

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: February 13, 2018

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: HPB17-0171, **928 Ocean Drive.**

The applicant, Deco Walk Hotel & Golf Club, LLC, is requesting a Certificate of Appropriateness for the partial demolition of the Ocean Drive façade and the design of a new glass storefront system and the installation of a retractable canopy system at the rooftop including a variance to exceed the allowable hours of operation for an accessory outdoor bar counter on the roof of the building.

STAFF RECOMMENDATION

Approval of Certificate of Appropriateness with conditions
Denial of the variance

EXISTING STRUCTURE

Local Historic District: Ocean Drive/Collins Avenue

Status: Non-Contributing

Construction Date: 1993

SITE DATA

Legal Description: Lot 5, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

Zoning: MXE, Mixed-Use Entertainment

Future Land Use Designation: MXE, Mixed-Use Entertainment

THE PROJECT

The applicant has submitted plans entitled "Voodoo Restaurant & Lounge", as prepared by Norman Paul, R.A., dated December 8, 2017.

The applicant is requesting the following variance in order to operate an accessory outdoor bar counter with extended hours of operation:

1. A variance to exceed the allowable hours of operation of an accessory outdoor bar counter in order to operate a bar adjacent to a property with a residential use until 2:00 am.

- Variance requested from:

Sec. 142-543. Accessory uses.

The accessory uses in the MXE mixed use entertainment district are as follows:

- (3) Accessory outdoor bar counters counters, pursuant to the regulations set forth in chapter 6, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.

The property currently has a restaurant operation at the first level and the roof level. Due to construction work performed at the roof without the required permits, a violation has been issued by the Building Department. As part of the application to modify the existing roof conditions, the applicant is proposing a bar counter with 19 seats and to extend the allowable hours for alcohol sales at the bar up to 2:00 am.

As the property abuts residential buildings, an outdoor bar counter cannot be operated or utilized after 8:00 pm. Staff was unable to find practical difficulties to substantiate the extension of the hours to sell alcoholic beverages from 8:00 pm to 2:00 am, nor has the applicant substantiated how they would address potential impacts on adjacent residential apartments. Currently, the existing restaurant operation is allowed to dispense alcoholic beverages up to 5:00 am for people seated at the tables. Staff has concerns with the extension of outdoor bar counter hours proposed in this particular context at the open roof level, due to the potential noise increase from the bar area. In this regard, as the number of people gathering in groups around a bar increases, they tend to become louder, which is more likely to occur later in the evening. Staff finds that the variance request has a potential to adversely impact the adjacent residential apartment units.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded **do not** satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application **do not** satisfy the following hardship criteria, 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;

Not Satisfied

There are no special or unique circumstances which exist that are peculiar to the subject property. Other adjacent commercial buildings are also adjacent to the properties that contain residential uses.

- That the special conditions and circumstances do not result from the action of the applicant;

Not Satisfied;

The applicant is proposing to extend the hours of alcohol sales at the outdoor bar on a property in close proximity to residential uses.

- 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;

Not Satisfied;

All properties within the subject zoning district are subject to the regulations for the hours of operations of an outdoor bar counter.

- 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;

Not Satisfied;

The 8:00 p.m. closing time pertains only to the outdoor bar counter. All other indoor and outdoor seating areas associated with the venue may sale alcohol up to 5 am.

- That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

Not Satisfied;

The property contains hotel rooms and a restaurant with allowed alcohol sales up to 5 am. The 8:00 p.m. closing time pertains only to the outdoor bar counter. All other indoor and outdoor seating areas associated with the venue may operate up to 5 am.

- 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

Not Satisfied;

The granting of the variance request has a potential to negatively impact the adjacent residential apartment units.

- 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.

Satisfied

COMPLIANCE WITH ZONING CODE

A preliminary review of the project indicates that the application, as proposed, appears to be inconsistent with the following sections of the City Code, in addition to the requested variance:

1. A business tax receipt shall be issued for an outdoor café with a minimum of 30 seats for the rooftop portion of the property in order to permit the accessory outdoor bar counter pursuant to Section 142-1109 of the City Code.

All zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

CONSISTENCY WITH 2025 COMPREHENSIVE PLAN

A preliminary review of the project indicates that the proposed **hotel with accessory restaurant and outdoor bar counter use** appears to be **consistent** with the Future Land Use Map of the Comprehensive Plan.

COMPLIANCE WITH CERTIFICATE OF APPROPRIATENESS CRITERIA

A decision on an application for a Certificate of Appropriateness shall be based upon the following:

- I. Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable, compliance with the following criteria pursuant to Section 118-564(a)(1) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
 - a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time.
Not Applicable
 - b. Other guidelines/policies/plans adopted or approved by Resolution or Ordinance by the City Commission.
Satisfied
- II. In determining whether a particular application is compatible with surrounding properties, the Board shall consider the following criteria pursuant to Section 118-564(a)(2) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
 - a. Exterior architectural features.
Not Satisfied
The location and height of the rooftop canopy structure as currently proposed is incompatible with the surrounding properties.
 - b. General design, scale, massing and arrangement.
Not Satisfied
The location and height of the rooftop canopy structure as currently proposed is incompatible with the surrounding properties.
 - c. Texture and material and color.
Satisfied
 - d. The relationship of a, b, c, above, to other structures and features of the district.
Not Satisfied

The location and height of the rooftop canopy structure as currently proposed is incompatible with the surrounding properties.

- e. The purpose for which the district was created.
Satisfied
 - f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.
Not Satisfied
The location and height of the rooftop canopy structure as currently proposed is incompatible with the surrounding properties.
 - g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.
Not Applicable
 - h. The original architectural design or any subsequent modifications that have acquired significance.
Satisfied
- III. The examination of architectural drawings for consistency with the criteria pursuant to Section 118-564(a)(3) of the Miami Beach Code and stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community. The criteria referenced above are as follows (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
- a. 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.
Satisfied
 - b. 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.
Satisfied
 - c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the city identified in section 118-503.
Satisfied
 - d. The proposed structure, and/or additions to an existing structure is appropriate to and compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties, or the purposes for which the district was created.
Not Satisfied

The location and height of the rooftop canopy structure as currently proposed is incompatible with the surrounding properties.

- e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces 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 preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

Satisfied

- f. 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 any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

Satisfied

- g. 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 and consistent with a City master plan, where applicable.

Not Satisfied

A lighting plan has not been submitted.

- h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

Not Applicable

- i. 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.

Not Satisfied

A lighting plan for the rooftop deck has not been submitted

- j. Any proposed new structure shall have 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 location and height of the rooftop canopy structure as currently proposed is incompatible with the surrounding properties.

- k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, 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 sidewalk street, or streets shall have

residential or commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.

Satisfied

- l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Satisfied

- m. Any 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 Satisfied

The location and height of the rooftop canopy structure as currently proposed is incompatible with the surrounding properties.

- n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.

Satisfied

- o. 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

CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION EVALUATION CRITERIA

Section 118-564 (f)(4) of the Land Development Regulations of the Miami Beach Code provides criteria by which the Historic Preservation Board evaluates requests for a Certificate of Appropriateness for Demolition. The following is an analysis of the request based upon these criteria:

- a. The Building, Structure, Improvement, or Site is designated on either a national or state level as a part of an Historic Preservation District or as a Historic Architectural Landmark or Site, or is designated pursuant to Division 4, Article X, Chapter 118 of the Miami Beach Code as a Historic Building, Historic Structure or Historic Site, Historic Improvement, Historic Landscape Feature, historic interior or the Structure is of such historic/architectural interest or quality that it would reasonably meet national, state or local criteria for such designation.

Satisfied

The subject structure is designated as part of the Ocean Drive/Collins Avenue Local Historic District; the building is classified as a 'Non-Contributing' structure in the historic district.

- b. The Building, Structure, Improvement, or Site is of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense.

Not Satisfied

The subject structure would be difficult and inordinately expensive to reproduce.

- c. The Building, Structure, Improvement, or Site is one of the last remaining examples of its kind in the neighborhood, the country, or the region, or is a distinctive example of an architectural or design style which contributes to the character of the district.

Not Satisfied

The subject structure is not a distinctive example of an architectural style which contributes to the character of the district.

- d. The building, structure, improvement, or site is a contributing building, structure, improvement, site or landscape feature rather than a noncontributing building, structure, improvement, site or landscape feature in a historic district as defined in section 114-1, or is an architecturally significant feature of a public area of the interior of a historic or contributing building.

Not Satisfied

The subject structure is classified as a 'Non-Contributing' building in the Miami Beach Historic Properties Database.

- e. Retention of the Building, Structure, Improvement, Landscape Feature or Site promotes the general welfare of the City by providing an opportunity for study of local history, architecture, and design or by developing an understanding of the importance and value of a particular culture and heritage.

Not Satisfied

The retention of this structure is critical to developing an understanding of an important Miami Beach architectural style.

- f. If the proposed demolition is for the purpose of constructing a parking garage, the Board shall consider it if the parking garage is designed in a manner that is consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, U.S. Department of the Interior (1983), as amended, and/or the design review guidelines for that particular district.

Not Applicable

The demolition proposed in the subject application is not for the purpose of constructing a parking garage.

- g. In the event an applicant or property owner proposes the total demolition of a contributing structure, historic structure or architecturally significant feature, there shall be definite plans presented to the board for the reuse of the property if the proposed demolition is approved and carried out.

Not Applicable

The applicant is not proposing total demolition of the existing 'Contributing' building.

- h. The Miami-Dade County Unsafe Structures Board has ordered the demolition of a Structure without option.

Not Applicable

The Miami-Dade County Unsafe Structures Board has not ordered the demolition of any part of the subject buildings.

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.
Not Satisfied
A recycling or salvage plan has not been provided.
- (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) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.
Satisfied
- (5) Whether 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, including a study of land elevation and elevation of surrounding properties were considered.
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.
Not Applicable
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.
Satisfied
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.
Satisfied
The existing ground level is currently at a finish floor elevation of 8.75'.
- (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) Where feasible and appropriate, water retention systems shall be provided.
Satisfied

STAFF ANALYSIS

The applicant is requesting a Certificate of Appropriateness for the following modifications to the property:

After-the-fact approval of an existing rooftop bar counter.

On October 4, 2017, the City's Code Compliance Department issued a violation (ZV2017-01332) for "altering a property without obtaining a Certificate of Appropriateness." Specifically, the violation was issued for the introduction of a rooftop bar counter without the required approvals from the City's Historic Preservation Board. Further, on December 20, 2017, the City's Building Department issued an Unsafe Structure's Violation (US2017-02289) for construction on the roof deck without required building permits. The following is a description of the violation:

NOTICE OF VIOLATION ISSUED

Evidence of work done without approved permit at roof area. Installation canopy structure, plumbing and electrical connection, new bar counter and equipment. Operating a restaurant (Voodoo) without approved Certificate of Occupancy.

After receiving the violations, the current business owner met with Planning staff to discuss options for improving the design of the rooftop venue. Subsequently, the applicant has submitted plans for the removal of the majority of the unpermitted rooftop structures including the existing bar counter located on the northeastern portion of the roof, bamboo screening located along the southern edge of the roof deck and several shade structures. While staff is supportive of the removal of these unpermitted elements, it is currently unclear whether or not the applicant is proposing to remove the second existing bar counter currently located adjacent to the south wall of the stair tower. The letter of intent submitted by the applicant requests an after-the-fact approval for the retention of this bar counter, while the plans submitted note that the bar counter will be relocated to a temporary rooftop location during construction. Since no such location has been specified in the plans, staff cannot currently support the relocation of this structure, even on a temporary basis.

New rooftop bar structure

The applicant has submitted plans for a new, permanent bar structure to replace the existing mobile bar counter. The new structure includes an eighteen seat counter, back bar cabinet and under counter plumbing and storage. The 3'-8" tall bar counter is proposed to be setback approximately 30'-0" from the east façade and will not be visible from the right of way or Lummus Park. While staff has no objection to the introduction of a bar in this location, staff has some concerns relative to the proposed design.

First, while the bar counter itself will not be visible from the pedestrian vantage point, the associated canopy shade structure above the counter will be visible. Consequently, staff would recommend that the bar counter be reduced in length so as not to extend east of the western wall of the elevator structure located along the north edge of the roof deck. Second, staff would recommend that the back bar cabinet be reduced in height or lowered so as not to project beyond the roof of the stair tower.

New rooftop canopy shade structures

The applicant is proposing to introduce two canopy shade structures on the roof level. An approximately, 76'-6" by 24'-0" retractable canopy structure is proposed to be located along the

southern portion of the deck and an approximately 90'-6" by 13'-5" fixed canopy structure is proposed to be introduced within the northern portion of the roof deck.

While not opposed to the introduction of appropriately designed shade structures for the rooftop of this particular building, staff is concerned with the overall size and height of these structures, which as currently proposed will be visible from portions of Ocean Drive, Lummus Park and the City's Beachwalk. Consequently, staff would recommend that both canopy structures be reduced in length so as to not extend east of the western wall of the northern elevator tower and that the height be lowered so that the top of the structures do not exceed 10'-0" above the roof deck.

Ground level modifications of eastern façade

The applicant is proposing to reconfigure the two southernmost ground level storefronts including the expansion of the existing window openings. The new storefront configuration is consistent with and compatible to the architectural character of the building. As such, staff has no objection to this request.

VARIANCE ANALYSIS

Staff is not supportive of the requested variance to extend the hours of alcohol sales at the roof top bar from 8:00 pm to 2:00 am. There is already a restaurant operation on the property with a business license for 100 seats and the service of alcohol beverages is permitted at the outdoor tables on the rooftop until 5:00 am. The concentration of people around the bar and corresponding noise increase could have an adverse impact on the adjacent residential uses. As the applicant has not substantiated the reasons why the closing of the bar at 8:00 pm qualifies as a practical difficulty, and has not provided evidence that the extension of hours will not cause a negative impact on the residential units, staff recommends that the variance be denied.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application be **approved** as to the Certificate of Appropriateness and that the application for variances be **denied**, subject to the conditions enumerated in the attached draft Order, which address the inconsistencies with the aforementioned Certificate of Appropriateness criteria and Practical Difficulty and Hardship criteria, as applicable.

**HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida**

MEETING DATE: February 13, 2018

FILE NO: HPB17-0171

PROPERTY: 928 Ocean Drive

APPLICANT: Deco Walk Hotel & Golf Club, LLC

LEGAL: Lot 5, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

IN RE: The application for a Certificate of Appropriateness for the partial demolition of the Ocean Drive façade and the design of a new glass storefront system and the installation of a retractable canopy system at the rooftop including a variance to exceed the allowable hours of operation for an accessory outdoor bar counter on the roof of the building.

ORDER

The City of Miami Beach Historic Preservation Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

I. Certificate of Appropriateness

- A. The subject site is located within the Ocean Drive/Collins Avenue.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted:
 - 1. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
 - 2. Is not consistent with Certificate of Appropriateness Criteria 'a', 'b', 'd' & 'f' in Section 118-564(a)(2) of the Miami Beach Code.
 - 3. Is not consistent with Certificate of Appropriateness Criteria 'd', 'g', 'i', 'j', 'm' & 'o' in Section 118-564(a)(3) of the Miami Beach Code.
 - 4. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(f)(4) of the Miami Beach Code.

5. Is not consistent with Sea Level Rise and Resiliency Review Criteria (1) in Section 133-50(a) of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met:
1. A business tax receipt shall be issued for an outdoor café with a minimum of 30 seats for the rooftop portion of the property prior to the approval of any accessory outdoor bar counter pursuant to Section 142-1109 of the City Code.
 2. Revised elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
 - a. Any outdoor bar counter shall only be permitted to be installed within the location specified by the plans approved by the Board.
 - b. The cabinet located along the back of the bar shall not exceed the height of the roof of the adjacent stair tower, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - c. The existing string lights located at the rooftop deck shall be removed prior to the approval of a Building Permit, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - d. The canopy structures shall not extend east of the western wall of the elevator located at the northeast portion of the roof, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - e. The height of the canopy structures shall not exceed 10'-0" as measured from the roof deck to the top of the structures, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - f. Final details of all exterior surface finishes and materials for the canopy structure(s), including samples, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - g. Fixtures, including but not limited to lighting, speakers, fans, heaters, misters shall not be permitted to be attached to any canopy structure(s).

- h. Any lighting, fans, televisions, heaters or similar fixtures proposed to be located on the roof level shall be located so that they are not be visible from the public right of way, including the City's Beachwalk, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - i. Exterior lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding historic district. Intensive 'white', color changing, flashing, blinking or similar lighting shall not be permitted on the roof level or ground level, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - j. Any sprinkler lines, sprinkler heads or emergency lighting that may be required by the Building or Fire Code shall be integrated within the canopy structure(s) and shall not be surface mounted, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - k. Vertical side panels, including those for weather protection, shall not be permitted within the rooftop venue and shall not be permitted to be attached to any rooftop canopy structure.
 - l. Any kitchens and other venting shall be chased to the nearest roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors.
 - m. Final details of the storefront systems and materials, including samples, shall be provided, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - n. Televisions or similar digitals screens shall not be permitted to be located within the ground level outdoor terrace or within the first 10'-0" of the storefronts at the ground level.
2. The Applicant agrees to the following operational conditions for any and all permitted primary and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations.

a. OUTDOOR CONDITIONS

- i. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced. Owner agrees to

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include the rules and regulations set forth in these conditions in any lease, contract or assignment.

- ii. Exterior speakers, except those required to address Building and Life Safety Codes, shall not be permitted at the ground level of the property.
- iii. Exterior speakers, except those required to address Building and Life Safety Codes and those associated with a distributed sound system for ambient, background music only, which does not interfere with normal conversation, shall not be permitted at the roof deck, unless a Conditional Use Permit is approved by the Planning Board for outdoor entertainment. An acoustic plan certified by an acoustic engineer for the proposed distributed sound system shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

b. NOISE CONDITIONS

- i. The Historic Preservation Board (HPB) and the Planning Director shall retain the right to call the owners and/or operators back before the HPB, at the expense of the owners and/or operators, to impose and/or modify any operating conditions, should there be a valid violation (as determined by Code Compliance) about loud, excessive, unnecessary or unusual noise or other conditions of this approval. An adverse adjudication of a violation against the owner or operator is not necessary for the board to have jurisdiction over the matter under this condition. This condition vests jurisdiction independent of any other condition hereof.
- ii. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this approval and subject the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first sentence of this subparagraph.

c. OPERATIONAL CONDITIONS

- i. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Doors shall remain closed and secured when not in active use.
- ii. All furnishings, equipment and supplies, with the exception of tables and chairs, associated with the rooftop café and bar shall be stored within the

envelope of the existing building in areas which are not visible from streets, alleys or nearby buildings. Storage shall not be permitted at the roof level.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):

The following variance was **denied** by the Board:

1. A variance to exceed the allowable hours of operation of an accessory outdoor bar counter in order to operate a bar adjacent to a property with a residential use until 2:00 am.

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

Additionally, the Board has concluded that the plans and documents submitted with the application **DO NOT** comply with the following hardship criteria 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.

- C. The Board hereby **Denies** the requested variance, as noted and imposes the following condition based on its authority in Section 118-354 of the Miami Beach City Code:
1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

III. General Terms and Conditions applying to both 'I. Certificate of Appropriateness' and 'II. Variances' noted above.

- A. A recycling/salvage plan shall be provided as part of the submittal for a demolition/building permit, in a manner to be reviewed and approved by staff.
- B. All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street.
- C. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
- D. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- E. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
- F. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

- G. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- H. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the application is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "Voodoo Restaurant & Lounge", as prepared by Norman Paul, R.A., dated December 8, 2017, and as approved by the Historic Preservation Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated this _____ day of _____, 20____.

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
DEBORAH TACKETT
CHIEF OF HISTORIC PRESERVATION
FOR THE CHAIR

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by Deborah Tackett, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.

NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: _____

Approved As To Form:
City Attorney's Office: _____ ())

Filed with the Clerk of the Historic Preservation Board on _____ ())