minimum average apartment size, open space requirements in rear yard, and maximum allowable projection in required yards.

STAFF RECOMMENDATION

Approval of the Certificate of Appropriateness and the project, with conditions.

Denial of variance # 1.

Approval of variances #2, #3, #4, #5 and #6.

EXISTING SITE

Local Historic District: Normandy Isles

ZONING / SITE DATA

Legal Description: Lot 27, Block 1, of the Ocean Side Section of Isle of Normandy, according to the Plat Thereof, as Recorded in Plat Book 25, Page 60, of the Public Records of Miami-Dade County, Florida.

Zoning: CD-2, Commercial, medium intensity

Future Land Use Designation: CD-2, Commercial, medium intensity

Lot Size: 19,417 S.F. / 2.0 Max FAR

Proposed FAR: 38,823 S.F. / 1.99 FAR

Proposed Height: 53'-8", as represented by the applicant

Existing Use/Condition: Vacant lot

Proposed Use: Mixed use residential and commercial

THE PROJECT

The applicant has submitted plans entitled "880 71st Street", as prepared by Built Form Architecture, dated November 9, 2020.

The applicant is requesting the following variance(s):

1. A variance to eliminate the residential or commercial use requirement at the ground level when parking is provided along Bay Drive for the construction of a new residential building.
 - Variance requested from:

Sec. 142-308. – Additional Regulations for new construction

- (a) In the CD-2 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 facade facing a street, sidewalk or waterway.*

The irregularly shaped site has an unusually long street frontage of approximately 323' along Bay Drive and 71st Street while the rear portion on the water way is approximately 50'-0". Most of the street frontage features commercial uses and open corridors with pedestrian access and views to the waterway. A parking area, including a loading space is proposed on the southwest portion of the site. The City Code requires that parking areas be screened from street view with commercial or residential uses.

The surrounding area has intense pedestrian activity and the elimination and reduction of this requirement could negatively impact the urban character of this part of the City. As designed, a portion of the parking facing Bay Drive does not comply with this requirement and a variance is being requested. Although staff finds that the shape of the lot may impose some challenges to satisfy the frontage requirements when parking is provided, there are several ways to mitigate the adverse impact of the parking and loading operation.

Based on the design of the ground floor, an active use that would not create FAR can be provided by reducing the width of the driveway, currently proposed at more than 23' in width (22'-0" is required). Additionally, the front setback for parking can be increased by removing or reducing the area of the planter to the east of the driveway. Staff would also recommend additional screening along the interior side, in a form of a wall, as the landscape area provided is limited.

It is important to note that in July of 2020, the parking requirements were amended for residential and hotel units, including allowable accessory uses, on properties zoned CD-2 and located in the Normandy Isles National Register Conservation District (Ordinance No. 2020-4343). Accordingly, there are no parking requirements for the proposed uses on this site. This provides even more reason to better mitigate the lack of active uses.

In summary, staff is not supportive of variance No. 1 as presently proposed, as it fails to address the hardship and practical difficulty criteria in the code. Additionally, with minor modifications, staff believes the variance request can be eliminated altogether, or substantially reduced in scope.

2. A variance to eliminate the required rear setback of 5'-0" for a structure in order to construct a new deck up to the rear property line facing the waterway.
3. A variance to exceed by 70% (182 s.f.) the maximum area of 30% (78 s.f.) allowed for structures within the required rear yard of 5'-0" in order to construct a deck and occupy up to 100% (260 s.f.) within the rear yard of the property.

- Variances requested from:

Sec. 142-307. Setback requirements.

The setback requirements for the CD-2 commercial, medium intensity district are as follows:

Subterranean, pedestal and tower (non-oceanfront), Rear: 5'-0".

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.

(a) Accessory buildings. Accessory buildings which are not a part of the main building may be constructed in a rear yard, provided such accessory building does not occupy more than 30 percent of the area of the required rear yard and provided it is not located closer than seven and one-half feet to a rear or interior side lot line and 15 feet when facing a street. Areas enclosed by screen shall be included in the computation of area occupied in a required rear yard, but an open uncovered swimming pool shall not be included.

(j) Hot tubs, showers, saunas, whirlpools, toilet facilities, decks. In all districts, hot tubs, showers, whirlpools, toilet facilities, decks and cabanas are structures which are not required to be connected to the main building but may be constructed in a required rear yard, provided such structure does not occupy more than 30 percent of the area of the required rear yard and provided it is not located closer than seven and one-half feet to a rear or interior side lot line. Freestanding, unenclosed facilities including surrounding paved or deck areas shall adhere to the same setback requirements as enclosed facilities.

The project has a required front and street side setback of zero (0'-0") for commercial and residential uses and most of the project exceeds these requirements at the ground level; this has increased the available landscape area along the street frontage. However, a rear setback of 5'-0" is required facing the waterway and although the building structure is setback 7'-0", a deck at the ground level up to the seawall does not comply with this requirement and minimum open space. Staff finds that these two variance requests satisfy the practical difficulties criteria for approval. The project provides public pedestrian access to the waterway and the additional landscape at the front and street side mitigate the reduced open space in the rear yard. The irregular shape of the lot with a large frontage and reduced rear side also contribute to the practical difficulties. As such, staff recommends approval of variances #2 and #3 as proposed.

4. A variance to exceed by 1'-9" (35%) the maximum allowed projection of 1'-3" (25%) for balconies and roof overhang within the rear yard of 5'-0" in order to construct a new building with projections of 3'-0" (60%) into the rear yard.
5. A variance to exceed by 2'-1" (21%) the maximum allowed projection of 2'-6" (25%) for balconies and roof overhang within the side yard of 10'-0" in order to construct a new building with projections of 4'-7" (46%) into the south side yard.

- Variances requested from:

Sec. 142-1132. - Allowable encroachments within required yards.

(o) Projections. In all districts, 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.

(4) Exterior unenclosed private balconies.

(7) Roof overhangs

Some of the residential units facing the interior side have balconies that exceed the maximum 25% projection allowed into the required 10'-0" side setback. The units facing the waterway also exceed the maximum projection into the rear yard of 5'-0". In this particular case the rear of the property faces the waterway and no landscape is proposed at the ground level in the rear. The setback of the side balconies is 5'-5", which is a typical setback in this area. Based on these specific conditions, as well as the irregular shape of the lot, staff believes that the practical difficulty standard has been satisfied and recommends approval of variances #4 and #5.

6. A variance to reduce by 13.5 s.f. the minimum required average unit size of 800 s.f. for apartments in order to construct a new residential building with an average size of 786.5 sf.

- Variance requested from:

Sec. 142-306. - Development regulations.

The development regulations in the CD-2 commercial, medium intensity district are as follows:

Average Apartment Unit Size (Square Feet) New Construction — 800

The CD-2 district requires that new apartments comply with a minimum size of 550 sf and an average size of 880 sf. The project proposes 36 apartments with a size ranging from 570 sf to 1265 sf. However, the average apartment size proposed is slightly below the minimum 800 sf required. Staff would note that the CD-2 district allows up to 100 residential units per acre. The project contains a lot size of 19,417 sf, which would allow up to 44 units. Based on the irregular shape of the lot, as well as the minimum size and number of the units proposed, staff believes that the practical difficulty standard has been satisfied and has no objection to the minor deviation from the average unit size. The approval of this variance request would not negatively impact the property or the surrounding neighborhood. In summary, staff recommends approval of the variance request #6.

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 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, in addition to the variance requests:

1. Section 142-1161. The structures above the roof shall comply with allowable height requirements.

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 mixed use residential and commercial 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 Applicable
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Not Applicable

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
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.
Partially Satisfied
The ground level commercial spaces are proposed to be located below base flood elevation plus freeboard. The first habitable level is proposed to be located at 33.66' NGVD.
- (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 Satisfied
- (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
The applicant is proposing to install pervious terra-pavers within the driveway and parking spaces. 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.
Not Applicable
 - 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.
Not Applicable

- h. The original architectural design or any subsequent modifications that have acquired significance.

Not Applicable

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

The applicant is requesting variances.

- 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.

Partially Satisfied

Landscaping plans have not been provided for the roof levels.

- 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.

Not Satisfied

The parking spaces located along the south side of the property are not adequately buffered to ensure that headlights of vehicles are shielded from the adjacent properties the south.

- 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.

Not Satisfied

- l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Satisfied

- 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

STAFF ANALYSIS

The applicant is proposing to construct a 4-story mixed use residential and commercial development on a vacant lot located at the southeast corner of the intersection of 71st Street and Bay Drive. The building consists of 2 commercial spaces, a residential lobby and 10 parking spaces at the ground level, 36 residential units each with access to private outdoor balconies at the upper 3 levels and a rooftop residential amenity deck.

Staff would commend the architect for a design that is highly responsive to the site. In this regard, the residential portion of the building has been raised on pilotis allowing for views through the property to the waterway at the rear of the site. Further, at the ground level, individual pavilion-like buildings have been oriented along 71st Street and will serve to activate and enhance the pedestrian experience along this heavily traveled commercial corridor. Staff is supportive of the contemporary design language of the proposed structure, as it has been well developed and achieves a high level of compatibility with its neighbors in terms of its overall design aesthetic. In this regard, the strong horizontal emphasis of the residential building successfully relates to and complements the predominately Post-War Modern architecture of the historic district.

Staff has two concerns with regard to the proposed project. First, the City Code requires that all floors of a building containing parking spaces along a street or waterway be screened with active residential or commercial uses. As the applicant is proposing an at grade parking level with no active residential or commercial use along a small portion of Bay Drive, a variance is being sought. The lack of active uses along the ground level will have an adverse impact on the urban character of the historic district and the surrounding neighborhood. Consequently, staff recommends that this portion of the site be further developed in accordance with the active use requirements, commensurate with its location along a primary street frontage. Staff would note that there are a number of active liner strategies that could be implemented without resulting in additional floor area. Second, staff would note that the applicant has not provided landscape plans for any of the roof levels. Consequently, staff has included several conditions in the draft Order to ensure appropriate and sustainable landscaping within these areas.

Finally, staff would note that in commercial districts the Board has the authority to approve up to an additional 5'-0" of height provided the additional height is located at the ground level to accommodate future adaptability in light of expected impacts of future sea level rise. As currently proposed, the applicant is requesting to construct the building at a height of 53'-8", 3'-8" above the allowable height of 50'-0".

In summary staff is highly supportive of the proposed project and is confident that the two above noted concerns can be addressed administratively and recommends approval as noted below.

VARIANCE ANALYSIS

The applicant is requesting six (6) variances, as noted in the project portion of the staff recommendation. Staff is supportive of five (5) of the variances requested due to the irregular shape of the lot with an unusually large street frontage compared to the length of the rear, and the size of the proposed project. Collectively, these create practical difficulties that justify variance requests #2, #3, #4, #5 and #6. However, staff would recommend modifications to the ground floor plan that would eliminate the need for variance #1 with the addition of an active use to screen the parking area and the addition of screening on the interior side. As such, staff recommends that variance #1 be denied, or that the applicant withdraw variance #1 and comply with the minimum activation requirements of the City code.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application be **approved** including variances 2-6, and that variance 1 either be denied or withdrawn by the applicant, 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: February 9, 2021

PROPERTY/FOLIO: 880 71st Street / 02-3210-013-0190

FILE NO: HPB20-0431

IN RE: An application by Bay Dr. LLC and KG Normandy LLC for a Certificate of Appropriateness for the construction of a mixed use development project on a vacant lot and variances from the requirements to provide residential or commercial use to screen parking at the ground level, from the required rear setback, minimum average apartment size, open space requirements in rear yard, and maximum allowable projection in required yards.

LEGAL: Lot 27, Block 1, of the Ocean Side Section of Isle of Normandy, according to the Plat Thereof, as Recorded in Plat Book 25, Page 60, 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 Normandy Isles 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 not consistent with the Certificate of Appropriateness Criteria 'a' 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' & 'i' in Section 118-564(a)(3) 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. A plaque or historic display describing the history and evolution of the original building shall be placed on the site shall be located in a manner visible from the right of way, prior to the issuance of a Certificate of Occupancy for the building, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - b. The parking space at the southwest corner of the site shall be screened with active use(s) along Bay Drive, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - c. An architectural screening element shall be introduced in a manner to shield the vehicular parking area along the south side of the project, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - d. 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.
 - e. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and elevation drawings and shall be screened from view, 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. 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. A comprehensive Tree Report prepared by a ISA Certified Arborist shall be submitted for the specimen size Florida native multi-trunk Ficus Aurea identified on the tree disposition plan as tree # 029 with an overall height of 35' and a spread of 50', scheduled for removal. Should the City of Miami Beach Urban Forester determined that the tree is in good health, then the proposed plan should be modified to retain the tree on site at its current location subject to the review and approval of the Board.
 - b. Rooftop landscape plans shall be provided and shall be planted with natural vegetation, including plant beds of sufficient size to accommodate trees and landscape, and other green infrastructure practices, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

- c. A permanent tree bracing / support system shall be provided for any substantially large plant material proposed on a rooftop, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- d. The proposed landscape plan shall satisfy minimum landscape code requirements as prescribed by CMB Code Chapter 126.
- e. All hedge and ground cover plantings within the street facing yards shall not exceed 36" in height at maturity.
- f. 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.
- g. The project design shall minimize the potential for a project causing a heat island effect on site.
- h. Cool pavement materials or porous pavement materials shall be utilized.
- i. The use of Silva Cells or approved equal should be specified for canopy shade trees planted in areas where rooting space may be limited, inclusive of street trees, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

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), which were either approved by the Board with modifications, or denied:

The following variance was denied by the Board:

- 1. A variance to eliminate the residential or commercial use requirement at the ground level when parking is provided along Bay Drive for the construction of a new residential building.

The following variances were approved by the Board:

- 2. A variance to eliminate the required rear setback of 5'-0" for a structure in order to construct a new deck up to the rear property line facing the waterway.
- 3. A variance to exceed by 70% (182 s.f.) the maximum area of 30% (78 s.f.) allowed for structures within the required rear yard of 5'-0" in order to construct a deck and occupy up to 100% (260 s.f.) within the rear yard of the property.

4. A variance to exceed by 1'-9" (35%) the maximum allowed projection of 1'-3" (25%) for balconies and roof overhang within the rear yard of 5'-0" in order to construct a new building with projections of 3'-0" (60%) into the rear yard.
 5. A variance to exceed by 2'-1" (21%) the maximum allowed projection of 2'-6" (25%) for balconies and roof overhang within the side yard of 10'-0" in order to construct a new building with projections of 4'-7" (46%) into the south side yard.
 6. A variance to reduce by 13.5 s.f. the minimum required average unit size of 800 s.f. for apartments in order to construct a new residential building with an average size of 786.5 sf.
- A. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, only as it relates to variance(s) II.A.2, II.A.3, II.A.4, II.A.5 and II.A.6, 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 indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code only as it relates to variance(s) II.A.2, II.A.3, II.A.4, II.A.5 and II.A.6, 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.

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.

- B. The Board hereby **Approves** the requested variances #2, #3, #4, #5 and #6 and **Denies** variance request #1 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. 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 "**880 71st Street**", **as prepared by Built Form Architecture, dated November 9, 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.

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)
)SS
COUNTY OF MIAMI-DADE)

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 _____ ()