

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 27, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB21-0426. Vacation of a portion of the southern half of 21st Street, between Collins Avenue and Miami Beach Drive.**

RECOMMENDATION

Staff recommends that the Planning Board approve the proposed vacation of the City Right-of-Way Areas, provided that the vacation of the city ROW shall be subject to and conditioned upon the applicant's delivery of certain public benefits to the City, including (1) a voluntary monetary payment in the amount of \$7,400,000.00, (2) a maintenance agreement providing for the installation and perpetual maintenance of additional landscaping within the City's beach access and Beachwalk area east of Miami Beach Drive, and (3) a perpetual easement in favor of the City over the ROW, to ensure continued public use of the ROW for city access, pedestrian and vehicular travel, and utilities.

BACKGROUND

BHI Limited Miami Corporation (the "Owner" or "Applicant"), is the owner of the Seagull hotel site, located at 100 21st Street, Miami Beach, Florida (the "Property"). The Property is located on the south side of 21st Street, consisting of an 8-story structure, under Folio No. 02-3226-001-0040, as more particularly described in Exhibit "B". The Seagull hotel was constructed in 1950, and was designed by Miami Beach architect Albert Anis.

The Property consists of Lots 1, 3, and 5 of Block A of the Amended Map of the Ocean Front Property of the Miami Beach Improvement Company Subdivision recorded in Plat Book 5, Page 7 of the Public Records of Miami-Dade County. As platted, the Property fronts the south side of 21st Street (identified in the plat as Park Avenue).

The entire block to the north of 21st Street, adjacent to the Property, was platted as a City park. The platted park site has now become unified with the two blocks to the west and the land to the east of Miami Beach Drive under a single folio (02-3226-001-0370). Currently, 21st Street terminates at the edge of, and is not part of, the City property.

At its November 18, 2020 meeting, the City Commission approved a dual referral to the Land Use and Sustainability Committee ("LUSC") and the Finance and Economic Resiliency Committee

("FERC") to discuss the request from Owner to renovate the Property, the Seagull Hotel, located at 100 21st Street. The Applicant is proposing a major renovation of the existing structure in order to accommodate a new high-end luxury hotel operator, Bulgari Hotels & Resorts (the "Proposed Development").

As set forth more fully below, the Applicant's request for a vacation, which involves the City's conveyance of the ROW to the Applicant, must comply with Chapter 82 of the City Code, relating to the sale or lease of City property, and Section 1.03(b)(4) of the City Charter, which requires approval by a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission. As more particularly described below, the City Commission has the discretion to approve the vacation if the City Commission finds that the vacation meets the criteria established in Section 82-38 of the City Code and the public benefit proffered is compelling.

At the December 18, 2020 FERC meeting, the Applicant presented its proposed renovation of the Seagull Hotel, and the Applicant's request for a vacation of the City's ROW. The Applicant confirmed that it had conducted its own independent appraisal of the property proposed to be vacated, and that the appraised amount would be proffered as a public benefit for the City by way of a monetary contribution to the City, to be used as directed by the Commission. **To ensure a proper valuation of the ROW, the Administration engaged its own independent appraisal to appraise the market value for the ROW. The Applicant's appraiser valued the ROW at \$5,000,000, and the City's appraisal valued the ROW at \$7,400,000.00.** The Owner's appraisal is attached as Exhibit "C" and the City's appraisal is attached as Exhibit "D".

On January 22, 2021 meeting, the FERC discussed the appraisal results and analysis, with the participation of Applicant's representatives and City staff. The Acting City Attorney outlined a preliminary analysis of the proposed vacation under the City Charter, and a more detailed analysis is set forth in this Memorandum. **Additionally, at the January 22, 2021 FERC meeting, the Applicant accepted the City's higher appraisal value for the ROW at \$7,400,000.00.** Since the January 22, 2021 FERC meeting, the Applicant and the Administration have continued to discuss terms, including additional public benefits (in addition to the \$7.4 million appraised value) discussed below.

The proposed vacation of the ROW would be memorialized in a vacation agreement between the Applicant and the City (the "Vacation Agreement"). As part of this renovation and the City's vacation of the ROW, the Owner has proposed the following:

1. Applicant shall provide the City with a voluntary contribution of \$7,400,000 under a payment schedule to be determined in a Vacation Agreement to be executed by the Applicant and the City.
2. The vacation of that portion of the southern half of the 21st Street right-of-way, generally located between approximately 150 feet east of Collins Avenue and Miami Beach Drive, and consisting of approximately 6,736 square feet in total area ("ROW") along the front of the Seagull Hotel property. The ROW is more particularly described in the attached Exhibit "A". As permitted under Section 1.03(c) of the City Charter (discussed more fully below) and Section 118-5 of the City Code, the Applicant, upon obtaining fee ownership of the

ROW, would create a unified development site, thereby permitting the aggregation of floor area ("FAR") across the unified abutting parcels.

3. As a condition of the proposed vacation, the Applicant would grant a perpetual, non-revocable easement in favor of the City, for the City's continued use of the ROW for vehicular, pedestrian and utility purposes, so that the public's use of 21st Street would not be altered or diminished in any way.
4. Applicant and the City shall enter into a Maintenance Agreement providing for installation (prior to the issuance of a Certificate of Occupancy) and perpetual maintenance of additional landscaping at the Applicant's sole cost in the portion of the City's Beach Access and Beachwalk area as depicted in Exhibit "E" that is directly to the east of the ROW and directly to the east of Applicant's Property (defined below as the "Proposed Maintenance Area").
5. Applicant shall pay all of the City's costs in connection with the proposed vacation of the ROW, including any City closing costs, recording fees, or outside legal fees that may be incurred by the City.
6. Applicant agrees that City's quit claim deed for the ROW shall contain a reverter clause, to provide for the ROW to revert back to the City in the event Applicant fails to satisfy all conditions of the Vacation Resolution prior to the completion of the Proposed Development, except the installation and maintenance of the landscape improvements depicted in Exhibit "E," which shall be governed by the Maintenance Agreement, and with such reverter being without prejudice to any other rights or remedies that may be available to the City in the event the Applicant fails to satisfy the conditions of the Vacation Resolution.
7. Applicant agrees that City shall not issue a Temporary Certificate of Occupancy or final Certificate of Occupancy (whichever comes first) for the Proposed Development until the Applicant has satisfied all conditions of the Vacation Resolution.
8. In the event the foregoing conditions of the Vacation Agreement, excluding the obligations under the Maintenance Agreement, which shall be solely governed by that Agreement, are not met, following notice to Applicant and a reasonable opportunity to cure, the Vacation Agreement shall be subject to termination, and in the event of any such termination, this Vacation Resolution shall be null and void.

APPRAISAL REPORTS

As discussed above, the Owner proffered a voluntary contribution to the City for the appraised value of the ROW as part of its public benefit package, in consideration of the vacation of the ROW. On December 18, 2022, the Owner presented an appraisal performed by Walter Duke and Partners to appraise the fair market value of the ROW to be vacated. The appraisal commissioned by Owner appraised the market value "as is" at \$5,000,000. A copy of the Owner's appraisal report is attached as Exhibit "C".

In addition to the appraisal engaged by Owner, the City's Public Works Department engaged CBRE to appraise the fair market value of the ROW to be vacated. The City's independent appraisal valued the ROW at \$7,400,000. A copy of the City's appraisal report is attached hereto as Exhibit "D".

At the January 22, 2021 FERC meeting, the Owner informed the City that it had accepted the City's valuation of the ROW at \$7,400,000 and was prepared to offer this full amount as part of its public benefits package.

PUBLIC BENEFITS PACKAGE

In exchange for the vacation of the City's ROW in favor of the Owner, the Owner's initial proposal includes a public benefit package to the City consisting of a cash payment based on the City's appraised value of the ROW at \$7,400,000, and a perpetual easement in favor of the City to ensure continued public use of the ROW for pedestrian and vehicular travel and utilities, such that the public's rights to use the ROW would not be diminished.

The Owner has proposed that the cash payment to the City in the amount of \$7,400,000 would be provided in installment payments, namely:

(i) an initial refundable installment payment of \$750,000 due 30 days following land use board approvals becoming final and non-appealable; and

(ii) a second refundable installment payment of \$3,325,000 due prior to the Building Department's issuance of a building permit for the renovation project; and

(iii) a final installment payment of \$3,325,000 due prior to the Building Department's issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy (whichever comes first) for the new construction. As proposed by the Applicant, the \$7,400,000 proposed by Applicant would become non-refundable upon the owner obtaining the temporary certificate of occupancy.

The Administration and Applicant will continue to discuss the proposed payment schedule, in an effort to improve on the terms prior to the Planning Board's consideration of this matter, as the Interim City Manager has recommended that a greater portion of the \$7,400,000 be provided up-front, with all payments to become non-refundable at the Closing. For its part, the Applicant has expressed a willingness to work with the Administration to accommodate the Interim City Manager's request, within a framework that would permit for the Project to be financeable.

In addition to the public benefits initially proposed by the Owner, the Owner has recently proffered to the City that the Owner, at its own sole cost and expense, would maintain and repair the Beachwalk area, consisting of the serpentine path and surrounding areas, located both directly to the east of the ROW and directly east of the property ("Proposed Maintenance Area"). The Proposed Maintenance Area is attached hereto as Exhibit "E". Currently, the City is responsible for the repair and maintenance of the Proposed Maintenance Area. The Public Works Department is currently reviewing the Owner's proposal to assume responsibility for the repair and maintenance of the Proposed Maintenance Area in order to identify a cost estimate for the annual net benefit associated with this proposal.

PLANNING ANALYSIS

The Planning Department's analysis of the proposed vacation, pursuant to Section 82-38 of the City Code, is attached as Exhibit "B" hereto.

LEGAL EFFECT OF A RIGHT-OF-WAY VACATION

The City is currently **not** the underlying fee simple owner of the 21st Street ROW, and does not hold legal title to the ROW. Instead, the City holds a right of way dedication, which confers on the public an exclusive right of use, so long as the dedicated right of way is used for the purpose of the dedication (namely, for pedestrian and vehicular access). The Owner, as the successor to the original abutting property owners who dedicated the ROW when the plat was created, holds the underlying reversionary fee interest in the dedicated ROW. See *Robbins v. White*, 52 Fla. 613, 42 So. 841, 841-44 (Fla. 1907) (a dedication "does not divest the owner of the title to the land, but only subjects the land and the title to the public easement for street purposes," with title remaining in the dedicator or his successors in title); *Coral Gables v. Old Cutler Bay Homeowners Corp.*, 529 So. 2d 1188, 1189-90 (Fla. 3d DCA 1988) ("[A] common law dedication does not pass the fee in land. The interest acquired by the municipality is generally held to be in the nature of an easement, with the public having a right of use and nothing more.")

The vacation of a right-of-way is a legislative act within the exercise of the City Commission's discretion, if the City Commission determines the vacation is in the public interest. See, e.g., *Robbins v. White*, 42 So. 2d 841 (1907); *City of Temple Terrace, Fla. v. Tozier*, 903 So. 2d 970 (Fla. 2d DCA 2005). If approved, the vacation would be effectuated by the City Commission's adoption of a resolution authorizing the vacation, and the City thereafter quit claiming any right, title and interest it has in the ROW, (thereby extinguishing the dedication). **By operation of law, once the City vacates the ROW, the underlying fee interest in the ROW vests with the current abutting property owners.** See, e.g., *Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289 (Fla. 1956); *Smith v. Horn*, 70 So. 435 (Fla. 1915); *Hurt v. Lenchuk*, 223 So. 2d 350 (Fla. 4th DCA 1969) ("When a street is lawfully vacated, title to the area vacated vests in the adjoining property owners").

Based on the foregoing, under the current structure of the transaction, at the Closing when the City delivers its quit claim deed to the Owner, the Owner will be fully vested with its underlying fee interest in the vacated ROW. **Importantly, at the Closing, Owner will simultaneously encumber the vacated ROW, by granting the City an irrevocable, perpetual easement, in favor of the public, for the continued public use of the ROW. The easement runs with the land, and has a scope that is similar to the interests the City currently has in the ROW dedication. Accordingly, by requiring the Owner to deliver the easement as a condition of Closing, the transaction is expressly structured to address concerns about public access, and to ensure that the rights of the public to the continued use of the ROW will not be abandoned, diminished or altered in any way.**

Finally, by vesting the Owner with the fee interest (subject to the easement in favor of the public), the structure of the transaction would permit the Owner to include the vacated ROW as part of a unified development site, and to aggregate its vested development rights on unified abutting parcels through a covenant in lieu of unity of title, as permitted by Section 1.03(c) of the City Charter (without a referendum) and Section 118-5 of the City Code, as discussed more fully

below. Of course, the benefit to the Owner would only be available if the Owner complies with the terms and conditions of the Vacation Resolution (including, among other terms, the requirement to deliver to the City the irrevocable, perpetual easement for the continued public use of the ROW).

APPLICABILITY OF SECTION 1.03(b)(4) OF THE CITY CHARTER

As with every transaction involving a conveyance of property, the City Attorney's Office has evaluated the relevant provisions of Section 1.03 of the City Charter, which governs the disposition of City property. Consistent with prior City interpretation and action on other similar right-of-way vacation applications, **the proposed vacation requires approval by a majority 4/7 vote of the Planning Board and 6/7 vote of the City Commission.**

Analysis of Relevant Charter Provisions

1. ***Section 1.03(b)(1) of the City Charter: Does the vacation involve a sale, exchange, conveyance or lease of ten years or longer of City-owned Park, Recreation, or Waterfront Property, which would require voter referendum approval?***

No. The proposed ROW vacation, which would vacate the southern half of 21st Street, is located outside the boundaries of Collins Park. No portion of Collins Park is proposed to be transferred. Further, the ROW itself is not "park" or "recreation property." The ROW serves as a public street, and no part of it is used for park or recreation purposes. This issue was previously addressed as part of the Ocean Terrace vacation, wherein the City Attorney previously opined as follows, an opinion which is directly applicable to the instant matter as well:

The Right of Way was dedicated by plat expressly for public street purposes and for no others. See *Florida E.C.R. Co. v. Worley*, 49 Fla. 297, 38 So. 618, 621 (Fla. 1905) (the placement of streets on a plat map "evinces an intention to dedicate the streets to public use as such. This is true although there is no formal written dedication accompanying the map"). Were the City to convert the Right of Way to a "park"—a use inconsistent with the plat dedication—the Right of Way would revert to the abutting property owner by operation of law, without any payment or contribution to the City. See *Woodlawn Park Cemetery Co. v. City of Miami*, 104 So. 2d 851 (Fla. 3d DCA 1958) (portion of right-of-way parcel dedicated to municipality for street purposes was held to be abandoned and reverted to landowner when used for other purposes). For these reasons, the Right of Way is purely a public street and does not function as, and cannot be deemed, "park" or "recreation" property within the meaning of Section 1.03(b)(1) of the City Charter.

In addition, the ROW is not waterfront property. 21st Street terminates at the eastern edge of platted Miami Beach Drive. Immediately to the east, there is a separate property that is part of Folio No. 02-3226-001-0370, which is waterfront property. Because no portion of the separate waterfront property is at issue here, the application therefore does not involve waterfront property. The above analysis is analogous to the Ocean Terrace vacation, where the vacated right-of-way was separated from the waterfront by a separately platted parcel which, as in this case, was not proposed to be transferred.

2. ***Section 1.03(b)(2) of the City Charter: Does the application involve a sale, exchange, conveyance or lease of ten years or longer of the Cultural Campus (all city-owned property bounded by 22nd Street on the North, Park Avenue on the West, 21st Street on the South, and Miami Beach Drive on the East), which would require voter referendum approval?***

No. The Cultural Campus boundary ends at the northern boundary of 21st Street and does not include any part of the 21st Street ROW. Moreover, the application includes only the southern half of 21st Street and does not abut the southern boundary of the Cultural Campus. Accordingly, Section 1.03(b)(2) of the City Charter is not implicated, as the street is located outside the boundaries of the Cultural Campus, as referenced in the City Charter.

3. ***Section 1.03(d) of the City Charter: Does the application involve a sale, exchange, conveyance, lease, or any other transfer of any City interest in a public beach right-of-way (extending eastward from Collins Avenue/Ocean Drive to the erosion control line), which would require voter referendum approval?***

No. The ROW itself extends eastward from Collins Avenue but merges and continues onto Miami Beach Drive. As the survey of the area confirms, 21st Street does not reach the erosion control line. Section 1.03(d) therefore does not apply to the proposed vacation.

4. ***Section 1.03(e): Does the application involve a sale, exchange, conveyance, lease, or any other transfer of any City interest in any public street-end bordering on land designated "Government Use", "Golf Course" or Waterfront land, which would require voter referendum approval?***

No. Even though the eastern-most parcel of Collins Park is zoned GU, the application does not include a "street end," consistent with prior City interpretations. As with the Ocean Terrace vacation, no portion of the ROW is a street end. Miami Beach Drive is a through street running north/south, which continues onto 21st Street on the south. 21st Street merges and continues onto Miami Beach Drive. 21st Street is therefore distinct from City rights-of-way that "dead end" (i.e. are surrounded by private property and do not connect to other streets). Moreover, only the southern half of 21st Street is proposed to be vacated. Accordingly, public access to the waterfront is neither disrupted nor eliminated, and public access to the waterfront is maintained.

5. ***Section 1.03(c) of the City Charter: Does the application involve the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance, such that the referendum requirement of Section 1.03(c) does not apply?***

Yes. Section 1.03(c) of the City Charter specifically does not apply to the "aggregation of development rights on unified abutting parcels, as may be permitted by ordinance." Section 118-5 of the City Code permits a property owner with fee simple title to abutting parcels to aggregate development rights through a covenant in lieu of unity of title. The requested vacation, by vesting the fee interest in the ROW with the abutting property

owner, would allow the property owner to create a unified development site and join the vacated right-of-way with the abutting property. Accordingly, Section 1.03(c) of the City Charter, by its express terms, permits this aggregation.

Accordingly, based on the above analysis, and consistent with prior interpretations on similar projects, the very heightened approval requirements of Section 1.03(b)(4) of the City Charter would apply to the proposed vacation. In order for the vacation to proceed, the vacation requires approval by a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Consistent – The proposal will increase the resiliency of the City with respect to sea level rise by providing additional revenue to the City, providing additional landscaping on the site, and allowing for new, more resilient development.

- (3) Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

Consistent – The proposal is compatible with and enhances the City's sea level rise mitigation and resiliency efforts.

CONCLUSION

In view of the foregoing analysis, staff recommends that the Planning Board approve the proposed vacation of the City Right-of-Way Areas, provided that the vacation of the city ROW shall be subject to and conditioned upon the applicant's delivery of certain public benefits to the City, including (1) a voluntary monetary payment in the amount of \$7,400,000.00, (2) a maintenance agreement providing for the installation and perpetual maintenance of additional landscaping within the City's beach access and Beachwalk area east of Miami Beach Drive, and (3) a perpetual easement in favor of the City over the ROW, to ensure continued public use of the ROW for city access, pedestrian and vehicular travel, and utilities.

Exhibit B

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

PLANNING DEPARTMENT

MEMORANDUM

TO: Raul Aguila, Interim City Manager

FROM: Thomas R. Mooney, AICP
Planning Director



DATE: April 27, 2021

SUBJECT: **Planning Analysis of Proposed Right of Way (ROW) Vacation – Portion of Southern Half of 21st Street**

BACKGROUND

Section 82-38 of the Code of the City of Miami Beach requires that any proposed sale or lease of City-owned land be analyzed from a planning perspective so that the City Commission and the public are fully apprised of all conditions relating to the proposed sale or lease.

The proposal is to vacate the southern half of 21st Street, generally located between approximately 150 feet east of Collins Avenue and Miami Beach Drive (See the "Right of Way Vacation Area" map at the end of this report). The right of way contains approximately 6,736 SF/0.155 AC in total lot area. A perpetual public access easement will be provided, allowing for the area to continue to function for vehicular and pedestrian access.

In exchange for the vacation, the developer of the adjacent Seagull Hotel will be providing certain public benefits to the City, including the payment of \$7,400,000, a maintenance agreement providing for the installation and perpetual maintenance of additional landscaping within the City's beach access and Beachwalk area east of Miami Beach Drive, and a perpetual easement in favor of the City over the row, to ensure continued public use of the row for City access, pedestrian and vehicular travel, and utilities. The following is an analysis based on the criteria delineated in the Code:

ANALYSIS

1. **Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city comprehensive plan.**

Consistent – The vacated ROW will continue to be used for public purposes. Public access will continue to be provided. The area will be enhanced with additional landscaping. This is consistent with the Comprehensive Plan Conservation/Coastal Zone Management Element Objective 10, which states the following:

Objective 10: PUBLIC SHORELINE ACCESS

Increase the amount of public access to the beach or shoreline consistent with the estimated public need.

2. **The impact on adjacent property, including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level or enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the proponent shall be responsible for obtaining a traffic impact analysis from a reputable traffic engineer.**

Consistent – No negative impacts are anticipated by the proposal. The ROW being vacated by the City is within the High Density Multi Family Residential (RM-3) future land use category. This category allows for a maximum floor area ratio (FAR) of 2.0 for oceanfront lots located in the Architectural District. Vacation of the 6,736 SF of ROW will allow approximately 13,472 of additional floor area to be developed within a unified development site with the abutting parcel.

- Though a ROW is proposed to be vacated, no construction is being proposed within the vacated ROW; therefore, there will be no diminution of open space. The vacated area will be rebuilt consistent with additional landscaping and other enhancements.
- Vacation of the ROW will not affect the transportation network, as vehicular access will be maintained. If the use of the floor area that is made available from the vacation of the ROW were used for hotel units, the use would potentially generate up to approximately 18 peak hour trips. This does not represent a significant increase in peak hour volumes. Traffic impacts for any new development will be addressed as part of the land use board process. Any new development will also be subject to pay mobility fees which will help fund mobility transportation improvements in the City.
- No noise level impacts are anticipated from the vacation, as the use of the property will remain open and the use will be similar in nature. Any noise impacts of any new development on the adjacent will be addressed as part of the land use board processes.
- The appearance of the property will improve with the proposed vacation, as the applicant will be providing landscape and other enhancements, as well as improving the development site. These improvements should enhance surrounding property values.
- Vacation of the ROW will allow for improved utilization of the adjacent parcel, and lead to an improved development.
- Vacation of the ROW will not impact adopted levels of service for public infrastructure. Compliance with parks concurrency and mobility fees for the utilization of the floor area that is gained within a unified development site will be determined and mitigated in conjunction with the building permit process;

however, no additional utilities or infrastructure are expected to be necessary.

3. **A determination as to whether or not the proposed use is in keeping with a public purpose and community needs, such as expanding the city's revenue base, creating jobs, creating a significant revenue stream, and improving the community's overall quality of life.**

Consistent - This proposal expands the City's revenue base by adding untaxed public property to the tax rolls. The additional floor area that is made available to the abutting property will improve the viability of a new development and create additional taxable value. In addition, the existing building on the abutting site will be greatly improved.

4. **A determination as to whether or not the development is in keeping with the surrounding neighborhood, will block views or create environmental intrusions, and evaluation of the design and aesthetic considerations of the project.**

Consistent - The surrounding neighborhood will not be negatively affected. The ROW area will remain undeveloped, and a public access easement will be provided. As a result, it will not lead to the blocking of views. No environmental intrusions will be created by the proposed ROW vacation.

5. **The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.**

Consistent – Vacation of this ROW will not affect the parking or infrastructure needs of adjacent properties. Surrounding properties are not dependent on the parking provided within this ROW should it be removed in the future. Additionally, the site is adjacent to a public parking lot.

6. **Such other issues as the city manager or his authorized designee, who shall be the city's planning director, may deem appropriate in analysis of the proposed disposition.**

Not applicable - The Planning Department has no other issues it deems appropriate to analyze for this proposal.

CONCLUSION

Vacation of the public ROW is consistent with the Goals, Objectives, and Policies based on the proposals for the property. The vacation of the Street public ROW will generate no negative impacts for the surrounding area. The property would continue to serve a public purpose; as utility and pedestrian access will continue to be provided.

**PLANNING BOARD RESOLUTION
VACATION OF A PORTION OF THE SOUTHERN HALF OF 21ST STREET,
BETWEEN COLLINS AVENUE AND MIAMI BEACH DRIVE**

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING BY A 4/7THS VOTE, PURSUANT TO CITY CHARTER SECTION 1.03(b)(4), AND SECTION 118-51(11) OF THE CITY'S LAND DEVELOPMENT REGULATIONS, OF THE PROPOSED VACATION OF THAT PORTION OF THE SOUTHERN HALF OF 21ST STREET, GENERALLY LOCATED BETWEEN APPROXIMATELY 150 FEET EAST OF COLLINS AVENUE AND MIAMI BEACH DRIVE, AND CONSISTING OF APPROXIMATELY 6,736 SQUARE FEET IN TOTAL AREA ("ROW"), IN FAVOR OF THE ABUTTING PROPERTY OWNER, BHI LIMITED MIAMI CORPORATION (THE "APPLICANT"); PROVIDED THAT THE VACATION OF THE CITY ROW SHALL BE SUBJECT TO AND CONDITIONED UPON THE APPLICANT'S DELIVERY OF CERTAIN PUBLIC BENEFITS TO THE CITY, INCLUDING A VOLUNTARY MONETARY PAYMENT IN THE AMOUNT OF \$7,400,000.00, A MAINTENANCE AGREEMENT PROVIDING FOR THE INSTALLATION AND PERPETUAL MAINTENANCE OF ADDITIONAL LANDSCAPING WITHIN THE CITY'S BEACH ACCESS AND BEACHWALK AREA EAST OF MIAMI BEACH DRIVE, AND A PERPETUAL EASEMENT IN FAVOR OF THE CITY OVER THE ROW, TO ENSURE CONTINUED PUBLIC USE OF THE ROW FOR CITY ACCESS, PEDESTRIAN AND VEHICULAR TRAVEL, AND UTILITIES.

WHEREAS, the City holds a right-of-way dedication to the portion of the southern twenty-five (25) feet of 21 Street located approximately 150 feet east of Collins Avenue and running east for approximately 269.43 feet, consisting of approximately 6,736.28 square feet, and more particularly described in Exhibit "A" to the Memorandum accompanying this Resolution (the "ROW"); and

WHEREAS, BHI Miami Limited Corp. (the "Applicant") owns the property abutting the ROW, which is known as 100 21 Street and is identified by tax folio number 02-3226-001-0040 (the "Property"), more particularly described in Exhibit "B" to the Memorandum accompanying this Resolution; and

WHEREAS, Applicant's Property, currently known as the Seagull Hotel, consists of an 8-story structure constructed in 1950, and designed by architect Albert Anis; and

WHEREAS, the Applicant intends to redevelop the Property as a hotel development (the "Proposed Development"); and

WHEREAS, in conjunction with Proposed Development, the Applicant is requesting that the City vacate the ROW, and has submitted its application to the City's Public Works Department with respect thereto; and

WHEREAS, in accordance with Article II, Sections 82-36 through 82-40, of the City Code, prior to approving a request for vacation, the following requirements must be satisfied: (1) the title of the Resolution approving the proposed vacation shall be heard by the City Commission on two separate meeting dates, with the second reading to be accompanied by a duly noticed public hearing; (2) the proposed vacation shall be transmitted to the Finance and Economic Resiliency Committee (FERC) for its review; (3) the City's Planning Department shall prepare a written

planning analysis, to be submitted to the City Commission concurrent with its consideration of the proposed vacation; and (4) the City shall obtain an independent appraisal of the fair market value of the property proposed to be vacated; and

WHEREAS, the Applicant is proposing that the Proposed Development be developed as a unified development site, and the former right of way and the Applicant's Property would be joined via a covenant in lieu of unity of title following the effective date of the vacation, to permit Applicant to utilize the floor area associated with the ROW within the Proposed Development; and

WHEREAS, the Public Works Department obtained an appraisal for the market value of the ROW on January 13, 2021, which appraisal is attached as Exhibit "D" to the Memorandum accompanying this Resolution, and valued the ROW at \$7,400,000; and

WHEREAS, at FERC's January 22, 2021 meeting, the FCWPC recommended in favor of the proposed vacation of the ROW, with the vacation of the ROW subject to and conditioned upon the Applicant's delivery of certain public benefits to the City: (1) the Applicant's voluntary payment of \$7,400,000 to the City, and (2) the Applicant providing the City with a perpetual easement over the ROW to ensure continued public use of the ROW for City access, public pedestrian and vehicular travel, and the installation and maintenance of utilities; and

WHEREAS, the Applicant has further agreed to the installation and perpetual maintenance of additional landscaping adjacent to the Applicant's Property within the City's Beach Access and Beachwalk area depicted in Exhibit "E" to the Memorandum accompanying this Resolution, to be memorialized in a recorded Maintenance Agreement; and

WHEREAS, the Planning Department analysis of the vacation, pursuant to Section 82-38 of the City Code, is attached as Exhibit "F" to the Memorandum accompanying this Resolution; and

WHEREAS, Section 82-39(a) of the City Code provides that the lease or sale of public property also requires an advertised public bidding process, which requirement may be waived by 5/7th vote of the City Commission; and

WHEREAS, by operation of law, once the City vacates the ROW, the underlying fee interest in the ROW vests with the current abutting property owners area; and

WHEREAS, as the only persons entitled to the vacated ROW is the Applicant (as the abutting property owner and holder of the appropriate reversionary interests), the City Administration recommends that the Mayor and City Commission waive the competitive bidding requirement, finding that the public interest is served by waiving such condition; and

WHEREAS, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the proposed vacation will be heard before the Planning Board on the March 23, 2021 meeting, where it must be approved by 4/7ths vote; and

WHEREAS, Section 1.03 (b)(4) of the Charter also requires that the vacation be approved by 6/7th5 vote of the City Commission whereby the City Commission has the discretion to approve the vacation if the City Commission finds that the vacation meets the criteria established in Section 82-38 of the City Code and the public benefit proffered is compelling; and

WHEREAS, the vacation of the ROW shall be subject to and conditioned upon the Applicant and City executing a Vacation Agreement that includes the following terms and conditions:

- (1) Applicant shall provide the City with a voluntary contribution of \$7,400,000 under a payment schedule to be determined in a Vacation Agreement to be executed by the Applicant and the City; and
- (2) the vacation of that portion of the southern half of the 21st Street right-of-way, generally located between approximately 150 feet east of Collins Avenue and Miami Beach Drive, and consisting of approximately 6,736 square feet in total area ("ROW") along the front of the Seagull Hotel property. The ROW is more particularly described in Exhibit "A" to the Memorandum accompanying this Resolution. As permitted under Section 1.03(c) of the City Charter (discussed more fully below) and Section 118-5 of the City Code, the Applicant, upon obtaining fee ownership of the ROW, would create a unified development site, thereby permitting the aggregation of floor area ("FAR") across the unified abutting parcels; and
- (3) Applicant would grant a perpetual, non-revocable easement in favor of the City, for the City's continued use of the ROW for vehicular, pedestrian and utility purposes, so that the public's use of 21st Street would not be altered or diminished in any way; and
- (4) Applicant and the City shall enter into a Maintenance Agreement providing for installation (prior to the issuance of a Certificate of Occupancy) and perpetual maintenance of additional landscaping at the Applicant's sole cost in the portion of the City's Beach Access and Beachwalk area as depicted in Exhibit "C" to the Memorandum accompanying this Resolution that is directly to the east of the ROW and directly to the east of Applicant's Property (defined below as the "Proposed Maintenance Area"); and
- (5) Applicant shall pay all of the City's costs in connection with the proposed vacation of the ROW, including any City closing costs, recording fees, or outside legal fees that may be incurred by the City; and
- (6) Applicant agrees that City's quit claim deed for the ROW shall contain a reverter clause, to provide for the ROW to revert back to the City in the event Applicant fails to satisfy all conditions of the Vacation Resolution prior to the completion of the Proposed Development, except the installation and maintenance of the landscape improvements depicted in Exhibit "C" to the Memorandum accompanying this Resolution, which shall be governed by the Maintenance Agreement, and with such reverter being without prejudice to any other rights or remedies that may be available to the City in the event the Applicant fails to satisfy the conditions of the Vacation Resolution; and
- (7) Applicant agrees that City shall not issue a Temporary Certificate of Occupancy or final Certificate of Occupancy (whichever comes first) for the Proposed Development until the Applicant has satisfied all conditions of the Vacation Resolution; and

WHEREAS, in the event the foregoing conditions of the Vacation Agreement, excluding the obligations under the Maintenance Agreement, which shall be solely governed by that Agreement, are not met, following notice to Applicant and a reasonable opportunity to cure, the Vacation Agreement shall be subject to termination, and in the event of any such termination, this Vacation Resolution shall be null and void; and

WHEREAS, the Applicant has proposed that the voluntary cash payment to the City in the amount of \$7,400,000 would be provided in installment payments, namely:

- (1) an initial refundable installment payment of \$750,000 due 30 days following land use board approvals becoming final and non-appealable; and
- (2) a second refundable installment payment of \$3,325,000 due prior to the Building Department's issuance of a building permit for the renovation project; and
- (3) a final installment payment of \$3,325,000 due prior to the Building Department's issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy (whichever comes first) for the new construction. As proposed by the Applicant, the \$7,400,000 proposed by Applicant would become non-refundable upon the owner obtaining the temporary certificate of occupancy; and

WHEREAS, the Administration and Applicant will continue to discuss the proposed payment schedule, in an effort to improve on the terms prior to the Planning Board's consideration of this matter, as the Interim City Manager has recommended that a greater portion of the \$7,400,000 million be provided up-front, with all payments to become non-refundable at the closing of the transaction, and the Applicant has expressed a willingness to work with the Administration to accommodate the Interim City Manager's request, within a framework that would permit for the Project to be financeable; and

WHEREAS, the Administration recommends approval of the vacation at first reading on February 10, 2021, subject to the terms and conditions contained herein, and recommends scheduling a second reading public hearing; and

WHEREAS, the City Commission approved the vacation at first reading on February 10, 2021, subject to the terms and conditions contained herein, and referred the item to the Planning Board; and

WHEREAS, on April 27, 2021, the Planning Board held a public hearing to consider the aforementioned items; and

WHEREAS, on April 27, 2021, the Planning Board approved the vacation (individual votes of #-#).

NOW, THEREFORE, BE IT DULY RESOLVED BY THE PLANNING BOARD OF THE CITY OF MIAMI BEACH, FLORIDA, that the Planning Board of the City of Miami Beach, Florida, hereby approve, by a 4/7ths vote, pursuant to City Charter Section 1.03(b)(4), and Section 118-51(11) of the City's Land Development Regulations, of the proposed vacation of that portion of the southern half of 21st Street, generally located between approximately 150 feet east of Collins Avenue and Miami Beach Drive, and consisting of approximately 6,736 square feet in total area ("ROW"), in favor of the abutting property owner, BHI Limited Miami Corporation (the "Applicant"); provided that the vacation of the City ROW shall be subject to and conditioned upon the Applicant's delivery of certain public benefits to the City, including a voluntary monetary payment in the amount of \$7,400,000.00, a maintenance agreement providing for the installation and perpetual maintenance of additional landscaping within the City's beach access and beachwalk area east of Miami Beach Drive, and a perpetual easement in favor of the City over the ROW, to

