

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 the retention of an existing bar counter and the design for a new replacement bar counter 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 Historic District.
- 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', 'l', '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.

Page 2 of 8
HPB17-0171
Meeting Date: February 13, 2018

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. The Historic Preservation Board shall maintain jurisdiction of this Certificate of Appropriateness. The applicant shall appear before the Historic Preservation Board for a progress report 60 days from the issuance of the Certificate of Appropriateness. The Board reserves the right to modify the Certificate of Appropriateness approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports.
 3. 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 existing bar counter may remain in its current location until the new replacement bar counter has been fabricated and is ready to be installed. The existing bar counter shall not be utilized until all unpermitted rooftop canopy structures and lighting have been removed and all required permits for the existing bar counter have been issued.
 - c. 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.
 - d. 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.
 - 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.

Page 3 of 8
HPB17-0171
Meeting Date: February 13, 2018

- 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 digital 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.

Page 4 of 8
HPB17-0171
Meeting Date: February 13, 2018

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 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.

Page 5 of 8
HPB17-0171
Meeting Date: February 13, 2018

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

Page 6 of 8
 HPB17-0171
 Meeting Date: February 13, 2018

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

Page 7 of 8
HPB17-0171
Meeting Date: February 13, 2018

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

Page 8 of 8
HPB17-0171
Meeting Date: February 13, 2018

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.

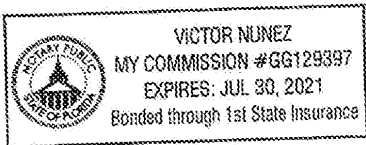
Dated this 20 day of February, 2018

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
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 20 day of Feb 2018 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.



[Signature]
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: JULY 30, 2021

Approved As To Form: [Signature]
City Attorney's Office: [Signature] (2/15/18)

Filed with the Clerk of the Historic Preservation Board on [Signature] (2/20/18)
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