

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Design Review Board

TO: DRB Chairperson and Members

DATE: March 2, 2021

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: DRB18-0236 (aka DRB16-0054)  
**7118-7140 Collins Avenue and 7121-7145 Harding Avenue**

An application has been filed requesting exterior design modifications to a previously issued Design Review Approval, specifically for one or more waivers and one or more variances from the street class frontage requirements. This project was originally approved on June 05, 2018.

#### **RECOMMENDATION:**

Continuance of the application to a future date OR Denial of the application without prejudice.  
Continuance of the variance requests to a future date OR Denial of the variance requests without prejudice.

#### **BACKGROUND:**

On January 3, 2017, the Design Review Board reviewed and approved a new 10-story hotel on an assemblage of parcels, pursuant to DRB16-0054. At the same meeting the Board approved a variance to reduce the required setback for new FPL power lines.

On June 5, 2018, the Design Review Board approved exterior design modifications that included an additional five-story wing component to the previously approved 11-story structure, pursuant to DRB18-0236.

At the February 2, 2021 Design Review Board meeting, the item was continued to the February 16, 2021 meeting due to a lack of quorum.

The February 16, 2021 DRB meeting was cancelled due to the lack of in-person quorum, and the application was automatically continued to March 2, 2021.

#### **LEGAL DESCRIPTION:**

Lots 1, 2, 3, 4, 9, 10, 11 and 12 in Block 8 of Normandy Beach South, according to the Plat thereof, as recorded in Plat Book 21, Page 54, of the Public Records of Miami- Dade County, Florida.

#### **SITE DATA:**

Zoning:	TC-C
Future Land Use:	TC-C
Lot Size:	49,890 SF
Existing FAR:	Not provided
Proposed FAR:	
Phase 1	172,910 (3.47)
Phase 2	174,200 (3.49)
Maximum FAR:	174,615 SF (3.5)
Height:	124'-8" (133'-8" NGVD) / 11 stories

Maximum: 125'-0" / 12 stories  
Highest Projection: 149'-8" (158'-8" NGVD)  
Proposed Uses:  
    Ground Level Retail:  
        Phase 1 13,968 SF  
        Phase 2 15,797 SF  
    Hotel Units: 74  
    Residential/Co-Living Units: 168 Co-Living  
Parking provided: 134  
Required Bicycle Parking: Long term bicycles: 168  
    Short term bicycles: 29  
    Total Required: 205  
    Total Provided: 205

Loading spaces: 6  
Base Flood Elevation (BFE): +8.00' NGVD  
First Floor Elevation: Varies +6.00' and +9.00' NGVD

**SURROUNDING PROPERTIES:**

East: Nineteen-story multifamily building (Burleigh House Condominium)  
North: City surface parking lot, P92  
South: One-story retail building  
West: One-story retail building

**THE PROJECT:**

The applicant has submitted plans entitled "72+ Collins Hotel & Condominium", as prepared by **Revuelta Architecture International**, dated, signed and sealed December 7, 2020.

The applicant is proposing exterior design modifications to a previously approved 11-story hotel/residential complex as part of a phased development permit.

The applicant is requesting the following design waiver(s):

1. **Sec 142-745(a)(12)(c) LOADING:** Along all frontages where loading is permitted, it shall be designed as follows, in addition to the requirements for driveways: Driveways for parking and loading shall be combined, unless waived by the Design Review Board.

The applicant is requesting the following variances:

1. A variance to reduce the required minimum of 70 percent clear glass windows with views into the habitable space in order to retain existing parking area and trash room facing 72<sup>nd</sup> Street.
2. A variance to eliminate the requirement to screen the parking facilities from public rights-of-way and clear pedestrian path facing 72<sup>nd</sup> Street.
3. A variance to eliminate the minimum required habitable space with 50'-0" in depth along a Class A frontage in order to retain an existing parking area and trash room facing 72<sup>nd</sup> Street.

4. A variance to eliminate the required habitable space and 50'-0" setback for parking from the building façade, in order to retain existing parking area facing 72<sup>nd</sup> Street.
5. A variance to allow a driveway and vehicle access in a class A frontage facing 72<sup>nd</sup> Street.
  - Variances requested from:

**Sec. 142-745. –Street Frontage, Design, and Operations Requirements.**

*(a)The following regulations shall apply to all frontages:*

*(8)Commercial, hotel, and access to upper level frontages. In addition to other requirements for specific frontage types and other requirements in the City Code, frontages for commercial, hotel, and access to upper level frontage shall be developed as follows:*

- a.The habitable space shall be directly accessible from the clear pedestrian path.*
- b.Such frontages shall contain a minimum of 70 percent clear glass windows with views into the habitable space.*

*(10)Off-street parking facilities. In addition to requirements for specific frontage types and other requirements in the City Code, off-street parking facilities shall be built as follows:*

- a.Parking facilities shall be entirely screened from view from public rights-of-way and clear pedestrian paths. Parking garages shall be architecturally screened or lined with habitable space.*

*(e)Class A. In addition to other requirements in the City Code, Class A frontages shall be developed as follows:*

*(2)Buildings shall have a minimum of three floors located along a minimum of 90 percent of the length of the setback line pursuant to the following regulations:*

- b.Except where required for driveways and utility infrastructure, the ground floor shall contain habitable space with a minimum depth of 50 feet from the building façade.*

- e.Ground floor and surface parking shall be setback a minimum of 50 feet from the building façade and be concealed from view from the clear pedestrian path.*

*(3)Driveways and vehicle access to off-street parking and loading shall be prohibited on a Class A frontage, unless it is the only means of egress to the site.*

The zoning regulations for the TC-C zoning district were not yet in place when modifications to the project were last approved in 2018; the property was zoned TC-1 at the time. The project, which has a pending building permit application, is not required to comply with the current TC-C regulations, as design review approval was issued prior to adoption of the regulations.

The applicant is requesting modifications that would allow a phased permit to retain the existing conditions of the portion of the project at the corner of 72<sup>nd</sup> Street and Collins Avenue, which currently has a Denny's restaurant. Due to the scope of the proposed modifications, five (5) variances are being requested to maintain the existing conditions. Staff would note that the project is still in the process of being approved at the building permit phase and

already is classified as non-conforming within the TC-C district.

The City Code allows the phased development of a project in the TC-C district to temporarily retain non-conforming buildings that are under a lease agreement, conditioned to full compliance with the TC-C regulations once the lease is terminated. However, the project would have to be fully consistent with the remainder of the current TC-C regulations in order to be approved for such a phased development. Since the subject project is non-conforming with regard to the current TC-C regulations, variances are being sought to retain additional non-conforming attributes of the project site, which are located at the Denny's portion of the property.

The requested variances would increase the non-conformity of the project and are not consistent with the intent of the phased development requirements. The applicant could redesign the subject project to be either more, or fully consistent with the current TC-C regulations, thus allowing the existing non-conformities associated with the Denny's portion of the site to utilize the phased development requirements of the TC-C district.

However, at this time, the applicant is not proposing any modifications to bring the site into compliance with the current TC-C requirements. As such, if the subject variances are granted, the remainder of the project will never be conforming with the requirements of the TC-C regulations, which is the whole intent of the phased development provision.

While understanding of the applicant's inability to accommodate the previously approved design of the project due to the lease with Denny's, staff is not supportive of the variances requested due to the lack of a hardship and practical difficulties. In this regard, as the previously approved project has not yet been permitted, design modifications could be made to address most, if not all, of the applicable TC-C regulations. In this regard, staff recommends that the applicant further study design modifications to the street facing portions of the project facing Harding Avenue and 72<sup>nd</sup> Street, in order to make the project more compliant with the current TC-C regulations. Specifically, better compliance with the street classification, curb cut and access requirements would go a long way in mitigating the variances being requested.

In order to explore such changes, and better comply with the TC-C district regulations, staff recommends the application be continued to a future date. However, if the applicant does not wish to make any changes to the project and seeks to retain the existing design, staff recommends denial of the variances requested, without prejudice.

#### **PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicant has submitted plans and documents with the application that **DO NOT** satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of the requested variances if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also **DO NOT** indicate the following, as they relate to the requirements of Section 118-353(d), 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 133, article II, as applicable.

#### **ACCESSIBILITY COMPLIANCE**

Additional information will be required for a complete review for compliance with the Florida Building Code 2001 Edition, Section 11 (Florida Accessibility Code for Building Construction). These and all accessibility matters shall require final review and verification by the Building Department prior to the issuance of a Building Permit.

#### **CONCURRENCY DETERMINATION:**

In accordance with Chapter 122 of the Code of the City of Miami Beach, the Transportation and Concurrency Management Division has conducted a preliminary concurrency evaluation and determined that the project does not meet the City's concurrency requirements and level-of-service standards. However, the City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division will make the determination of the project's fair-share mitigation cost.

A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.

#### **CONSISTENCY WITH COMPREHENSIVE PLAN:**

A preliminary review of the project indicates that the proposed **hotel use** is **consistent** with the Future Land Use Map of the 2025 Comprehensive Plan.

**COMPLIANCE WITH ZONING CODE:**

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following section of the City Code, aside from the requested variances as noted herein this application:

1. **Sec. 142-745(a)(12) Loading:** Where loading is permitted, it shall be designed as follows, in addition to the requirements for driveways: Driveways for parking and loading shall be combined, unless waived by the Design Review Board.
2. **Sec. 142-746. - Nonconforming structures within unified development sites.**
  - (a) Buildings within the TC-C district that are nonconforming with the regulations of this division and incorporated into a unified development site as part of a land use board approval shall be made conforming with the development regulations of this division.
  - (b) Notwithstanding the requirements of subsection (a) above, if said nonconforming building has a tenant with a lease that prevents the structure from being made conforming as part of the land use board approval, then the following shall apply:
    - (1) A phased development permit, pursuant to section 118-259, shall be applied for as part of the land use board approval process. **The phased development approval shall require the nonconforming building to be redeveloped into a conforming building. The phasing time limit shall be the minimum necessary to allow for the completion of the lease.**
    - (2) A certified copy of the lease shall be provided as part of the land use board application.

The above note 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:**

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria is found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
2. 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.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**

3. 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.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
4. 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 118-252.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
5. 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 Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
6. The proposed Structure, and/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.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
7. 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.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
8. 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 safely 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.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
9. 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 provided**

10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
11. 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; (an aluminum grille is proposed on the ground level where the parking lot is being retained).**
12. 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).  
**Not Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
13. 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 Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.  
**Not Applicable**
15. 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**
16. 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 Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**
17. 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 Satisfied; the applicant is requesting one waiver and multiple variances from the Board.**

18. In addition to the foregoing criteria, subsection [118-]104(6)(t) of the City Code 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**

19. The structure and site complies with the sea level rise and resiliency review criteria in Chapter 133, Article II, as applicable.

**Satisfied**

**COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development 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.  
**Satisfied**
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 126 of the City Code.  
**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.  
**Not 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. Proper precautions will be taken to ensure the critical mechanical and electrical systems are located above base flood elevation.**

8. Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.

**Not 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.

**Satisfied**

10. In all new projects, water retention systems shall be provided.

**Not Satisfied**

11. Cool pavement materials or porous pavement materials shall be utilized.

**Not Satisfied**

12. The project design shall minimize the potential for a project causing a heat island effect on site.

**Not Satisfied**

## **ANALYSIS**

### **DESIGN REVIEW**

This application was originally approved by the Design Review Board on January 3, 2017 as a multi-story hotel on an assemblage of parcels, pursuant to DRB16-0054. On June 5, 2018, the applicant returned to the Board for the approval of exterior design modifications that included an additional five-story wing component to the previously approved 11-story structure, pursuant to DRB18-0236. Additionally, the applicant increased the overall size of the project pursuant to voter approval of an FAR increase for the TC-1 district.

The applicant is returning to the board to request modifications to the approved design to allow for a phased development permit. Specifically, to accommodate the terms of a lease, which is set to expire on November 30, 2032, with the existing tenant (Denny's restaurant). The proposed design modifications require one design waiver as part of this application.

The phased development permit is being sought pursuant to section 118-259 of the Land Development Regulations of the City Code:

***Sec. 118-259. - Phased development permit. A phased development permit shall apply to multiple building/structure development only and shall include all plans for each phase of the project as submitted, required and approved by the design review board. The applicant shall request the board approve a phased development at the public hearing and the board shall specify a reasonable time limit within which the phases shall begin or be completed or both. The board shall require a progress report from the applicant at the completion of each phase. A phased development permit shall not be a demolition, electrical, foundation, mechanical or plumbing permit or any other partial permit.***

The project was approved by the DRB prior to the implementation of the current TC-C District. Occupying the larger north portion of a block sited between Collins Avenue and Harding Avenue and south of 72<sup>nd</sup> Street, the project was designed to retain two existing one-story

retail buildings (Denny's at the northeast corner of parcel and the other southern-most parcel). The applicant is proposing a phased development where Phase 1 would permit the construction of the previously approved design except for the modifications required to retain the existing tenant and the associated parking lot and curb cut. Phase 2 would consist of the removal of the surface parking lot and curb cut behind Denny's in order complete the design as approved by the Board in 2018, pursuant to DRB18-0236. Given that this project was approved prior to the implementation of the TC-C District, its design does not comply with many of the district's regulations and is non-conforming. As such, Phase 1, where the applicant is requesting modifications from the previously approved design, must be reviewed for compliance with the current TC-C requirements.

To address the underlying TC-C zoning requirements, the proposed design for Phase 1 encloses the parking with a shallow display and storefront windows along the ground floor façade and a roll-up gate to enclose the parking. These elements will be demolished during Phase 2 and the originally approved design will be executed, returning the area to commercial space with associated landscape and hardscape.

Staff has concerns with the retention of the parking lot and its associated driveway and curb cut. Given that 72<sup>nd</sup> Street is meant to be a prominent pedestrian thoroughfare, the curb cut and driveway disassociate this portion of the development from its intended use, and would result in a substantial negative impact on the vision for 72<sup>nd</sup> street, for over a decade. Staff recommends that the applicant and tenant seek out alternate parking solutions that do not compromise the public right-of-way, such as providing parking elsewhere within the site so as to not modify the approved exterior of the building.

Furthermore, the proposed phased development does fully comply with section of the TC-C District concerning non-conforming structures:

**Sec. 142-746. - Nonconforming structures within unified development sites.**

(a) Buildings within the TC-C district that are nonconforming with the regulations of this division and incorporated into a unified development site as part of a land use board approval shall be made conforming with the development regulations of this division.

(b) Notwithstanding the requirements of subsection (a) above, if said nonconforming building has a tenant with a lease that prevents the structure from being made conforming as part of the land use board approval, then the following shall apply:

(1) A phased development permit, pursuant to section 118-259, shall be applied for as part of the land use board approval process. The phased development approval shall require the nonconforming building to be redeveloped into a conforming building. The phasing time limit shall be the minimum necessary to allow for the completion of the lease.

(2) A certified copy of the lease shall be provided as part of the land use board application.

While the applicant has provided documentation that includes a copy of the lease that supports an application for phased development, the plan does not include the redevelopment of the non-conforming building into a conforming building. As part of the Phase 1 modifications a design waiver is being requested that relates to the retention of the driveway and curb cut on 72<sup>nd</sup> Street. In applying the current code to this portion of the project, the TC-C District defines 72<sup>nd</sup> Street as a Class “A” street, for which the Code does not permit driveways (refer to the variance section of this report). In instances where driveways are allowed, they shall be combined with loading, unless waived by the Design Review Board. For this project, the driveway for loading is located on Harding Avenue and the retention of the existing driveway on 72<sup>nd</sup> Street necessitates a waiver. Given that staff does not recommend the retention of the existing parking lot and associated curb cuts and driveways, staff does not support this waiver as it retains an undesirable urban condition.

As indicated above, the subject project, as currently configured, does not comply with multiple regulations of the TCC district; these include, but are not limited to, the following:

- Along 72<sup>nd</sup> Street and Collins Avenue, the 2<sup>nd</sup> and 3<sup>rd</sup> floors require habitable space for 90% of the façade.
- Along Harding Avenue, a pedestrian path with a minimum width of 10’-0” and shade covering required and parking would have to be setback 20’-0” from the building façade.
- All parking and loading would have to be screened from view along Harding Avenue.

In conclusion, staff believes that there is an opportunity for the applicant to make changes to the street facing portions of the project in order to better comply with the TC-C regulations, particularly as it relates to the street classification requirements along Harding Avenue and 72<sup>nd</sup> Street. While these changes may not result in 100% compliance with the current regulations, they could be substantial enough to mitigate the variances requested. As such, staff does not support the exterior modifications associated with the phased development as currently proposed and recommends the application be continued to a future date so the applicant can explore design modifications to make the remainder of the project more consistent with the current TC-C regulations.

**VARIANCE ANALYSIS:**

As identified under the ‘Project’ section of the recommendation, staff is not supportive of the variances requested, as currently proposed, since they would increase the non-conformity of the project and do not comply with the intent of the phased development section of the TC-C district for non-conforming buildings. Staff would recommend the variance requests be continued to a future date and the project be redesigned to better comply with the current TC-C district regulations, or alternative options for Denny’s parking within the parking area of the project already approved.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application be continued to a future date, including the variance requests. If the applicant does agree to make any changes to the project, and seeks to retain the existing design, staff recommends **denial** of the application, including **denial** of the variances requested, without prejudice. Should the board move to approve the project, in some form, staff recommends that any such approval be subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Design Review criteria and Practical Difficulty and Hardship criteria, as applicable.