

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

MEETING DATE: April 2, 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 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. 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

- b. 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.
  - c. The final design and details of the aluminum cladding on the front elevation brise soleil at the 5<sup>th</sup> 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.
  - d. 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.
  - e. The design and details of any site/garage fencing/gates, if proposed, shall be subject to the review and approval of staff.
  - f. 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.
  - g. 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.
  - h. 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. The applicant shall provide seating areas in the landscaped portion of the front yard, in a manner to be reviewed and approved by staff.
  - b. The applicant shall ensure that mature trees are installed in the front yard, in a manner to be reviewed and approved by staff.
  - c. The applicant shall provide a tree maintenance plan, to be reviewed and approved by staff, prior to the issuance of a certificate of occupancy and shall maintain the landscaping in perpetuity.
  - d. 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

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Chapter 46 Ordinance.

- e. 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.
  - f. 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.
  - g. 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.
  - h. 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.
  - i. 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.
  - j. 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

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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. A Public Baywalk shall be provided. 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.~~

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 2024.03.08, 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.

5/16/2024 | 6:11 PM EDT

Dated \_\_\_\_\_.

DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_

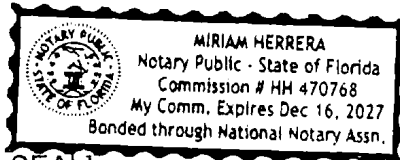
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*Rogelio Madan*

Rogelio A. Madan, AICP  
Development & Resiliency Officer  
For the Chair

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

The foregoing instrument was acknowledged before me this 5 day of June 2024 by Rogelio A. Madan, Development & Resiliency 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: *Miriam Herrera*  
Print Name *Miriam Herrera*  
Notary Public, State of Florida  
My Commission Expires: *12-16-27*  
Commission Number: *HH470768*

Approved As To Form:  
City Attorney's Office: \_\_\_\_\_

DocuSigned by:

*Steven Rothstein*

5/16/2024 | 5:43 PM EDT

Filed with the Clerk of the  
Design Review Board on: \_\_\_\_\_

DocuSigned by:

*Jessica Gonzalez*

5/17/2024 | 10:09 AM EDT