

**DESIGN REVIEW BOARD  
City of Miami Beach, Florida**

MEETING DATE: July 5, 2016

FILE NO: DRB0416-0012 (a.k.a. Design Review File No. 23248)

PROPERTY: **8011-8035 Harding Avenue**

APPLICANT: Harding Excalibur, LLC

LEGAL: Lots 2-5 less west 2.5' of Block 5 of "Altos Del Mar No. 3", according to Plat thereof as recorded in Plat Book 8, Page 41, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for modifications to a previously approved Design Review Approval to include variances to reduce the required front, interior side, and sum of the side setbacks in order to retain an existing two-story structure with non-conforming setbacks.

**S U P P L E M E N T A L   O R D E R**

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 and 3 in Section 118-251 of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of Section 118-251 if the following conditions are met:
  - 1. All of the original conditions of the Final Orders dated December 01, 2015 and June 7, 2016 shall remain in full force and effect except as modified herein.

**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 to reduce 10'-9" from the required pedestal interior side setback of 16'-0" in order to retain an existing two-story residential building at a minimum setback of 5'-3" from the interior side (north) property line.
  2. A variance to reduce 3'-3" from the required pedestal front setback of 20'-0" in order to retain an existing two-story residential building at a minimum setback of 16'-9" from the front property line facing Harding Avenue.
  3. A variance to reduce 10'-5" from the required sum of the side setback of 32'-0" in order to construct a new four-story development with a sum of the side yard setback of 21'-7" where 32'-0" is required.
- 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 also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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

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

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

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

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

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


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

- 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.
2. The existing structure on site (8035 Harding Avenue) shall be fully renovated and restored, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
3. All through-the-wall 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 Design Review Criteria and/or the directions from the Board.
4. The existing windows shall be removed; new casement windows shall be provided and shall incorporate a muntin configuration that is consistent with the architectural style of the building, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
5. A copy of all pages of the recorded Supplemental 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

**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. 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.
  - B. 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 driveway to the adjacent neighboring properties.
  - C. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.
  - D. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
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- E. In the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, subject to the review and approval of staff based upon the design review or appropriateness criteria, and/or directions received from the Board.
- F. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- G. The Supplemental 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 Supplemental 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.

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 "Own Hotel Variance Application", as prepared by **Behar Font Partners PA** dated, signed, and sealed May 24, 2016 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 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 6<sup>th</sup> day of July, 2016.

DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY:   
DEBORAH J. TACKETT  
DESIGN AND PRESERVATION MANAGER  
FOR THE CHAIR

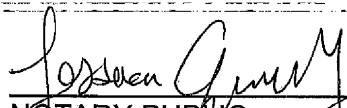
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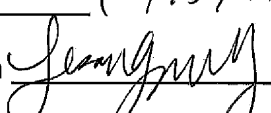
The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2016, by Deborah J. Tackett, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: 2-9-20

Approved As To Form:

City Attorney's Office:  ( 7/5/16 )

Filed with the Clerk of the Design Review Board on  ( 7-6-16 )