

MIAMI BEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members DATE: February 6, 2024

FROM: Thomas R. Mooney, AICP  for TRM
Planning Director

SUBJECT: DRB23-0934
1940 Bay Drive

An application has been filed requesting Design Review Approval for the construction of a new 5-story multifamily building, including one or more waivers, and a variance from the driveway setback requirements and a variance from the minimum required width of interior drive aisles with parking.

RECOMMENDATION:
Continuance to a future date.

LEGAL DESCRIPTION:
Lot 15 thru Lot 18, Block 29, of ISLE OF NORMANDY MIAMI VIEW SEC PART 1, according to the Plat thereof, as recorded in Plat Book 34, at Page 80, of the Public Records of Miami-Dade County, Florida.

BACKGROUND
On January 2, 2024, the Design Review Board continued this application to a date certain of February 6, 2024, due to a lack of quorum for variances.

<u>SITE DATA:</u>		Existing Use:	Multifamily
Zoning:	RM-1	Proposed Use:	Multifamily
Future Land Use:	RM-1		Residential
Lot Size:	35,406 SF	Residential Units:	12 Units
Proposed FAR:	44,252.15 SF/ 1.24*	Grade: +4'-1" NGVD	
Maximum FAR:	44,257.50 SF/ 1.25	Flood: +8.00' NGVD	
*As represented by the applicant		First Finished Floor Elevation:	+22'-8" NGVD
Lot Coverage:			
Proposed:	17,303 SF / 49%*		
Maximum:	15,932.7 SF / 45%		
*DRB Waiver		<u>Surrounding Properties:</u>	
Height:		East:	4-story Multifamily
Proposed:	55'-0"	North:	1-story and 2-Story Multifamily
Maximum:	55'-0"	South:	Biscayne Bay
Highest Projection:	75'-0"	West:	2-Story Multifamily

THE PROJECT:
The applicants have submitted plans entitled "1940 Bay Drive" as prepared by **Revuelta Architecture International, PA**, dated 11/05/2023.

The applicant is proposing to construct a new five-story, twelve unit multifamily residential development including waivers and variances.

The applicant is requesting the following waiver(s):

1. The maximum lot coverage for lots greater than 65 feet in width shall not exceed 45%.
The applicant is proposing a lot coverage of 49%.

The applicant is requesting the following variance(s):

1. A variance to reduce by 1'-0" from the minimum required width of 22'-0" for a two-way interior drive aisle with 90° parking, in order to provide an interior aisle of 21'-0".
Approval recommended
2. A variance from the minimum required front setback of 20 feet for parking/driveway, in order to construct a driveway parallel to the front property line with a setback of approximately 14 feet.
Denial recommended

Although the application includes a variance request for the combined width of the two access drives, staff has determined that the two proposed driveway curb cuts of 14 feet each is compliant with the requirements of the Code, notwithstanding the design concerns of staff as noted in the analysis section of this report.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded **partially** satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application **partially** comply with the following hardship criteria, as they relate to the requirements Section 2.8.3 of the Land Development Regulations:

- i. 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;
- ii. The special conditions and circumstances do not result from the action of the applicant;
- iii. 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;
- iv. 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;
- v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

- vi. 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;
- vii. 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; and
- viii. 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 7, article I, as applicable.

COMPLIANCE WITH ZONING CODE:

A preliminary review of the project indicates that the application, as proposed, appears to be consistent with the requirements of the City Code with the exception of the waiver and variances requested.

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.

COMPLIANCE WITH DESIGN REVIEW CRITERIA, SECTION 2.5.3.1:

Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearance, safety, and function of any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community. The design review board and the planning department shall review plans based upon the below stated criteria, criteria listed in neighborhood plans, if applicable, and applicable design guidelines. Recommendations of the planning department may include, but not be limited to, comments from the building department and the public works department.

- a. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
Satisfied
- b. 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.
Not Satisfied; the applicant is requesting variance(s) associated with drives from the Board.
- c. 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.
Satisfied
- d. The color, design, selection of landscape materials and architectural elements of exterior building surfaces and primary public interior areas for developments requiring a building permit in areas of the city identified in section 2.5.3.2.
Satisfied

- e. The proposed site plan, and the location, appearance and design of new and existing buildings and structures are in conformity with the standards of this article and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the design review board and historic preservation board and all pertinent master plans.

Satisfied

- f. The proposed structure, or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties.

Satisfied

- g. The design and layout of the proposed site plan, as well as all new and existing buildings 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 contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

Satisfied

- h. 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 all parking spaces are usable and are safety and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.

Not Satisfied; the applicant is requesting variance(s) from the Board associated with drives.

- i. 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. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.

Not Satisfied; a lighting plan has not been submitted.

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

Satisfied

- k. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

Satisfied

- l. The proposed structure has 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

- m. The building has, where feasible, space in that part of the ground floor fronting a 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 street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

Satisfied

- n. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Satisfied

- o. An 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

- p. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

Satisfied

- q. 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

- r. In addition to the foregoing criteria, subsection 118-104-6(t) of the General Ordinances shall apply to the design review board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public rights- of-way.

Not Applicable

- s. The structure and site comply with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

Not Satisfied; see below

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4(a)(i) of the Land Development Regulations establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

1. A recycling or salvage plan for partial or total demolition shall be provided.

Not Satisfied

A recycling plan shall be provided as part of the submittal for a demolition/building permit to the building department.

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

Satisfied

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 4 of the Land Development Regulations.
Satisfied
5. The project applicant shall consider the adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.
Satisfied
6. The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.
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.
Satisfied
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 Applicable
10. In all new projects, water retention systems shall be provided.
Satisfied; additional information will be required at the time of building permit in order to demonstrate compliance.
11. Cool pavement materials or porous pavement materials shall be utilized.
Satisfied; additional information will be required at the time of building permit in order to demonstrate compliance.
12. The project design shall minimize the potential for a project causing a heat island effect on site.
Satisfied; additional information will be required at the time of building permit in order to demonstrate compliance.

ANALYSIS:
DESIGN REVIEW

The applicant is proposing to construct a modern five-story building above ground level parking and common areas. The project proposes three large unit types per floor, ranging in size from 2,800 to almost 3,000 square feet. Each unit type has an associated elevator and lobby, as well as a designated pool area with deck and restroom on the roof level, resulting in three elevator shafts and three pool areas for the overall development. The units contain three bedrooms, one of which is a convertible den, a large master bedroom suite, laundry room, an open kitchen / dining / living area, and expansive balconies. 24 parking spaces are provided, allotting two spaces per unit.

The design of the proposed building features bands of floor to ceiling glass walls set beyond curvilinear balconies of glass and aluminum railings that wrap the building at each level. The ground floor alternates smooth stucco with horizontally scored stucco walls, and vertical, wood-like aluminum cladding screens the garage elevations. The same aluminum cladding accents the brise soleil on the top floor of the street elevation, as well as the underside of the balcony slabs. The various architectural gestures and materiality lend the elevations interest and movement. Staff recommends that the design include balcony dividers between units, specifically along the expansive balconies overlooking the bay, as well as the revision of the rooftop canopy to incorporate a trellis where it does not cover an enclosed room.

While supportive of the building design, staff has serious concerns with the site layout, in particular the proposed driveways and extent of pavement within the front of the property. Considering that there are only 12 units within the entire building, staff does not find a need for a dedicated, two-way drive aisle that traverses the entire front of the building, and for which this application is requesting a variance.

Staff is strongly opposed to the location, dimensions and design of the proposed driveways, as well as the associated excessive pavement as proposed. In this regard, given the relatively low density proposed, alternatives for drop-off should be explored. Additionally, the width of the curb cuts should be reduced to no more than 10' on each side, since the two parking areas under the building serve 6 units each. Lastly, staff is supportive of the proposed public bay walk along the waterway.

This application includes a requested design waiver for lot coverage. For multifamily lots greater than 65'-0" in width, the code requires that the lot coverage shall not exceed 45 percent of the lot, inclusive of impervious pavements, unless waived by the DRB. The applicant is proposing a lot of coverage of 49%. The excess lot coverage is largely due to the proposed two-way drive, which staff does not support. The applicant has indicated that the entire front of the property must contain a wide access driveway to accommodate the largest fire truck, due to the excessive front setback provided. As submitted, the building has a proposed setback of 43 feet, whereas 20 feet is the minimum required.

Such large drives are inconsistent with the established scale, character and context of the RM-1, Residential Low Intensity zoning district, and would have a significantly negative impact on the surrounding residential area. Moving the entire building closer to the street is preferable to constructing a secondary road in front of the building. As such, staff is not supportive of the requested waiver with a two-way drive along the entire front of the building, and recommends denial of the waiver, along with the removal of the driveway parallel to the street.

VARIANCE REVIEW

The applicant is now requesting the following variance(s):

1. A variance to reduce by 1'-0" from the minimum required width of 22'-0" for a two-way interior drive aisle with 90° parking, in order to provide an interior aisle of 21'-0".

- Variance requested from:

5.3.43 INTERIOR AISLES

Interior aisles shall meet or exceed the following minimum dimensions permitted:

- a. 90° parking—**22 feet**, with columns parallel to the interior drive on each side of the required drive, set back an additional one foot six inches, measured from the edge of the required interior drive to the face of the column.

Due to the angled nature of the side property lines, the property is wider on the water side and slightly narrower on the street side. As proposed, the building footprint follows the angle of the side property lines and is slightly larger at the rear compared to the front. For this reason, approximately three parking spaces on each of the building have a drive aisle width of 21 feet. The remaining parking spaces towards the rear of the parking area, where the width of the building expands can be shifted slightly to follow the building walls and comply with the required 22 feet drive aisle width. Staff believes that the angled nature of the site results in a practical difficulty in complying with the minimum drive aisle requirements. Additionally, the variance has no external impact on the adjacent properties, is minimal in nature, and will not result in any negative impact on the site or surrounding properties. As such, staff is supportive of this variance.

2. A Variance from the minimum required front setback of 20 feet for parking/driveway, in order to construct a driveway parallel to the front property line with a setback of approximately 14 feet.

- Variance requested from:

7.2.4.3 DEVELOPMENT REGULATIONS (RM-1)**7.5.3.2 Allowable encroachments within required yards for districts other than single-family districts.**

With the exception of driveways leading into a property, driveways and parking areas are not an allowable encroachment within a required yard and must comply with the required building setbacks, which in this case is 20 feet. As noted previously, the applicant has indicated that the excessive driveway parallel to the front property line is needed for firetruck access due to the proposed building setback. This would also function as a large 2-way drop off drive in front of the building. While such a large drop-off area may be warranted for a much larger building in a high intensity zoning district, only 12 units are proposed for this project. Such large drives are inconsistent with the established scale, character and context of the RM-1, Residential Low Intensity zoning district, and would have a significantly negative impact on the surrounding residential area. For this reason, staff recommends denial of the requested variance. Further, staff recommends that the entire building be brought closer to the street, in order to negate the requirement for a firetruck lane on the property.

In light of the concerns expressed herein, including recommended changes to the site plan, staff recommends that the application be continued to a future date.

RECOMMENDATION:

In view of the foregoing analysis, and inconsistencies with the aforementioned design review criteria, staff recommend that the application be **continued to a future date**. However, should the Board approve the application, staff recommends that such approval, including the requested variance, be subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review criteria and Sea Level Rise criteria, and practical difficulty and hardship criteria.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: February 6, 2024

PROPERTY/FOLIO: **1940 Bay Drive** 02-3210-002-1200

FILE NO: DRB23-0934

IN RE: An application has been filed requesting Design Review Approval for the construction of a new 5-story multifamily building, including one or more waivers, and a variance from the driveway setback requirements and a variance from the minimum required width of interior drive aisles with parking.

LEGAL: Lot 15 thru Lot 18, Block 29, of ISLE OF NORMANDY MIAMI VIEW SEC PART 1, according to the Plat thereof, as recorded in Plat Book 34, at Page 80, of the Public Records of Miami-Dade County, Florida.

APPLICANT: 1940 Apartment LLC

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 2.1.3.1 of the Land Development Regulations. 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 b, h, i and s in Section 2.5.3.1 of the Land Development Regulations.
- 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 in Section 7.1.2.4(a)(i) of the Land Development Regulations.
- D. The project would be consistent with the criteria and requirements 2.5.3.1 and/ or Section 7.1.2.4(a)(i) if the following conditions are met:
 - 1. Revised elevation, site plan, and floor plan drawings for the proposed new multifamily building at 1940 Bay Drive shall be submitted, at a minimum, such drawings shall incorporate the following:
 - a. The lot coverage waiver shall not be granted.

- b. The proposed two-way drive that runs along the front of the site shall not be approved. The subject area shall be replaced with landscaping and a pedestrian connection to the street, in a manner to be reviewed and approved by staff.
 - c. The vehicular curb cuts shall each be reduced to 10 feet in width, subject to the review and approval of staff.
 - d. Balcony dividers shall be added to the large balconies overlooking the bay to separate units. The final design and details of the dividers 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.
 - e. The final design and details of the aluminum cladding on the underside of the balconies 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 design and details of the aluminum cladding on the front elevation brise soleil at the 5th floor 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. Rooftop lighting, with the exception of lighting which may be integrated into the outdoor kitchen trellis, shall be located no higher than 42 inches above the finished roof deck, subject to the review and approval of staff.
 - h. The design and details of any site/garage fencing/gates, if proposed, shall be subject to the review and approval of staff.
 - i. The final design details of the exterior materials and finishes 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.
 - j. URBAN HEAT ISLAND ORDINANCE Section 7.5.3.2(g)(iv) Driveways and parking areas that are open to the sky within any required yard shall be composed of porous pavement or shall have a high albedo surface consisting of a durable material or sealant, as defined in Section 1.2.1 of this Code, and (v) Driveways and parking areas composed of asphalt that does not have a high albedo surface, as defined in Section 1.2.1, shall be prohibited.
 - k. 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.
2. A revised landscape plan shall be prepared by and bear the seal of a Landscape Architect licensed to practice in the State of Florida. The corresponding landscape plans shall be submitted to and approved by staff. At a minimum, landscape plans shall comply with Chapter 46 Tree Preservation and Protection Ordinance of the City Code and Chapter 2, Landscape Requirements of the Land Development Regulations and shall incorporate the following:
- a. Prior to the issuance of a building permit, the applicant shall submit a tree survey and tree disposition plan that includes the approved tree protection fencing detail for existing mature trees and palms to remain. Such plans shall be subject to the review and approval of staff. A tree work permit shall be

obtained prior to the removal of any existing trees and palms according to the Chapter 46 Ordinance.

- b. In addition to the tree survey and tree disposition plan, a Tree Resource Evaluation Report prepared by an ISA Certified Arborist shall be submitted for the subject property. Every effort shall be made to protect and preserve existing mature trees on site. Architectural and site design shall be developed in such a way to protect, preserve, and retain existing specimen trees in their current location.
 - c. In new construction projects, street trees are required within the public right of way. Street trees are in addition to the required lot trees according to the Chapter 2 Landscape Ordinance. All proposed street tree plantings shall be reviewed and approved by the Public Works Department and a right of way permit shall be obtained prior to any plantings in the right of way.
 - d. Suspended paver systems such as Silva Cells or equal shall be installed where street trees are planted in right of way sidewalk and other hardscape areas in a manner to be reviewed and approved by staff. Suspended paver systems shall be clearly delineated in the landscape plans. Structural soils may be considered where proposed trees are located immediately adjacent to large open space areas.
 - e. Root guards or barriers shall be installed to protect utilities and structures within close proximity of proposed tree plantings. The root guards shall be clearly delineated in the landscape plans and shall be reviewed and approved by staff.
 - f. Irrigation systems shall be designed and installed corresponding to the water requirements of the proposed plantings and as required in the Chapter 2 Landscape Ordinance. The irrigation system shall be extended into the public right of way. A rain shut off device is required to be installed as part of the irrigation system.
 - a. 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.
 - b. 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.
 - g. Prior to the issuance of a Certificate of Occupancy, the Project Landscape Architect shall verify in writing that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
3. The applicant has voluntarily offered, proffered and agreed to provide a public bay walk ("Public Baywalk") north of the existing seawall along the rear of the subject site in accord with the following conditions. This proffer and its acceptance are based on

a particularized evaluation and assessment of the subject project, the rational nexus between such project and impacts to the local transportation network, and the rational nexus and rough proportionality between the project and impacts to the transportation network and the bay walk proffered. The following conditions pertain to the Public Baywalk. These conditions are subject to change upon further review by the City Attorney Office and other departments:

- a. The Public Baywalk shall be designed, permitted and built by the applicant. All costs associated with the design, permitting and construction of the Public Baywalk, as described herein, shall be borne by the applicant.
- b. Prior to the issuance of a building permit for any work approved by the Design Review Board, as it relates to the subject development project, the applicant shall enter into and record a restrictive covenant, approved by the Miami Beach City Attorney, which runs with the land, confirming the applicant's agreement to design, permit, construct and maintain a Public Baywalk including any required easements, in perpetuity, and confirming public access to such Public Baywalk, in accordance with the conditions herein. The restrictive covenant shall be recorded in the public records, at the expense of the applicant.
- c. The Public Baywalk shall connect directly to any future Public Baywalk to the east and west sides of the property.
- d. The width of the Public Baywalk shall be a minimum width of ten (10') feet along the waterfront. The location, design details and material of the Public Baywalk shall be subject to the review and approval of staff.
- e. The Public Baywalk may be secured and segregated from the upland portions of the site, in a manner to be reviewed and approved by staff.
- f. The Public Baywalk shall be open to the public from Sunrise to Sunset, 7 days a week, or as otherwise determined by the City Commission, upon the City Commission's adoption of uniform rules relating to public baywalks. The applicant may install an operable fence, gate or other operable barrier to restrict public access to the Public Baywalk, subject to the review and approval of staff; such operable fence, gate or barrier shall include some form of automatic timing device, in order to ensure that the Public Baywalk is open between the hours of sunrise and sunset. Access by the public to the Public Baywalk shall only be restricted between the hours sunset and sunrise, and otherwise, as determined by the Planning Director, in the event of an emergency, dangerous condition or other circumstance that would render usage of the Public Baywalk a safety risk. Any violation of this condition shall be subject to a notice of violation and enforcement by the Special Master or any alternative remedy available to the City.
- g. The applicant shall be responsible for the maintenance, repair and, if necessary, the replacement, if destroyed in whole or part, of the full Public Baywalk, including the seawall, and shall establish reserves and insurance to accomplish this obligation.
- h. The applicant shall complete all design development and permit drawings for the proposed Public Baywalk as part of the building permit for the project approved by the Design Review Board in this application. The Public Baywalk

shall be substantially completed prior to the issuance of any TCO, Partial CO or Final CO for any work approved by the Design Review Board in this application.

- i. All Public Baywalk access points shall be posted with standard “Public Baywalk” signs. The overall design, number, dimensions, placement and color of such signs shall be subject to the review and approval of staff.
- j. The installation of fences, gates or other barriers, which permanently block public access to the Public Baywalk shall be prohibited.
- k. If the applicant sells, leases or otherwise conveys the property, these conditions shall run with the land, and the applicant's successors shall be obligated to comply with these conditions.

In accordance with section 2.2.4.8 of the Land Development Regulations, the applicant, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal a decision of the design review board for design review approval only to 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), which were either approved by the Board or Denied:

- 1. A variance to reduce by 1'-0" from the minimum required width of 22'-0" for a two-way interior drive aisle with 90° parking, in order to provide an interior aisle of 21'-0".
(Variance Approved)
- 2. A Variance from the minimum required front setback of 20 feet for parking/driveway, in order to construct a driveway parallel to the front property line with a setback of approximately 14 feet. **(Variance Denied)**

B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, 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.

Additionally, the Board has concluded that the plans and documents submitted with the application comply with the following hardship criteria, as they relate to the requirements of Section 2.8.3 of the Land Development Regulations:

- i. 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;
- ii. The special conditions and circumstances do not result from the action of the applicant;
- iii. 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;

- iv. 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;
- v. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- vi. 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;
- vii. 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; and
- viii. 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 7, article I, as applicable.

C. The Board hereby **Approves variance request #1, Denies variance request #2,** and imposes the following condition based on its authority in Section 2.8.4 of the Land Development Regulations:

- 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. Site plan approval 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 prior to the issuance of a Building Permit
- B. All new construction over 7,000 square feet shall be required to be, at a minimum, certified as LEED Gold by USGBC. In lieu of achieving LEED Gold certification, properties can elect to pay a sustainability fee, pursuant Section 7.1.3.2 of the Land Development Regulations. This fee is set as a percentage of the cost of construction.
- C. 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.

- D. During construction work, the applicant shall maintain gravel at the front of the construction site within the first 15'-0" of the required front yard and including the swale (subject to the review and approval of Public Works), to mitigate disturbance of soil and mud by related personal vehicles exiting and entering the site. All construction materials, including dumpsters and portable toilets, shall be located behind the construction fence and not visible from the right-of-way.
- E. During the course of construction, all vehicles, including, but not limited to all personal vehicles, shall park within the confines of the private property, the swale directly abutting the construction site, or at alternate overflow parking sites that are not on-street metered spaces and not zoned RS. Additionally, parking of any vehicles shall be prohibited in the travel lanes of all streets.
- F. The building and parking departments shall approve a construction parking plan prior to the issuance of any building permit, including applicable demolition permits for the project.
- G. The applicant shall ensure that the contractor(s) observe good construction practices and prevent construction materials and debris from impacting the right-of-way.
- H. The contractor(s) shall ensure that the street and the swale directly abutting the construction site remains free of debris and refuse at all times; at a minimum, the contractor(s) shall inspect and clear the street and swale areas before leaving at the end of each day.
- I. This order shall be enforced by the Building, Planning, Parking and Code Compliance Departments.
- J. A recycling/salvage plan shall be provided as part of the submittal for a demolition/building permit, in a manner to be reviewed and approved by staff.
- K. 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.
- L. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- M. 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.
- N. 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.

- O. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- P. 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 revised plans, entitled "1940 Bay Drive" as prepared by **Revuelta Architecture International, PA**, dated 11/05/2023, 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 Section 2.2.4.6 of the Land Development Regulations; 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 2 of the Land Development Regulations, 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 2 of the Land Development Regulations, for revocation or modification of the application.

Dated _____.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, AICP
Planning & Design Officer
For the Chair

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

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by Michael Belush, Planning & Design Officer of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.

{NOTARIAL SEAL]

Notary:
Print Name
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
City Attorney's Office: _____ (_____)

Filed with the Clerk of the
Design Review Board on: _____ (_____)