

# MIAMI BEACH

PLANNING DEPARTMENT  
Staff Report & Recommendation

Design Review Board

TO: DRB Chairperson and Members

DATE: September 3, 2024

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: DRB24-1026  
**94 Palm Avenue**

An application has been filed requesting Design Review Approval for the construction a new two-story residence with an understory level, including a variance to permit an existing structure to remain within the front and side yard setbacks, ~~a variance to allow driveways to exceed the maximum allowable width~~, and one or more waivers, to replace an existing residence.

## **RECOMMENDATION:**

Approval of the Design.  
Approval of Variances.

## **LEGAL DESCRIPTION:**

Lots 36 and 37, in Block 1, of PALM ISLAND, according to the Plat thereof, recorded in Plat Book 6, Page 54, of the Public Records of Miami-Dade County, Florida.

Also:

A strip of land 20 feet wide lying Southerly of and contiguous to the Southerly boundary line of Lots 36 and 37, in Block 1, of PALM ISLAND, according to the Plat thereof, recorded in Plat Book 6, Page 54, of the Public Records of Miami-Dade County, Florida.

## **SITE DATA:**

Zoning:	RS-1
Future Land Use:	RS
Lot Size:	62,081.75 SF
Lot Coverage:	
Proposed:	18,619 SF / 29.9%
Maximum:	18,624.53 SF / 30%
Unit size:	
Proposed:	29,532 SF / 47.5%
Maximum:	31,040.88 SF / 50%
Height:	
Proposed:	31'-0" Flat Roof*
Maximum:	31'-0" Flat roof**
From 1 <sup>st</sup>	
habitable level:	28'-6"
*as measured from BFE+5'	
** subject to DRB review	

Grade:	+6.12' NGVD
Base Flood Elevation:	+9.00' NGVD / +10.00' NGVD
Adjusted Grade:	+7.56' NGVD
First Floor Elevation:	+16.92' NGVD (BFE+ 8'-7" fb)

## **EXISTING PROPERTY:**

Year:	1925
Architect:	Pfeifer & Orily
Vacant:	No
Demolition:	Full / retainment of separate two-story structure

## **Surrounding Properties:**

East:	2-story 1973 residence
South:	Biscayne Bay

West: Two-story 2006 residence  
North: Two-story 2013 residence

**THE PROJECT:**

The applicant has submitted plans entitled "94 Palm Residence" as designed by **Borges Architects + Associates** dated July 7, 2024

The applicant is requesting review for an understory area:

1. Understory area shall be subject to the review and approval of the Design Review Board in accordance with Section 7.2.2.3(b)(vi).

The applicant is requesting the following waivers:

1. A two-story side (east) elevation in excess of 60'-0" in length in accordance with Section 7.2.2.3(b)(ii).
2. A waiver from Sec. 7.2.2.3(b)(vi) to provide parking within a required yard.

The applicant is requesting the following variance(s):

1. A variance from Sec. 7.2.2.3.b. to reduce by 24'-10" the minimum required 30'-0" front setback to retain an existing two-story structure with a 5'-2" setback.
2. A variance from Sec. 7.2.2.3.b. to reduce by 17'-2" the minimum required 20'-0" side (east) setback to retain an existing two-story structure with a 2'-10" side setback.

**PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

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

Additionally, staff 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 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.
- 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 inconsistent with the following sections of the City Code:

- Section 7.2.2.3(b)(vi). Subject to the review and approval of the Design Review Board the following may apply to the understory area(s): Understory area(s) shall be used only for open air activities, parking, building access, mechanical equipment, non-enclosed restrooms and storage.
- Two-story side elevations located parallel to a side property line shall not exceed 50 percent of the lot depth, or 60 feet, whichever is less, without incorporating additional open space, in excess of the minimum required side yard, directly adjacent to the required side yard:
  - a. The additional open space shall be regular in shape, open to the sky from grade, and at least eight feet in depth, measured perpendicular from the minimum required side setback line.
  - b. The square footage of the additional open space shall not be less than one percent of the lot area.
  - c. The elevation (height) of the open space provided shall not exceed the maximum permitted elevation height of the required side yard, and
  - d. At least 50 percent of the required interior open space area shall be sodded or landscaped with pervious open space.

The intent of this regulation shall be to break up long expanses of uninterrupted two-story volume at or near the required side yard setback line and exception from the minimum requirements of this provision may be granted only through design review board approval in accordance with the applicable design review criteria.

- The proposed carport and the renovated existing building with ground floor parking does not comply with item E. of Section 7.2.2.3(b)(vi), Understory Level Standards. All parking, including required parking, shall be provided within the understory area. No parking or vehicle storage shall be provided within a required yard. The DRB or HPB may forego the requirement, in accordance with the applicable design review or appropriateness criteria.

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.

**Satisfied. The applicant is requesting two variances related to the retainment and renovation of an existing structure.**

- 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. The applicant is requesting two variances related to the retainment and renovation of an existing structure.**

- 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. The applicant is requesting two variances related to the retainment and renovation of an existing structure.**

- 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. The applicant is requesting two variances related to the retainment and renovation of an existing structure.**

- 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.

**Satisfied. However, the applicant is requesting a waiver from the *Understory Level Standards* that requires all proposed parking to be located within the understory level. See staff analysis.**

- 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 for building permit.**

- 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. The applicant is requesting two variances related to the retainment and renovation of an existing structure. These structures do not block important view corridors.**

- 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.

**Not Applicable.**

- 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).  
**Not Applicable.**
- 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.  
**Not Applicable.**
- 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.  
**Not Applicable.**
- 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 or salvage plan will be submitted for building permit.**
- 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.**

#### **STAFF ANALYSIS:**

##### **DESIGN REVIEW**

The applicant is proposing to construct a new two-story residential home consisting of multiple detached structures, including one existing building, on Palm Island that will replace an existing residence. The applicant is requesting review of the understory, two design waivers, as well as two variances.

The proposed home features an understory with the first fully enclosed, habitable floor of the residence designed at an elevation of +16'-8" NGVD, or BFE plus 7'-8" of freeboard. In this design, the project architect has incorporated an understory that features vehicle storage and parking, general storage, covered patio areas, a guest entry vestibule, stairs and an elevator. The residence includes the retainment and renovation of an existing two-story structure that is located towards the front of the 1.42 acre site, which will house additional vehicular storage, as well as two one-story accessory buildings in the rear yard.

The new two-story residence is designed in a contemporary architectural style highlighted by cantilevered volumes and pronounced floor slabs and eaves that frame recessed walls of glass and stone-like finishes. The front elevation features a prominent projecting volume, clad in large format blue stone, supported by a shark-finned shaped column and that connects to the main two-story residence with curved slabs and eaves. Along the first floor of the main elevation the same blue stone contrasts with bronze metal panels, which are sited at an angle forming a brise-soleil, and glass panes. The second floor primary elevation is set beyond a glass balcony rail and alternated large panes of windows with large-format tiled walls. The rear elevation continues the horizontal emphasis of slabs and eaves and has continuous glazing walls that overlook Biscayne Bay. As proposed, the home is visually interesting and elegant, incorporating a rich material palette with planar movement.

The first of the requested design waivers relates to the open space requirements for two-story side elevations that exceed 60'-0" in length. For such elevations, the code establishes open space requirements in an effort to break up long expanses of interior elevations. In this instance, the east (side) elevation does not comply with the open space requirements of the code. The subject elevation is 114'-8" long and features a notch that is 9'-3" deep and 6'-10". As this open space is not open from grade nor is it landscaped, it does not meet the requirements of the code. The subject two-story elevation is setback an additional 27'-2" from the required 20' setback. Within this additional setback there is one-story volume on pilotis that is attached to the subject two-story elevation and that is surrounded by 552 square feet of landscaped open space. While the subject side elevation does not strictly adhere to the code, the assemblage of varying height volumes, the small notch within the subject two-story elevation and additional green space effectively breaks up the two-story elevation and meets the intent of the code.

The second design waiver pertains to parking and vehicular storage requirements established for residences featuring an understory. Within the *Understory Level Standards* all parking, including required parking, is to be located within the understory in an effort to maximize the site's landscaped and pervious areas. No parking or storage is to be located within the required yard unless approved by the Design Review Board. The subject application proposes a carport within the required side (west) yard in order to store an accessory van that is over 9 feet in height and that will not fit within the understory due height restrictions. The proposed carport is constructed of metal pipe and canvas, to provide shade, and is reached by a porous pavement drive where it sits over 125' from the front property line, behind a sport court. Given the use of porous pavement and its minimal visibility from adjacent properties, staff is supportive of the requested waiver.

## **VARIANCE REVIEW**

The applicant is requesting the following variance(s):

1. A variance from Sec. 7.2.2.3.b. to reduce by 24'-10" the minimum required 30'-0" front setback to retain an existing two-story structure with a 5'-2" setback.
2. A variance from Sec. 7.2.2.3.b. to reduce by 17'-2" the minimum required 20'-0" side (east) setback to retain an existing two-story structure with a 2'-10" side setback.
  - Variances requested from:

### **7.2.2.3 Development Regulations (RS)**



*(b) The development regulations for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

*1. The FAR, density, lot area, lot width, lot coverage, unit size, setbacks, and building height requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:*

BUILDING SETBACKS	RS-1	RS-2	RS-3	RS-4
Front Setback ④	20 feet - 1 Story Structure (5)(6) - provided that any future addition of a two-story attached structure shall be setback a minimum of 40 feet 30 feet - 2 Story Structures - (5)(6)			
Side, facing a street Setback ⑤	10% of the lot width or 15 feet, whichever is greater (5)(6) and the sum of the required side yards shall be at least 25% of the lot width			
Side, Interior Setback ⑥ Lots 65 feet in width or less	7.5 feet and the sum of the required side yards shall be at least 25% of the lot width			
Side, Interior Setback ⑥ Lots greater than 65 feet in width	10% of the lot width or 10 feet, whichever is greater and the sum of the required side yards shall be at least 25% of the lot width			
Rear Setback ⑦	15 % of the lot depth (7) 20 feet minimum 50 feet maximum			

Variance #1 pertains to the minimum front setback which is 30' for two-story structures. Variance #2 pertains to the minimum side setback which is 10% of the lot width for lots greater than 65 feet in width, 20' in this case. The applicant is proposing to retain an existing two-story garage/guesthouse that is within the required front and side yards.

While the new single family home complies with all required setbacks, the existing garage/guesthouse structure on site encroaches into the currently required front and side yards. The existing structure is currently legally non-conforming; however the scope of the proposed new construction would require the removal of the structure without variances. Rather than demolish the existing structures on the property, the applicant is seeking to continue utilizing it, while enhancing the design to be consistent with the architectural character of the new single-family home.

The applicant is proposing a wall and landscaping that will help screen the structure from the roadway despite the proximity into the required setback. Staff finds 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. Likewise, 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.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application be **approved** with conditions, including variances, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review, Sea Level Rise criteria and Hardship and Practical Difficulties criteria, as applicable.

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

MEETING DATE: September 3, 2024

PROPERTY: **94 Palm Island** **02-4205-001-0330**

FILE NO: DRB24-1026

IN RE: An application has been filed requesting Design Review Approval for the construction a new two-story residence with an understory level, including a variance to permit an existing structure to remain within the front and side yard setbacks, a variance to allow driveways to exceed the maximum allowable width, and one or more waivers, to replace an existing residence.

LEGAL: Lots 36 and 37, in Block 1, of PALM ISLAND, according to the Plat thereof, recorded in Plat Book 6, Page 54, of the Public Records of Miami-Dade County, Florida.

Also:

A strip of land 20 feet wide lying Southerly of and cintguious to the Southerly boundary line of Lots 36 and 37, in Block 1, of PALM ISLAND, according to the Plat thereof, recorded in Plat Book 6, Page 54, of the Public Records of Miami-Dade County, Florida.

APPLICANT: Palm Island Residence Trust

**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 i. & 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 and 10 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 home at 94 Palm Avenue shall be submitted, at a minimum, such drawings shall incorporate the following:
  - a. The understory **shall be** approved as proposed.
  - b. The side (east) open space requirement **shall be** waived as proposed.
  - c. The design waiver to allow parking or vehicle storage within a required yard shall be granted.
  - d. The final design, materials and details of the proposed car port 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 details and color selection of the venetian plaster finish 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 details and color selection of the exterior tile cladding – large format proposed on the second story front elevation 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. The final design details and color selection of the exterior tile cladding – small format proposed on the second story front elevation 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.
  - h. The final design details and color selection of the exterior blue-like stone cladding – large format 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.
  - i. The final design details and color selection of the hardwood, or wood-like, cladding proposed on the underside of slabs and eaves 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. 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.
  - k. 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.

- I. 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, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding plans 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 plans shall comply with Chapter 4-Landscape Requirements of the Miami Beach Code and shall incorporate the following:
  - a. Shrubs and groundcover shall not be planted in the public Right-of-Way. The plans shall be revised to indicate that sod is to be used.
  - b. The plans shall be revised to comply with the line-of-sight visibility triangle requirements, subject to the review and approval of staff.
  - c. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
  - d. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
  - e. Any tree identified to be in good overall condition shall be retained and protected in their current location if they are not in conflict with the proposed home, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff.
  - f. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.
  - g. The proposed and existing trees located within the swale shall be subject to the review and approval of Green Space and CIP.
  - h. Street trees shall be required within the swale at the front of the property if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department. Any new street trees shall be of a

consistent canopy tree species as similar to the neighboring trees along the street.

- i. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- j. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
- k. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- l. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.

**In accordance with section 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.**

**I. Variance(s)**

- A. The applicant filed an application with the Planning Department for the following variance(s):
  - 1. A variance from Sec. 7.2.2.3.b to reduce by 24'-10" the minimum required 30'-0" front setback to retain an existing two-story structure with a 5'-2" setback
  - 2. A variance from Sec. 7.2.2.3.b to reduce by 17'-2" the minimum required 20'-0" side (east) setback to retain an existing two-story structure with a 2'-10" side setback.
- 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** the variance requests and imposes the following conditions based on its authority in Section 2.8.4 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.**

**II. General Terms and Conditions applying to both ‘I. Design Review Approval and ‘II. Variances’ noted above.**

- A. 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 or post a bond, pursuant to Section 7.1.3.2 of the Land Development Regulations. This fee is set as a percentage of the cost of construction.
- B. 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.

- C. 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.
- D. 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.
- E. All allowable construction signage shall be attached to or situated behind the construction fence and shall be limited to one (1) sign, not to exceed four (4) square feet, in accordance with Section 6.3.2 of the Land Development Regulations.
- 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 plans, entitled "94 Palm Residence" as designed by **Borges Architects + Associates** dated July 7, 2024, 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



Filed with the Clerk of the  
Design Review Board on \_\_\_\_\_ ( )