

RESOLUTION NO. R2021-XX

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING CONDITIONAL USE, SITE PLAN, AND RELATED VARIANCES FROM THE ZONING AND LAND DEVELOPMENT CODE FOR THE CONSTRUCTION OF A MIXED-USE DEVELOPMENT CONSISTING OF THREE TOWERS WITH APPROXIMATELY 12,258 SQUARE FEET OF RETAIL SPACE, 3,866 SQUARE FEET OF RESTAURANT SPACE, 77,856 SQUARE FEET OF OFFICE SPACE, 223 HOTEL UNITS, AND 526 PARKING SPACES; GRANTING FOUR VARIANCES FROM SEC. 24-52(D)(3) REQUIRED MINIMUM YARD SETBACKS; GRANTING A VARIANCE FROM SEC. 24-52(D)(7)(a) REQUIRING USES PERMITTED TO BE CONDUCTED ENTIRELY WITHIN AN ENCLOSED AND ROOFED STRUCTURE; GRANTING A VARIANCE FROM SEC. 24-81(A)(3) FOR REGULATIONS OF BALCONIES ENCROACHING ON REQUIRED SETBACKS; AND GRANTING CONDITIONAL USE APPROVAL FOR A HOTEL, ON PROPERTY LOCATED AT 851 NE 167 STREET, NORTH MIAMI BEACH, FLORIDA, AS LEGALLY DESCRIBED IN EXHIBIT “A”; PROVIDING FOR FINDINGS OF FACT; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

(P&Z Item No. 18-15, September 20, 2021)

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, Section 24-52, “General Business District” of the ZLDC provides that conditional use approval is required for hotels and motels; provided that any such use shall have a site area of not less than two (2) acres; and

WHEREAS, Echad Holdings, LLC (“Applicant”), requests conditional use, site plan approval and six (6) variances to develop a mixed-use development, consisting of three towers,

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approximately 12,258 square feet of retail space, 3,866 square feet of restaurant space, 77,856 square feet of office space, two-hundred twenty-three (223) hotel units, and five hundred twenty-six (526) parking spaces, on a 2.1043-acre parcel located at 851 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

WHEREAS, the Applicant requests a variance to permit a front yard setback of twenty-five feet four inches (25’4”), where Section 24-52(D)(3) of the ZLDC requires a minimum setback of eighty-five (85) feet from the front property line; and

WHEREAS, the Applicant requests a variance to permit a rear yard setback of twenty (20) feet, where Section 24-52(D)(3) of the ZLDC requires a minimum setback of eighty-five (85) feet from the rear property line adjacent to a more restrictive district; and

WHEREAS, the Applicant requests a variance permit an interior side yard setback of ten feet three inches (10’3”), where Section 24-52(D)(3) of the ZLDC requires a minimum setback of eighty-five (85) feet from the interior side property line adjacent to a more restrictive district; and

WHEREAS, the Applicant requests a variance to permit a corner side yard setback of twenty (20) feet, where Section 24-52(D)(3) of the ZLDC requires a minimum setback of eighty (80) feet from the corner side property line; and

WHEREAS, the Applicant requests a variance to permit open air rooftop amenities on the north building of the development, including a wading pool, two soaking pools, and lounging areas, where Section 24-52(D)(7)(a) of the ZLDC requires all uses permitted in the B-2 district to be conducted entirely within an enclosed and roofed structure; and

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WHEREAS, the Applicant requests a variance to permit the Development’s proposed balconies to encroach more than one-third (1/3) the width of the required front, rear, side, and corner side setbacks, where Section 24-81(A)(3) of the ZLDC provides that balconies may extend up to five (5) feet into any required yard setback area, provided that such extension shall not exceed one-third (1/3) the width of the required setback; and

WHEREAS, the Applicant submitted the application under the General Business District (“B-2”), zoning designation prior to the adoption of the Property’s current Mixed-Use International Boulevard designation adopted in June 2021; and

WHEREAS, the B-2 district is intended to provide suitable sites for development of retail and service commercial uses of a general nature, which serves the diverse consumer needs of the entire community; and

WHEREAS, after a duly noticed public hearing held on September 20, 2021, the Planning and Zoning Board by vote of __ to __, recommended _____ of the Conditional Use, Variances 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 Conditional Use, Variances, and 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 the ZLDC, 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, Section 24-175, and Section 24-176 of the Zoning and Land Development Code, the following conditional use and site plan, attached and incorporated by reference as Exhibit “B,” and the six (6) related variances (relief from Sections 24-52(D)(3), 24-52(D)(7)(a), and 24-81(A)(3)), as specified herein and in the Application) for the development of the existing property, on a 2.1043-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 conditional use, site plan and variances, is 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 Alvarez, Aiguesvives and Associates, Inc.
 - b. Plans prepared by HSQ Group, Inc., Kobi Karp Architecture and Interior Design, Inc., and Witkin Hults Design Group, including the following:
 - A-0.00 Cover
 - A-0.01 Index
 - A-1.00 Project Data
 - A-1.01 Render
 - A-1.02 Render
 - A-1.03 Render
 - A-1.04 Location Map
 - A-1.05 Existing Photos
 - A-1.06 Surrounding Photos
 - A-2.00 Site Plan
 - A-2.01 Fire Staging Plan
 - A-2.02 Temporary Construction Fencing Plan
 - A-2.03 Open Space Diagrams
 - A-3.00 Level 1

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- A-3.01 Level 2
- A-3.02 Level 3-5
- A-3.03 Level 6
- A-3.04 Level 7
- A-3.05 Level 8, 12
- A-3.06 Level 9, 13
- A-3.07 Level 10, 14
- A-3.08 Level 11, 15
- A-3.09 Roof Level
- A-3.10 Typical Unit Layouts
- A-4.00 North and South Elevations
- A-4.01 East and West Elevations
- A-5.00 Sections
- A-5.01 Sections
- A-6.00 Details
- L-1 Landscape Plan – Ground Floor
- L-2 Landscape Plan – 7th Floor
- L-3 Landscape Plan – Roof Plan
- L-4 Roof Floor Plan
- TD-1 Tree Disposition Plan
- WS-1 Conceptual Water and Sewer Plan
- PD-1 Conceptual Paving and Drainage Plan
- PD-2 Paving and Drainage Details
- SM-1 Conceptual Signage and Marking Plan
- SM-2 Signage and Marking Details
- L1 Site Lighting Plan

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

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- 5% lot coverage, setbacks, height limitations, as well as density or intensity calculations set forth in a previously approved site plan.
6. 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.
 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 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 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.
 15. 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

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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.

16. 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.
17. 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 tree mitigation have been completed in accordance to the landscape plan and tree removal permit.
18. 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.
19. Upon issuance of a hurricane warning by the National Weather Service or similar agency, all removable items from pool decks, roof decks and other outdoor spaces shall be immediately removed and secured.
20. All commercial signage shown on the site plan, including reference to placing signage in the circular design elements of the garage screen, is for illustration purposes only and shall be permitted separately through a Uniform Signage Plan and shall conform with the City's Sign Ordinance.
21. Prior to the issuance of a Certificate of Occupancy, the Applicant shall demonstrate through its plans the opportunity for improved or maintained levels of transit service to serve the Project, including accessibility with existing transit lines. The Applicant will maintain or enhance the current level of service by providing access in the form of a premium transit facility with collocated transit and trolley stops for Miami-Dade County and North Miami Beach.
22. Prior to issuance of the Master Building Permit, the Applicant shall provide manufactures detail sheet for pervious pavers used to ensure compliance with 20% pervious area on ground level.
23. Prior to the issuance of the Master Building Permit, the Applicant shall provide a feasibility study and concept drawings for a traffic-calming feature (traffic circle or mini-roundabout) at the intersection of NE 170th Street and NE 7th Court.
24. Prior to the issuance of the Master Building Permit, the Applicant shall complete the necessary traffic engineering warrant study and related permitting with Miami-Dade County Department of Transportation & Public Works, for the proposed midblock crosswalk on NE 8th Avenue, north of SR 826/NE 167th Street.
25. Prior to the issuance of a Certificate of Occupancy, the Applicant shall install "Do Not Block Intersection" signs on NE 8th Avenue, at the ingress/egress driveway and existing alley providing access to the development.
26. In accordance with the ZLDC, the hotel shall not be converted to a condominium or resort condominium use.

Section 3. Site Plan Findings of Fact. The Mayor and City Commission make the following FINDINGS OF FACT based upon the substantial competent evidence provided:

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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. Variances Decision. Pursuant to Section 24-176 of the Zoning and Land Development Code the following six (6) non-use variances on the Property are approved, subject to Plans as provided in the attached Exhibit “B.”

Section 5. Non-use Variance from Section 24-52(D)(3). The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-52(D)(3) of the ZLDC based on the substantial competent evidence provided:

The requested non-use variance from Section 24-52(D)(3) of the ZLDC, to permit a front yard setback of twenty-five feet four inches (25’4”), where the City Code requires a minimum front yard setback of eighty-five (85’) feet for structures three stories in height and taller; 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 Section 24-52(D)(3). The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-52(D)(3) of the ZLDC based on the substantial competent evidence provided:

The requested non-use variance from Section 24-52(D)(3) of the ZLDC, to permit a rear yard setback of twenty (20’) feet, where the City Code requires a minimum front yard setback of eighty-five (85’) feet for structures three stories in height and taller adjacent to a more restrictive zoning district; 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 24-52(D)(3). The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-52(D)(3) of the ZLDC based on the substantial competent evidence provided:

The requested non-use variance from Section 24-52(D)(3) of the ZLDC, to permit an interior side yard setback of ten feet three inches (10'3"), where the City Code requires a minimum front yard setback of eighty-five (85') feet for structures three stories in height and taller adjacent to a more restrictive zoning district; 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 24-52(D)(3). The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-52(D)(3) of the ZLDC based on the substantial competent evidence provided:

The requested non-use variance from Section 24-52(D)(3) of the ZLDC, to permit a corner side yard setback of twenty (20') feet, where the City Code requires a minimum front yard setback of eighty (80') feet for structures three stories in height and taller; 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. Non-use Variance from Section 24-52(D)(7)(a). The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-52(D)(7)(a) of the ZLDC based on the substantial competent evidence provided:

The requested non-use variance from Section 24-52(D)(7)(a) of the ZLDC, to permit open air rooftop amenities on the north building of the development, including a wading pool, two soaking pools, and lounging areas, where the City Code requires all uses permitted in the B-2 district to be conducted entirely within an enclosed and roofed structure, 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 10. Non-use Variance from Section 24-81(A)(3). The Mayor and City Commission make the following FINDINGS OF FACTS from Section 24-81(A)(3) of the ZLDC based on the substantial competent evidence provided:

The requested non-use variance from Section 24-81(A)(3) of the ZLDC, to permit the Development's proposed balconies to encroach more than one-third (1/3) the width of the required setbacks, where the City Code provides that balconies may extend up to five (5) feet into any required yard setback area, provided that such extension shall not exceed one-third (1/3) the width of the required setback, 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 11. 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 permit from the City within one (1) year of the date of this Resolution or the granted site plan approval 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 12. Conditional Use Findings of Fact. The Mayor and City Commission make the following FINDINGS OF FACT based upon the substantial competent evidence provided:

The requested Conditional Use for a hotel meets the applicable Conditional Use Review Standards provided for in Section 24-175(B) of the Code of Ordinances of the City of North Miami Beach. The requested Conditional Uses are compatible with the existing natural environment and surrounding properties, does not create substantial detrimental effects on the neighborhood property values, has adequate provisions for vehicular and pedestrian traffic movement, has adequate drainage systems for the proposed use, complies with the required setbacks and buffering to control possible adverse effects, is located in an area which is sufficient, appropriate and adequate for the proposed use and reasonable expansion.

Section 13. **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 within one (1) year of the issuance of a certificate of occupancy, whichever is longer, otherwise the Conditional Use approval granted for a hotel 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 14. **Limitation of Approval.** The issuance of this development order 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 a 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 15. **Conflicts.** All resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 16. **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** , **2021.**

[SIGNATURE PAGE TO FOLLOW]

ATTEST:

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 Daniela Jean | | | | |
| Commissioner McKenzie Fleurimond | | | | |
| Commissioner Barbara Kramer | | | | |
| Commissioner Michael Joseph | | | | |
| Commissioner Fortuna Smukler | | | | |
| Commissioner Paule Villard | | | | |

Exhibit "A"
LEGAL DESCRIPTION

The West ½ of Tract "A" of Clock 4, PANULETA GARDENS, according to the Plat thereof, as
recorded in Plat Book 53, at Page 42 of the Public Records of Miami-Dade County, Florida

&

The north 120 feet of the South 290 feet of the West 110 feet of the West ½ of the Southeast ¼ of
the Southeast ¼ of Section 7, Township 52 South, Range 42 East, less the West 35 feet thereof.

Tax Folio: 07-2207-015-0010

A/K/A

851 NE 167 ST
North Miami Beach, Florida

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**Exhibit “B”
SITE PLAN**

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