

RESOLUTION NO. R2022-XX

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE SITE PLAN AND ONE NON-USE VARIANCE FROM THE ZONING AND LAND DEVELOPMENT CODE (“CODE”) FOR THE CONSTRUCTION OF 67,101 SQUARE FOOT, NINE-STORY MULTIFAMILY DEVELOPMENT, CONSISTING OF 58 DWELLING UNITS AND 63 PARKING SPACES; GRANTING A NON-USE VARIANCE FROM SECTION 24-58(S)(3)(a) TO PERMIT A ZERO FOOT TOWER SETBACK FROM THE PODIUM, WHERE THE CODE REQUIRES A MINIMUM SETBACK OF FIFTEEN (15) FEET ON A 0.287 ACRE PARCEL LOCATED AT 1904 NE 167 STREET, NORTH MIAMI BEACH, FLORIDA; PROVIDING FOR FINDINGS OF FACT; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of North Miami Beach (“City”) Code of Ordinances, Chapter 24, “Zoning and Land Development Code” (the “ZLDC”), Article XV, “Other Development Review Procedures,” Section 24-172, “Site Plan Review” provides that site plan approval is required for new developments, any significant shift in the type of land use that involves major interior alteration, and any change in required parking or other similar impact determined to be significant by the Community Development Director; and

WHEREAS, Nina L. Boniske, PA., on behalf of Marby Development, LLC (“Applicant”), requests site plan approval and one (1) non-use variance to develop a 67,101-square foot multifamily development, consisting of one tower, 58 dwelling units, and 63 parking spaces, on a 0.287-acre parcel located at 1904 NE 167 Street, North Miami Beach, Florida, (“Property”), as legally described in Exhibit “A;” and

WHEREAS, Section 24-176 of the ZLDC provides that the City Commission may grant a variance based on its determination that the Applicant has demonstrated that the necessary criteria identified in the ZLDC have been satisfied; and

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WHEREAS, the Applicant requests a non-use variance to permit a zero (0)-foot tower setback from the podium, where Section 24-58(S)(3)(a) of the ZLDC requires a minimum setback of fifteen (15) feet; and

WHEREAS, the Property is zoned Fulford Mixed-Use Town Center District (“MU/TC”), which is intended to enable transit-oriented development that contributes to the creation of an urban downtown and the transformation of a quality pedestrian-oriented mixed-use district; and

WHEREAS, after a duly noticed public hearing held on December 13, 2021, the Planning and Zoning Board, by a vote of _ to __, recommended_____of the Non-Use Variance and Site Plan, subject to the conditions set forth and included below in Section 2; and

WHEREAS, the City Commission conducted a duly noticed public hearing in accordance with the law; and

WHEREAS, the Mayor and City Commission find the proposed Site Plan application consistent with the North Miami Beach Comprehensive Plan and find that approval of the Application furthers the purpose, goals, objectives, and policies of the Comprehensive Plan, and is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA:

Section 1. Recitals. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof.

Section 2. Decision. Pursuant to Section 24-172 and Section 24-176 of the Zoning and Land Development Code, the following site plan, attached and incorporated by reference as Exhibit “B,” and one (1) non-use variance (relief from Sections 24-58(S)(3)(a)), as specified herein

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and in the Application) for the development of the existing property, on a 0.287-acre parcel, legally described in Exhibit “A,” are approved, subject to the following conditions:

1. Unless otherwise provided, all the below conditions shall be completed and complied with prior to the issuance of the building permit.
2. The conditions of approval for this site plan are binding on the Applicant, the property owners, operators, and all successors in interest. Prior to issuance of any Master Building Permit, Applicant shall execute a covenant running with the land, binding upon its heirs, successors, and assigns, subject to the approval of the City Attorney, which shall be recorded in the public records of Miami-Dade County, Florida, at Applicant's sole expense, containing all of the conditions and provisions required by this Resolution. This recorded covenant may be amended from time to time and shall be re-recorded after each amendment at the Applicant's sole expense, subject to the approval of the City Attorney.
3. Construction of the proposed project shall be in conformance with the following:
 - a. Boundary Survey prepared by Atlantic Coast Surveying, Inc.
 - b. Plans prepared by CFM Architects, including the following:
 - A-0.00 Index of Drawings
 - C-1 Civil Plan prepared by EGSC Engineering Consultants
 - A-0.01 Zoning Table
 - A-0.02 Location Map
 - A-0.03 Zoning Designation
 - A-0.04 Adjacent – Property Land Use
 - A-0.05 Building Heights – Regulating Plan
 - SP-1.00 Site Plan
 - SP-1.01 Site Plan Details
 - SP-1.02 Site Plan Details
 - SP-1.03 Presentation Board
 - SP-1.04 Presentation Board
 - A-1.00 Ground Floor Plan
 - A-1.01 Mezzanine Floor Plan
 - A-1.02 2nd-8th Typical Floor Plan
 - A-1.03 Rooftop Floor Plan
 - A-1.04 Units Layout
 - A-1.05 Units Layout
 - A-2.00 North Elevation
 - A-2.01 West Elevation
 - A-2.02 East Elevation
 - A-2.03 South Elevation
 - A-2.04 Building Section
 - A-3.00 Aerial View
 - A-3.01 Street View
 - A-3.02 Night Aerial View
 - LA-1 Landscape Plans

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- LA-2 Landscape Typical Notes
- TD-1 Tree Disposition Plan
Topographic/Tree Survey prepared by Gunter Group, Inc.
- L1 Lighting Layout – Normal Mode
- L1E Lighting Layout – EM Mode

4. All representations proffered by the Applicant's representatives as a part of the site plan application review at the Planning and Zoning Board and City Commission public hearings.
5. Substantial modifications to the plans submitted and approved as part of the application may require the Applicant to return to the Planning and Zoning Board and Mayor and City Commission for approval. Insubstantial changes shall include proportionate reductions in residential units and parking spaces by less than 5% of the total proposed project, changes that do not alter the project more than 5% of lot coverage, setbacks, height, density and intensity calculations so long as the proposed amendment does not cause an increase in the number of average daily trips; does not alter the location of any points of ingress, egress, access and vehicular and pedestrian patterns to the site; and does not violate any condition placed upon the site plan as originally approved. Insubstantial changes may be administratively approved by the City Manager or designee. Any de minimis amendments to the plans or site plans which cannot be resolved administratively shall be returned to the Mayor and City Commission for a formal review. However, under no circumstances, may any plans, site plans, building, structure, or project be administratively altered by more than 5% lot coverage, setbacks, height limitations, as well as density or intensity calculations set forth in a previously approved site plan.
6. The Applicant shall remove all public hearing signage no later than 48 hours after the final public hearing for the development project.
7. No later than 90 days following the final City Commission approval, the Applicant shall enter into an agreement with the City to defend, indemnify and hold harmless (using legal counsel acceptable to the City) the City, its agents, servants, and employees, from and against any loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to any act or omission related to the variances and for which the City, its agents, servants, or employees, are alleged to be liable or charged with such expense. The Applicant shall pay all costs and expenses related to any legal defense required by the City pursuant to the foregoing.
8. The Applicant shall comply with all applicable conditions and permit requirements of the Miami-Dade County Fire Department, the Water and Sewer Department, and Department of Regulatory and Economic Resources; and the Florida Department of Environmental Protection (FDEP), the Florida Department of Transportation (FDOT) and any other applicable regulatory agency.
9. The words "Aventura," "Miami Beach," and "Sunny Isles Beach" shall not be used by the Applicant immediately preceding or following the Project name. The words "Aventura," "Miami Beach," and "Sunny Isles Beach" shall not be part of the website address for the Project. References in the marketing materials to nearby communities shall be limited to descriptions of entertainment, shopping or dining locations, or other landmarks; the Applicant shall identify the Project as being located in the City of North Miami Beach, Florida.

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10. The Applicant shall post a sign on-site providing contact information in case of any complaint or concern during construction. The sign shall be removed upon the earlier of the City's issuance of a temporary or full Certificate of Occupancy.
11. Applicant must join the NMBPD *Trespass After Warning* Program, provide the NMBPD with access to the property at all times, and a safety plan.
12. All water and sewer service installations are the responsibility of the Applicant and must be permitted through the NMB Water Department.
13. The Applicant, its successors, and assigns shall comply with all City ordinances applicable to development and permit approvals at the time of adoption of the Resolution, and in the event the Master Building Permit expires, all approvals and prior fees paid shall be subject to forfeiture. This shall not be applied to the City of North Miami Beach impact fees paid, which would not be refunded but would be credited to the property for any subsequent development.
14. All above-ground utilities on-site and adjacent public right of ways shall be relocated underground pursuant to Section 24-62(F) of the City's Code of Ordinances, contingent on phasing due to FPL's objection to incremental undergrounding. The applicant shall install conduits for future undergrounding of overhead utilities.
15. All City impact fees shall be paid prior to the issuance of a Master Building Permit. In the event the Master Building Permit expires, all approvals and prior fees paid, shall be subject to forfeiture. This shall not be applied to impact fees paid to the City of North Miami Beach, which would not be refunded, but credited to the property for any subsequent development.
16. Prior to the issuance of the Master Building Permit, the Applicant shall provide an updated landscape plan. The trees to be planted within the right-of-way shall not be spaced more than 30-feet on center, have a minimum caliper or diameter at breast height (D.B.H) of three (3) inches, be a minimum of twelve (12) feet in height, and five (5) feet in spread at the time of planting.
17. Prior to the issuance of the Demolition Permit, the Applicant shall apply for a tree removal permit indicating the total canopy of the trees to be removed, not including the canopy of invasive trees, and mitigate the canopy in accordance with Section 24-121 of the Zoning and Land Development Code.
18. Prior to the issuance of a Master Building Permit, the City Manager or designee and the City Attorney, may refer any application for review by engineering, planning, legal, technical, environmental, or professional consultant(s) as deemed necessary. The City shall be reimbursed by Applicant for reasonable fees and charges made by such consultant(s) or professional(s) within thirty (30) days of submission of a City voucher. These fees and charges are in addition to any and all other fees required by the City.
19. Prior to the issuance of the Master Building Permit, the Applicant shall meet all requirements of the Department of Public Works Solid Waste Division and ensure that the solid waste container storage area be visually screened from the ground view of surrounding and adjacent properties.
20. Prior to the issuance of the Master Building Permit, the Applicant shall submit a Site Management Plan and a Temporary Construction Fencing plan pursuant to Section 16-5 of the North Miami Beach Code of Ordinances.
21. Prior to issuance of a Certificate of Occupancy, the Applicant shall have the registered landscape architect, or a certified arborist certify that the landscaping, tree removal, and

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tree mitigation have been completed in accordance to the landscape plan and tree removal permit.

22. Prior to issuance of the Certificate of Occupancy, the Applicant shall have the registered engineer certify that on-site lighting has been constructed and is operating in accordance with the photometric plans and must not exceed 1.0 Foot-candle beyond all property lines.
23. Prior to the issuance of a Temporary Certificate of Occupancy, the Applicant shall request and complete the address assignment process for the common areas and residential units as required, with the U.S. Postal Service, Miami-Dade County Fire Rescue, and the Miami-Dade County Property Appraisers. This Resolution shall be made part of any condominium declaration and other applicable condominium documents if so established.
24. The Applicant and its successors and assigns, including but not limited to the successor homeowners' association, if any, shall maintain all landscape and exterior hardscape features and materials on-site and throughout all public improvements in good condition, replacing diseased, dying, or dead plant material as necessary and repairing / cleaning / painting all hardscape features so as to present a healthy and orderly appearance at all times.
25. "No Dumping – Drains to Stream" signage/markers must be installed along the right-of-way.

Section 3. Findings of Fact. The Mayor and City Commission make the following

FINDINGS OF FACT based upon the substantial competent evidence provided:

The requested site plan meets the applicable Site Plan Review Standards provided for in Section 24-172 of the Code of Ordinances of the City of North Miami Beach. The requested site plan approval is not contrary to the public interest or detrimental to the community and is compatible with the surrounding land uses while maintaining the basic intent and purpose of the zoning and land use regulations.

Section 4. Non-use Variance from Section 24-58(S)(3)(a). The Mayor and City

Commission make the following FINDINGS OF FACTS from Section 24-176(B) based on the substantial competent evidence provided:

The requested non-use variance from section 24-58(S)(3)(a) of the Zoning and Land Development Code, to permit a zero (0)-foot tower setback from the podium, where the code requires a minimum setback of fifteen (15) feet, maintains the basic intent and purpose of the applicable zoning, subdivision and other land use regulations. Moreover, the requested variance is not contrary or detrimental to the public interest because the proposed use and design is compatible with the surrounding land uses and is in keeping with the surrounding properties.

Section 4. Time for Building Permit. Pursuant to Section 24-172(I) of the Code of Ordinances of the City of North Miami Beach, the Applicant must apply for a master building

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permit from the City within one (1) year of the date of this Resolution or the granted site plan approval and non-use variance shall be deemed null and void, and the Applicant shall be required to reinstate the site plan review process unless the term is extended administratively or by the City Commission prior to its expiration.

Section 9. Limitation of Approval. The issuance of this development permit does not in any way create a vested right(s) on the part of the Applicant to obtain a permit from a county, state or federal agency, and does not create any liability on the part of the municipality for issuance of the permit if the Applicant fails to obtain requisite approvals or does not fulfill the obligations imposed by a county, state or federal agency or undertakes actions that result in a violation of county, state, or federal law.

Section 10. Conflicts. All resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 11. Effective Date. This Resolution shall be in force and take effect immediately upon its passage and adoption.

APPROVED AND ADOPTED by the City Commission of the City of North Miami Beach, Florida, at regular meeting assembled this ___the day of _____, 2022.

[SIGNATURE PAGE TO FOLLOW]

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ATTEST:

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ANDRISE BERNARD
CITY CLERK

ANTHONY F.DEFILLIPO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION

HANS OTTINOT
INTERIM CITY ATTORNEY

SPONSORED BY: Mayor and City Commission

	YES	NO	ABSTAIN	ABSENT
Commissioners				
Mayor Anthony DeFillipo				
Vice-Mayor Fortuna Smukler				
Commissioner McKenzie Fleurimond				
Commissioner Barbara Kramer				
Commissioner Michael Joseph				
Commissioner Paule Villard				
Commissioner Daniela Jean				

Exhibit "A"
LEGAL DESCRIPTION

FULFORD BY THE SEA SEC F PB 8-64 LOTS 3 & 4 BLK 67 LOT SIZE 12500 SQUARE FEET
COC 26201-2593 02 2008 5

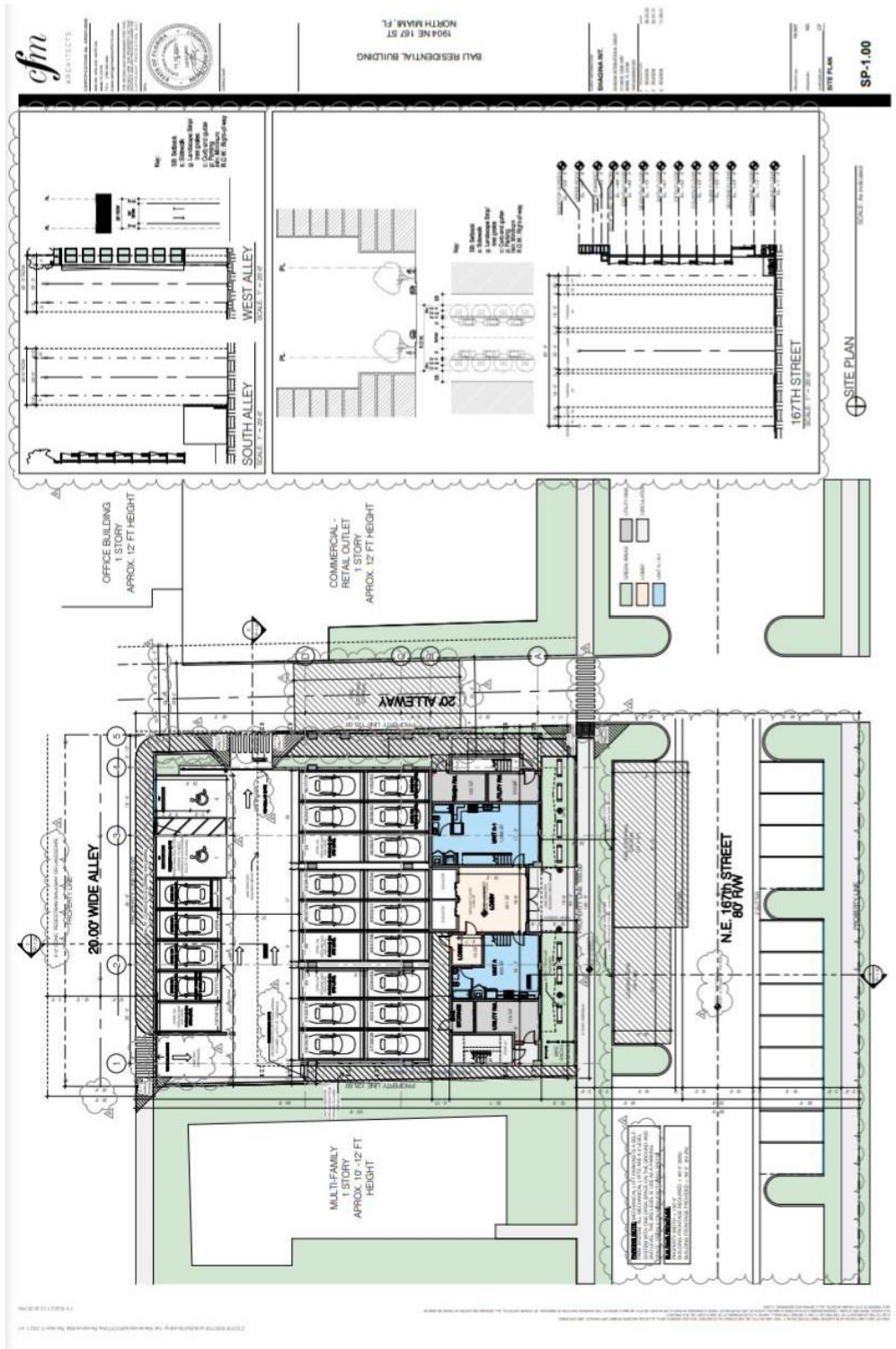
Tax Folio: 07-2216-001-0150

A/K/A

1904 NE 167 Street, North
Miami Beach, Florida

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Exhibit "B" SITE PLAN



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