

CFN: 20210103052 BOOK 32342 PAGE 288  
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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

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

MEETING DATE: January 12, 2021

PROPERTY/FOLIO: 2901 Indian Creek Drive / 02-3226-001-1180  
2911 Indian Creek Drive / 02-3226-001-1170

FILE NO: HPB20-0379

IN RE: An application by 29 ICD, LLC for a Certificate of Appropriateness for the total demolition of two existing buildings, the renovation, restoration and relocation of one existing building, the construction of a detached residential addition and multiple variances from the required pedestal and tower setbacks and to exceed the maximum projection allowed in required yards.

LEGAL: **Parcel 1 (2901 Indian Creek Drive):** Lot 17 and tract opposite same facing Indian Creek, Block 12, Miami Beach Improvement Company Subdivision, According to the Plat Thereof, as Recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida.

**Parcel 2 (2911 Indian Creek Drive):** Lot 16 and tract opposite same facing Indian Creek, Block 12, Miami Beach Improvement Company Subdivision, According to the Plat Thereof, as Recorded in Plat Book 5, Page 7, 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 Collins Waterfront 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 not consistent with Sea Level Rise and Resiliency Review Criteria "1" in Section 133-50(a) of the Miami Beach Code.
  2. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
  3. Is not consistent with Certificate of Appropriateness Criteria 'b' in Section 118-564(a)(2) of the Miami Beach Code.

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4. Is not consistent with Certificate of Appropriateness Criteria 'b', 'd', 'f', & 'm' in Section 118-564(a)(3) of the Miami Beach Code.
  5. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(f)(4) of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-564 and 133-50(a) if the following conditions are met:
1. Revised elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
    - a. The existing structure on site shall be fully renovated and restored, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board; at a minimum, this shall include the following:
      - i. Final details of the relocation and elevation of the building 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. The first habitable floor shall be located at 9.00' NGVD.
      - ii. All through-the-wall and through-the-window air conditioning units shall be removed and replaced with a central air conditioning system, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
      - iii. The existing non-original windows shall be replaced with new impact resistant casement windows and shall incorporate a muntin configuration that is consistent with available historical documentation, 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 final design and details of the south pedestal portion of the new addition shall be further developed and may contain openings in a manner more consistent with the design alternatives presented at the January 12, 2021 meeting, 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 north 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.

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- 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. All hedge and ground cover plantings within the street facing yards shall not exceed 36" in height at maturity.
    - b. Prior to issuance of a Building Permit, the applicant shall provide a Tree Report prepared by a Certified Arborist for any existing canopy shade trees with a DBH of 3" or greater located in public or private property, which may be scheduled for removal or relocation for the review and approval of the City of Miami Beach Urban Forester.
    - c. 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.
    - d. The project design shall minimize the potential for a project causing a heat island effect on site.
    - e. Cool pavement materials or porous pavement materials shall be utilized.

In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.

## II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s) which were either approved by the Board with modifications, or denied:
  1. A variance to reduce by 4'-4" the minimum required pedestal front setback of 20'-0" in order to relocate a contributing building for a new residential development and provide a setback of 15'-8" from the front property line facing Indian Creek Drive.
  2. A variance to reduce by 7'-6" the minimum required lower rear setback of 22'-6" for a new residential development and provide a tower setback of 15'-0" from the rear property line.

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3. A variance to reduce by 0'-5" the minimum required lower interior side setback of 12'-7" for a new residential development and provide a lower setback of 12'-2" from the interior north side property line.

The following variances were approved with modifications or denied:

4. A variance to exceed by ~~3'-4" (38%)~~ 1'-6" (15%) the maximum allowed projection of 2'-6" (25%) for balconies within the side ~~4'-0"~~ yard of 10'-0" at pedestal level in order to construct a new building with balcony projection of ~~6'-5" (64%)~~ 4'-0" (40%) into the north side yard.
  5. A variance to exceed by ~~3'-8" (36.6%)~~ 1'-6" (15%) the maximum allowed projection of 2'-6" (25%) for balconies within the street side yard of 10'-0" at pedestal and lower levels in order to construct a new building with balcony projection of ~~6'-2" (61.6%)~~ 4'-0" (40%) into the south side yard.
  6. A variance to exceed by ~~4'-5" (29.4%)~~ 3'-9" (25%) the maximum allowed projection of 3'-9" (25%) for balconies within the rear yard of 15'-0" at pedestal level in order to construct a new building with balcony projection of ~~8'-2" (54.4%)~~ 7'-6" (50%) into the rear yard.
  7. A variance to exceed by ~~5'-4" (47%)~~ 3'-6" (28%) the maximum allowed projection of 3'-1" (25%) for balconies within the side yard of 12'-7" at lower level in order to construct a new building with balcony projection of ~~8'-0" (72%)~~ 6'-7" (53%) into the north side yard.
  8. A variance to exceed by ~~4'-1" (44.6%)~~ 9'-5" (42%) the maximum allowed projection of 5'-7" (25%) for balconies within the rear yard of 22'-6" at tower level in order to construct a new building with balcony projection of ~~15'-8" (69.6%)~~ 15'-0" (67%) into the rear yard.
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

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That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure,

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

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

- C. The Board hereby **Approves** the requested variances and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:
1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.

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

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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

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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 "29 Indian Creek", as prepared by Urban Robot Associates, 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.

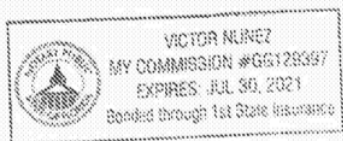
Dated this 2 day of February, 2021

HISTORIC PRESERVATION BOARD  
THE CITY OF MIAMI BEACH, FLORIDA  
BY:   
DEBORAH PICKETT  
CHIEF OF HISTORIC PRESERVATION  
FOR THE CHAIR

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

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The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of February 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.



Victor Nunez  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: July 30, 2021

Approved As To Form  
City Attorney's Office: [Signature] ( 1/28/2021 )

Filed with the Clerk of the Historic Preservation Board on Jan. 14 ( 2/2/21 )



