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VIA ELECTRONIC SUBMITTAL AND HAND DELIVERY

July 8, 2021

Michael Belush, Planning and Zoning Manager
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

RE: DRB21-0693 – Revised Letter of Intent – Design Review
Approval and Non-Use Variances for the Property at 6881 Indian
Creek Drive, Miami Beach, Florida

Dear Michael:

This law firm represents 6881 Indian Creek Drive, LLC (the "Applicant"), the owner of the property located at 6881 Indian Creek Drive (the Property) in Miami Beach, Florida (the "City"). Please consider this the Applicant's letter of intent in connection with design review and variances requests to the city's Design Review Board ("DRB").

Property Description. The Property is identified by Miami-Dade County Property Appraiser Folio number 02-3211-001-0750 and is approximately 12,062 square feet (approximately 0.28 acres) in size. See Exhibit A, Property Appraiser Summary. The Property is a triangular-shaped lot bordered on the north by 69 Street, on the east by Byron Avenue, and on the west by Indian Creek Drive. The Property's front is 69 Street. The irregular shape of the lot is a challenge when accommodating development. The Property is improved with a two-story multifamily building built in 1939 with 30 units.

The Property is zoned TC-3 North Beach Town Center Residential Office district.

Prior Approvals. In 2017, the Applicant went before the Planning Board ("PB") and the DRB and secured the necessary approvals to renovate and adaptively reuse the existing multifamily building for a hotel, including multiple variances to accommodate a pool and small bar that would serve the hotel guests. See Exhibit B, Prior Approvals. On October 03, 2017, through DRB17-0165 the DRB approved the design and variances, in relevant part, as follows:

1. Reduce by 11'-8" the minimum required front setback of 15'-0" in order to construct a new exterior stair at 3'-4" from the front property line facing Byron Avenue.
2. Reduce by 14'-9" the minimum required front setback of 15'-0" in order to construct a new exterior stair at 3' from the front property line facing Indian Creek Drive.
3. Reduce by 4'-10" the minimum required street side setback of 10'-0" in order to construct a new exterior stair at 5'-2" from the street side property line facing 69 Street.
4. Reduce by 4'-9" the minimum required street side setback of 10'-0" in order to construct a new exterior stair at 5'-2" from the street side property line facing 69 Street.
5. Reduce by 5'-0" the minimum required side setback of 15'-0" in order to construct a pool deck at 10'-2" from the street side property line facing 69 Street.

In December 19, 2017, through PB 17-0153 the PB approved a conditional use permit to allow for hotel to operate in the TC-3 North Beach Town Center Residential Office district. Due to changing market realities, the Applicant has decided to pursue a residential development on the land.

Proposed Development Program. The Applicant proposes to redevelop the Property with five (5) 4-story luxury townhomes. The townhomes are approximately 3,000 square feet each and will features a driveway, garage, private pool and rooftop deck. The design is uniformly concentrated toward Byron Avenue, which creates a need for a sawtooth layout facing Indian Creek Drive. The design features clean lines, large windows, smooth light-colored stucco walls and smooth concrete finished walls. Balconies with glass and aluminum railings at the second and third story, eyebrows and the different materiality employed on the buildings façades effectively break up the proposed development's massing. These architectural features combine with lush and thoughtful landscaping to create a beautiful design for this triangular shaped lot.

The proposed development complies with the allowable 1.25 FAR proposing 14,458 square feet when 15,077 square feet are permitted. Further, the design proposes 37'-6" feet in height when 45 feet is allowed as of right.

However, in order to accommodate the development on this triangular shaped lot, the Applicant requires several variances. The requested variances are much like those granted by this Board in 2017. Accordingly, this Board has already recognized that the irregular shape of the lot creates a substantial hardship that warrants relief through variances. Notably, although various setback variances are still required, the proposed development reduces the existing nonconformity. For example, the existing 4'-9" setback on Indian Creek will be increased to 8'-2".

Requests. In addition to design review, the Applicant respectfully requests the following variances:

1. Variance of Section 142-737(b) of the Code to reduce the minimum required street side setback on Bryon Avenue for the building to permit 7'-10" where 10' is required; and
2. Variance of Section 142-737(b) of the Code to reduce the minimum required street side setback on Indian Creek Drive for the building to permit 8'-2" where 10' is required; and
3. Variance of Section 142-737(b) of the Code from additional front setback for every foot above 23 feet of height to allow front setback at 69 Street to be 15'-0" when 16'-6" is required at Elevation 24'-6" (Floor 4) and 18'-6" when 26'-6" is required at Elevation 34'-6" (Roof Terrace); and
4. Variance of Section 142-737(b) of the Code from additional street side setback for every foot above 23 feet of height to allow side street setback at Byron Avenue to be 7'-10" when 11'-6" is required at Elevation 24'-6" (Floor 4) and 7'-10" when 23'-2" is required at Elevation 34'-6" (Roof Terrace); and
5. Variance of Section 142-737(b) of the Code from additional street side setback for every foot above 23 feet of height to allow side street setback at Indian Creek to be 8'-2" when 11'-6" is required at Elevation 24'-6" (Floor 4) and 8'-2" when 23'-2" is required at Elevation 34'-6" (Roof Terrace); and
6. Variance of Section 142-737(b)(3) of the Code from minimum required additional setback to rooftop features to allow a rooftop setback on 69

Street of 5'-10", on Byron Avenue of 5'-4" and on Indian Creek Drive of 0'-0" when 8'-0" is required; and

7. Variance of Section 142-1133(3) of the Code to reduce minimum required street side setback to the pool and deck to permit a 7'-10" setback at Byron Avenue when 15'-0" is required; and
8. Variance of Section 142-1133(3) of the Code to reduce minimum required street side setback to the pool and deck to permit a 7'-6" setback from Indian Creek Drive when 15'-0" is required.
9. Variance of Section 142-1132(o)(6) of the Code to allow the stair projection facing 69 Street to be at an elevation of 9.5' NGVD when a maximum of 8.29' NGVD is the maximum permitted.

Satisfaction of Hardship Criteria. The above reference requests meet the hardship criteria for variances outlined in section 118-353(d) as follows:

(1) 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;

The irregular triangular shaped lot is a condition particular to the land that makes full compliance with the Code, which was designed with regularly shaped rectangular lots in mind, unfeasible. The lot shape is particular to the Property and those not affect other lands in the zoning district.

(2) The special conditions and circumstances do not result from the action of the applicant;

The special conditions and circumstances of the Property do not result from the action of the Applicant. The existing lot shape was a condition of the Property before the Applicant had any legal interest in the Property. The Property has been duly platted as such.

(3) Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;

The Code allows other similarly situated property owners to seek similar variances to accommodate development that is not fully compliant with the Code, especially on irregular-shaped lots. These variances are necessary to accommodate development on the lot. As a

whole, the development complies with the purpose and intent of the Code and the Applicant has mitigated any potential impact by providing lush landscaping and streetscape improvements. Therefore, granting of these minor setback variances does not confer any special privilege on the Applicant, it simply allows the Applicant to accommodate development as enjoyed by others on this irregularly shaped lot.

(4) Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;

The Applicant is seeking minor variances in order to accommodate development on this triangular lot. The requested variances are of the same nature as those granted by this Board in 2017. Accordingly, this Board has already recognized that the irregular shape of this lot creates such unique hardship that required relief through variances is warranted.

(5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure

The Applicant is requesting the minimum variances to reasonably accommodate development on Property. When feasible, like with FAR, height and the front setback from 69 Street, the Applicant is complying with the Code. Moreover, the Applicant has mitigated any potential impact from the requested variances by providing extensive landscaping and streetscape improvements.

(6) The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

The development is a marked improvement on the existing structure, will be in harmony with the surrounding properties, and aims to further the intent and purpose of the land development regulations. The design purposefully considers the shape of the lot and integrates landscaping and streetscape improvements in order to minimize the impacts of the development and improve the pedestrian experience. Further the proposed development increases the proposed setbacks therefore reducing the existing non-conformity. Granting the variances will be in harmony with the land development regulations and the proposed development will not be injurious to the area

- (7) 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 planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board voting on the applicant's request.**

The variance requests are consistent with the City's Comprehensive Plan and does not reduce the levels of service as set forth in the plan.

Practical Difficulty. The triangular shape of the lot is a practical difficulty inhibiting the Applicant from meeting all of the land development regulations to develop the land as enjoyed by others. The design of the building minimizes impacts on the nearby properties and the Applicant has included lush landscaping and streetscape improvements to further mitigate any impact from the development and improve the pedestrian experience. The slight deviations from the Code, allow the Applicant to effectuate the best design for this Property. As previously stated, the proposed design increases the existing setback therefore reducing the existing non-conformities on this uniquely shaped lot. The Applicant's proposal satisfies the intent and purposes of the Code and is compatible with the surrounding community.

Sea Level Rise and Resiliency Criteria. The proposed project advances the sea level rise and resiliency criteria in Section 133-50(a) as follows:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.**

The Applicant will provide a recycling or salvage plan during permitting.

- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.**

The structures will have hurricane impact windows and doors throughout the townhomes.

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.**

The proposed townhomes provide abundant windows, doors and balconies, such that passive cooling is feasible.

- (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.**

The landscape plan will include many native and Florida-friendly plants. The Applicant's landscape plan is appropriate for the Property and the neighborhood, with native, salt-tolerant, and Florida-friendly plant species. The plantings for the proposed townhomes will be highly water-absorbent to provide for both aesthetics and resilience.

- (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.**

The Applicant has considered the adopted sea level rise projections and has used the maximum allowable Freeboard for four of its units. Accordingly, habitable space begins at +9-6' NGVD for one unit and +14-0' NGVD for the remaining four units.

- (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 up to three (3) additional feet in height.**

The Applicant intends to construct the proposed townhomes at +9-6' NGVD and +14-0' NGVD such that it is adaptable to the raising of public rights-of-ways and adjacent land.

- (7) As applicable to all new construction, all critical mechanical and electrical systems shall be located above base flood elevation. All redevelopment projects shall, whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood elevation.**

Mechanical and electrical systems will be located above base flood elevation.

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

Not applicable as the existing building is proposed to be demolished.

- (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.**

No habitable space will be located below base flood elevation. Should any portion of the garage be located below BFE, flood proofing systems will be provided in accordance with Chapter 54 of the City Code to ensure proper drainage.

- (10) As applicable to all new construction, stormwater retention systems shall be provided.**

The Property will utilize appropriate stormwater retention systems and the Applicant will ensure appropriate drainage is provided.

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

The Applicant proposes appropriate materials for the driveway and other hardscaped areas.

- (12) The design of each project shall minimize the potential for heat island effects on-site.**

The Applicant will utilize high albedo surfaces, green roofs and abundant landscaping at ground level.

Conclusion. Based on the above reasons, granting this design review application with associated variances will permit the development of a beautifully-designed luxury townhomes on this extremely challenging triangular lot that will add much more value to the surrounding neighborhood than the existing structure. The variances are the minimal necessary for compatible development, the Project satisfies the intent of Code and the design ensures no negative impact to the neighbors.

We look forward to your favorable review of the application. If you have any questions or comments in the interim, please give me a call at

Sincerely,

A handwritten signature in blue ink, appearing to be 'MA' with a stylized flourish.

Michael J. Marrero

Enclosures

cc: Antonio Pardo



OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 6/9/2021

Property Information	
Folio:	02-3211-001-0750
Property Address:	6881 INDIAN CREEK DR Miami Beach, FL 33141-3867
Owner	6881 INDIAN CREEK LLC
Mailing Address	2020 PONCE DE LEON BLVD STE 1103 MIAMI, FL 33134
PA Primary Zone	3900 MULTI-FAMILY - 38-62 U/A
Primary Land Use	3921 HOTEL OR MOTEL : HOTEL
Beds / Baths / Half	30 / 30 / 0
Floors	2
Living Units	30
Actual Area	9,454 Sq.Ft
Living Area	9,454 Sq.Ft
Adjusted Area	8,509 Sq.Ft
Lot Size	11,751 Sq.Ft
Year Built	1939



Assessment Information			
Year	2020	2019	2018
Land Value	\$1,222,104	\$1,128,096	\$1,128,096
Building Value	\$2,477,896	\$2,571,904	\$1,871,904
XF Value	\$0	\$0	\$0
Market Value	\$3,700,000	\$3,700,000	\$3,000,000
Assessed Value	\$2,657,600	\$3,300,000	\$3,000,000

Benefits Information				
Benefit	Type	2020	2019	2018
Non-Homestead Cap	Assessment Reduction	\$1,042,400	\$400,000	
Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).				

Short Legal Description	
ATLANTIC HEIGHTS PB 9-14 ALL BLK K LOT SIZE 11751 SQ FT OR 12960-624 0186 4 COC 24113-4770 01 2006 4	

Taxable Value Information			
	2020	2019	2018
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$2,657,600	\$3,300,000	\$3,000,000
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$3,700,000	\$3,700,000	\$3,000,000
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$2,657,600	\$3,300,000	\$3,000,000
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$2,657,600	\$3,300,000	\$3,000,000

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
05/31/2017	\$4,500,000	30572-3157	Qual by exam of deed
01/01/2006	\$0	24113-4770	Sales which are disqualified as a result of examination of the deed
11/01/1975	\$230,000	00000-00000	Sales which are qualified
03/01/1974	\$180,000	00000-00000	Sales which are qualified

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 6881 Indian Creek Drive

FILE NO. PB 17-0153

IN RE: The applicant, IC Property Capital Corp, requested Conditional Use approval for the operation of a new hotel in the TC-3 zoning district, pursuant to Chapter 118, Article IV and Chapter 142, Article II of the City Code.

LEGAL DESCRIPTION: All of Block K of "Atlantic Heights", according to the plat thereof filed for record and recorded in Plat Book 9 at Page 14 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: December 19, 2017

CONDITIONAL USE PERMIT

The applicant, 6881 Indian Creek, LLC, filed an application with the Planning Director requesting a Conditional Use approval for a hotel in a TC-3 North Beach Town Center Residential Office zoning district pursuant to Chapter 118, Article IV, and Chapter 142, Article II of the City Code. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

The Planning Board of the City of Miami Beach 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 of the record for this matter:

That the property in question is located in the TC-3 North Beach Town Center Residential Office Zoning District;

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and uses associated with the request are consistent with the Land Development Regulations;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

IT IS THEREFORE 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 is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below:

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1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to 6881 Indian Creek, LLC, as owner of the hotel. Any new operator, change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. 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.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
 - A. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of 30 unit hotel project with the criteria listed below:
 - i. Entertainment of any kind shall be prohibited on the entire property, except in conjunction with a Special Event permit (see "L" below.)
 - ii. On the pool deck, only ambient level as background music may be played at a volume that will not interfere with normal conversation. The ambient level music may only be played between 10:00 AM and shall not operate past 8:00 PM, seven days per week.
 - iii. The pool deck shall only operate between 7:00 AM to 10:00 PM, seven days per week
 - iv. Only beer and wine shall be served as alcohol beverages on the pool deck bar between 10:00 AM to 8:00 PM, seven days per week.

MB

- B. Delivery trucks shall only be permitted to load on the proposed loading area on 69th Street, which is subject to the review and approval from Parking Department.
 - C. Delivery trucks shall not be allowed to idle while loading.
 - D. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - E. Deliveries and waste collections may occur Monday thru Saturday between 7:00 AM and 3:00 PM.
 - F. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
 - G. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
 - I. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
 - J. Garbage dumpster covers shall be closed at all times except when in active use.
 - K. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
 - L. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
7. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.
8. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Business Tax Receipt.

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9. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department prior to the issuance of a Business Tax Receipt.
10. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this entertainment establishment.
11. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
12. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
13. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
14. This 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.
15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
16. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
17. 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.

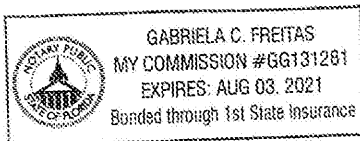
Dated this 21st day of DECEMBER, 2017.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, AICP
Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 21st day of December, 2017, by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



Gabriela C. Freitas
Notary
Print Name Gabriela C. Freitas
Notary Public, State of Florida
My Commission Expires: 8-3-21
Commission Number: GG131281

{NOTARIAL SEAL}

Approved As To Form:
Legal Department

[Signature], 12/26/17

Filed with the Clerk of the Planning Board on

Jessica Jurely (12/26/17)

MB

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: October 03, 2017

FILE NO: DRB17-0165

PROPERTY: **6881 Indian Creek Drive**

APPLICANT: 6881 Indian Creek LLC

LEGAL: All of Block K of "Atlantic Heights", according to the plat thereof filed for record and recorded in Plat Book 9 at Page 14 of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for exterior alterations and modifications to an existing two-story building and the construction of a new outdoor bar and storage area and pool, including variances to reduce the minimum required front and side facing a street setbacks, from the maximum projection allowed for a porch and roof overhang, from the minimum hotel unit size required, and to allow encroachments closer to property lines adjacent to streets than permitted.

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

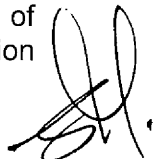
- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not an individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information 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, 8, 9, and 19 in Section 118-251 of the Miami Beach Code.
- C. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Sea Level Rise Criteria 1, 2, 3, 5, 6, 7, 8, 9, and 10 in Section 133-50(a) of the Miami Beach Code.
- D. The project would remain consistent with the criteria and requirements of Section 118-251 and/or Section 133-50(a) if the following conditions are met:



1. The proposed hotel use and the accessory bar shall be subject to a Conditional Use Permit approval by the Planning Board and subject to the conditions enumerated in the Final Order for the conditional use.
2. Revised elevation, site plan and floor plan drawings for the proposed hotel building located at 6881 Indian Creek Drive shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department, in a manner to be reviewed and approved by staff.
 - b. The final color selection of the exterior elements shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.
 - c. A fully enclosed, air-conditioned trash room shall be provided, which is sufficient to handle the maximum uses intended for the proposed structure. External dumpsters shall not be permitted.
 - d. The color of the monument sign shall not be the brightly colored or lit and that the base of the monument should have landscaping, No exterior disconnect switches shall be allowed. Any required electric switchbox shall be placed inside the structure not visible from the right-of-way
 - e. The final details and material of the pool decking shall consist of a wood or coral stone and shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - f. The final 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 Design Review Criteria and/or the directions from the Board.
 - g. All window frames shall be composed of silver, white or natural color anodized aluminum frames. All windows shall consist of clear glass and incorporate the minimum tint required by the energy code, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - h. The architect shall further refine the street side elevation of the accessory building and shall be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - i. The final design details and material sample of the trash room security door/gate located at the street side of the accessory building shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.



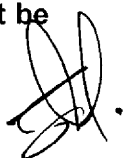
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- j. All exterior handrails and support posts shall incorporate a flat profile. The final design details, dimensions material and color of all exterior handrails shall be made part of the building permit plans and shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.
 - k. The final color selection of the exterior stucco elements shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.
 - l. 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.
 - m. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
3. A revised landscape plan, 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 the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - c. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.
 - d. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction



materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.

- e. The architect shall substantially increase the amount of native canopy shade trees within the site, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- f. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.
- g. Street trees shall be required within the swale at the front of the property if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.
- h. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- i. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
- j. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- k. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures. The location of backflow preventors, Siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans, and shall be subject to the review and approval of staff.
- l. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right of wall shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
- m. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.

In accordance with Section 118-262, the applicant, or the city manager on behalf of the City Administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for rehearing shall not be reviewed by the Commission.

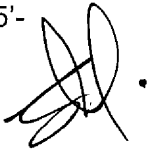


II. Variance(s)**A. The applicant filed an application with the Planning Department for the following variance(s):**

1. A variance from the minimum required hotel unit size: 15% of the hotel units shall be between 300-335 s.f. and 85% of units shall be 335 s.f. or larger, in order to permit 29 hotel units (96.6%) at less than 300 s.f. (the smallest at 203 s.f.), and 1 hotel unit between 300 s.f. and 335 s.f. (3% of the units).
2. A variance to reduce by 11'-8" the minimum required front setback of 15'-0" in order to construct a new exterior stair at 3'-4" from the front property line facing Byron Avenue.
3. A variance to reduce by 14'-9" the minimum required front setback of 15'-0" in order to construct a new exterior stair at 3" from the front property line facing Indian Creek Drive.
4. A. A variance to reduce by 4'-10" the minimum required street side setback of 10'-0" in order to construct a new exterior stair at 5'-2" from the street side property line facing 69th Street.

B. A variance to reduce by 4'-9" the minimum required street side setback of 10'-0" in order to construct a new detached accessory structure at 5'-3" from the street side property line facing 69th Street.
5. A variance to reduce by 4'-6" the minimum required front setback of 10'-0" in order to construct a new detached monument sign at 5'-6" from the front property line facing Byron Avenue.
6. A variance to reduce by 4'-3" the minimum required front setback of 10'-0" in order to construct a new detached monument sign at 5'-9" from the front property line facing Indian Creek Drive.
7. A. A variance to exceed by 6" (12.5%) the maximum allowed projection of 1'-0" (25%) for roof overhangs within the existing front yard of 4'-0" in order to construct a new roof with a roof overhang of 1'-6" (37.5%) into the front yard facing Indian Creek Drive.

B. A variance to exceed by 3" (4%) the maximum allowed projection of 1'-3" (25%) for roof overhangs within the existing front yard of 5'-2" in order to construct a new roof with a roof overhang of 1'-6" (29%) into the front yard facing Byron Avenue.
8. A variance to reduce by 11'-0" 5'-0" the minimum required side setback of 15'-0" in order to construct a pool deck at 4'-0" 10'-0" from the front property line facing Indian Creek Drive. (Modified Variance)
9. A variance to allow the construction of new stairs encroaching within the first 5'-0" from the property lines facing Byron Avenue and Indian Creek Drive.



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

The applicant has submitted plans and documents with the application that the Board has concluded 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.

- C. The Board hereby **Approves** the Variance request(s), and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.

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 submit a Hold Harmless Covenant Running with the Land to the City Attorney's Office in a form acceptable to the City Attorney indemnifying and holding harmless the city against any claim or loss in the event of an accident involving a motor vehicle or other instrumentality due to the proximity of the building structures and monument sign to the public right-of-way.
- B. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- C. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- D. 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.
- E. 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.
- F. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- G. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

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

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "The Devon Hotel", as prepared by **DNB Design Group** dated, signed and sealed August 11, 2017 and as approved by the Design Review Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

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



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

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

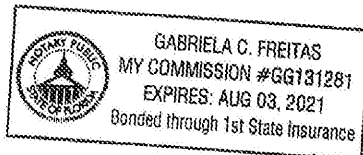
Dated this 06 day of October, 2017.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

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

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

The foregoing instrument was acknowledged before me this 6 day of October, 2017 by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



[Signature]
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 8-3-21

Approved As To Form: [Signature] (10/6/17)
City Attorney's Office: [Signature]

Filed with the Clerk of the Design Review Board on [Signature] (10/6/17)

[Signature]