

RESOLUTION NO. R2022-XX

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE SITE PLAN APPLICATION WITH CONDITIONS AND SIX NON-USE VARIANCES FOR THE CONSTRUCTION OF A 759,439 GROSS SQUARE FEET, MIXED-USE DEVELOPMENT WITH 363 APARTMENT UNITS, AND 14,582 SQUARE FEET OF GROUND FLOOR COMMERCIAL AND RESTAURANT SPACE AND 645 PARKING SPACES ON A 2.15-ACRE PARCEL LOCATED AT 16375 BISLAYNE BLVD; GRANTING A VARIANCE TO REDUCE THE TOWER SETBACK FROM THE PODIUM TO ZERO INCHES ALONG THE SOUTHERN PROPERTY LINE; GRANTING A VARIANCE TO EXTEND THE LENGTH OF THE BUILDING TO 386'-6"; GRANTING A VARIANCE TO REDUCE THE FRONT AND REAR FRONTAGES; GRANTING A VARIANCE TO ALLOW ARCHITECTURAL SCREEN IN-LIEU OF AN ACTIVE LINER ALONG BISLAYNE BLVD; GRANTING A VARIANCE TO ALLOW A GROUND FLOOR HEIGHT OF TWENTY FEET; GRANTING A VARIANCE TO PROVIDE ZERO PERCENT FENESTRATION ALONG THE NORTHEASTERN, EASTERN, AND SOUTHEASTERN FRONTAGES; 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, Ethan B. Wasserman, Esq., (the "Applicant"), requests site plan approval and six (6) non-use variances to construct a 28 story building consisting of a single tower, 363 residential units, 645 parking spaces, and approximately 14,582 square feet of retail space on a 2.15 acre parcel located at 16375 Biscayne Blvd.

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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

WHEREAS, the Applicant requests a non-use variance to permit a tower setback of 0" from the podium along southern property line where Section 24-58(S)(3)(a) requires a 15-foot tower setback; and

WHEREAS, the Applicant requests a non-use variance to permit a building length of 383'6", where Section 24-58(S)(1)(a) permits a 300' maximum; and

WHEREAS, the Applicant requests a non-use variance from Section 24-58.5(J)(2) to permit reduced frontage percentages for the front (Biscayne Boulevard) and rear frontages of the proposed development; and

WHEREAS, the Applicant requests a non-use variance from Section 24-58(S)(1)(g)(ii) to allow architectural, decorative screening of the parking garage (Levels 2-7) in lieu of an active liner along Biscayne Boulevard; and

WHEREAS, the Applicant requests a non-use variance to permit 22 feet height at the ground floor level, where Section 24-58(R)(2) of the Code of Ordinances only permits a maximum of 20 feet; and

WHEREAS, the Applicant requests a non-use variance to provide 0% fenestration along the northeastern, eastern and southeastern frontages where section 24-58(J)(i) requires that a minimum of 30% of all ground floor street walls must be fenestrated with windows; and

WHEREAS, after a duly noticed public hearing held on July 11, 2022, the Planning and Zoning Board by vote of 5 to 0, recommended approval of the site plan and conditional use, subject to the conditions set forth and included below in Section 2; and

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

WHEREAS, the Mayor and City Commission find that the proposed Conditional Use and Minor Site Plan Modification is consistent with the North Miami Beach Comprehensive Plan and the City's Land Development Code, and is in the best interests of the City.

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WHEREAS, the Mayor and City Commission find that the proposed Site Plan application and six (6) variances are consistent with the North Miami Beach Comprehensive Plan and is in the best interests of the City.

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

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 the six (6) non-use variances as specified herein and in the Application for the development of the proposed development on a 2.15-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 and assigns. 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. The proposed conditional use shall be in conformance with the following certified plans signed by the Community Development Director on file with the City of North Miami Beach Community Development Department Planning & Zoning Division with file number 22-15.
4. All representations proffered by the Applicant’s representatives as a part of the 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 in accordance with ZLDC Section 24- 172 (K).

6. Applicant shall remove all public hearing signage no later than 48 hours after the final public hearing by the City Commission 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.
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; participate in the NMBPD Rapid Response Training Program; link the alarm systems directly to the NMBPD; and keep former employee information on file after termination of employment.

12. Prior to issuance of the Certificate of Occupancy, the Applicant shall have the registered landscape architect or arborist to certify the installed landscaping, tree removal and mitigation have been installed in accordance with the plans.
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 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. The Applicant shall sealcoat and restripe the site's vehicular use areas in compliance with applicable City standards.
15. The Applicant shall obtain a certificate of occupancy and certificate of use from the City upon compliance with all terms and conditions. The certificate of use shall be subject to review upon violation of any of the conditions, in accordance with the law.

Section 3. **Non-Use Variance from Section 24-58(S)(3)(a) – “Tower Setbacks”** 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 ZLDC, to permit a tower setback of 0" from the podium along southern property line where the code requires a minimum 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. **Non-Use Variance from Section 24-58(S)(1)(a) – “Building Length”** 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)(1)(a) of the ZLDC, to permit a building length of 383'6", where the code permits a 300' maximum, 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 5. Non-Use Variance from 24-58.5(J)(2) Table MU/SWF-4 – “Building Frontages” 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 24-58.5(J)(2)(a) of the ZLDC, Section 24-58.5(J)(2) to permit reduced frontage percentages for the front (Biscayne Boulevard) where 70% is required and rear frontage (Secondary street) where 90% is required, 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 6. Non-Use Variance from 24-58(S)(1)(g)(ii) – Active Liner 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 24-58.5(S)(1)(g)(ii) to allow architectural screening of the parking garage (Levels 2-7) in lieu of an active liner along Biscayne Boulevard, 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 7. Non-Use Variance from Section 24-58(R)(2)a., - “Ground Floor Height” 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 24-5824-58(R)(2) to permit 22 feet height at the ground floor level, where the Code only permits a maximum of 20 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 8. Non-Use Variance from section 24-58(S)(1)j – “Ground Floor Fenestration” 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 24-5824-58(J)(i) to provide 0% fenestration along the northeastern, eastern and southeastern frontages where the code requires that a minimum of 30% of all ground floor street walls must be fenestrated

with windows, 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 9. Time for Building Permit. Pursuant to Section 24-172(I) of the Code of Ordinances of the City of North Miami Beach, the site plan shall remain valid for a period of 18 months from the date of approval with a master building permit issuance required. If a master building permit is not issued within an 18-month time period, the site plan approval, including any development right entitlements and any subsequent phasing, shall be considered null and void. If a site plan expires, a new submittal shall be required with board approvals. Minor site plan modifications which do not require board approvals would still be required to adhere to the, original site plan approval expiration date. Major site plan modifications which require board approvals will receive a new 18-month period starting from the date of the modified final site plan approval. Site plan applications received prior to the effective date of this ordinance shall adhere to the previous expiration regulations. Additionally, if at any time a building permit lapses, the site plan, including all phases thereof, shall be considered null and void.

Section 10. Time for Business Tax Receipt. Pursuant to Section 24-175(C) of the City Code, the Applicant must obtain a Business Tax Receipt within one (1) year of the date of this Resolution or the Conditional Use approval granted shall be deemed null and void and the Applicant shall be required to reinstate the conditional use review process unless the term is extended administratively or by the City Commission prior to its expiration.

Section 11. 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 12. Conflicts. All resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 13. 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]

ATTEST:

ANDRISE BERNARD
CITY CLERK

ANTHONY F. DEFILLIPO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION

HANS OTTINOT
CITY ATTORNEY

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SPONSORED BY: Mayor and City Commission

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

Exhibit "A"
LEGAL DESCRIPTION

LAND DESCRIPTION:

TRACT B, NORTH MIAMI BEACH PLACE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 155, PAGE 86 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA; TOGETHER WITH THE FOLLOWING DESCRIBED PROPERTY:

A PORTION OF TRACT A, OF NORTH MIAMI BEACH PLACE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 155, AT PAGE 86, OF THE PUBLIC RECORDS OF MIAM I/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHEASTERLY CORNER OF SAID TRACT A, THENCE RUN NORTH 04 DEGREES 16 MINUTES AND 04 SECONDS WEST FOR A DISTANCE OF 206.66 FEET TO A POINT; THENCE RUN SOUTH 85 DEGREES 43 MINUTES 56 SECONDS WEST FOR A DISTANCE OF 94.80 FEET TO A POINT; THENCE RUN SOUTH 04 DEGREES 16 MINUTES AND 04 SECONDS EAST, A DISTANCE OF 95.45 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT HAVING FOR ITS ELEMENTS A RADIUS OF 45.00 FEET THROUGH A CENTRAL ANGLE OF 20 DEGREES 56 MINUTES 02 SECONDS FOR AN ARC DISTANCE OF 16.44 FEET TO A POINT OF COMPOUND CURVE RUNNING SOUTHERLY THROUGH AN ARC HAVING FOR ITS ELEMENTS A RADIUS OF 75.00 FEET TH ROUGH A CENTRAL ANGLE OF 20 DEGREES 56 MINUTES 02 SECONDS FOR AN ARC DISTANCE OF 27.40 FEET TO A POINT OF TANGENCY; THENCE RUN SOUTH 04 DEGREES 16 MINUTES 04 SECONDS EAST ALONG A LINE

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PARALLEL TO THE MOST SOUTHERLY AND EASTERLY LINE OF SAID TRACT A FOR A DISTANCE OF 68.50 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT A; THENCE RUN NORTH 85 DEGREES 47 MINUTES 58 SECONDS EAST FOR A DISTANCE OF 102.41 FEET TO THE POINT OF BEGINNING.

Exhibit "B"
SITE PLAN



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