

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: September 13, 2016

FROM: Thomas R. Mooney, AICP  
Planning Director

SUBJECT: HPB0716-0049, **4385 Collins Avenue – SoHo Beach House Hotel.**

The applicant, Beach House Owner, LLC, is requesting an After-the-Fact Certificate of Appropriateness for design modifications within the rear yard, including after-the-fact variances from the required side setback, from the maximum size and required distance separation for structures, from the openness requirements, clear space height, and the required construction materials for structures, from the required open space, and from the maximum width of walkways within the Dune Overlay District in order to allow the retention of existing structures including a retractable roof at the rear of the property facing the Ocean.

#### **STAFF RECOMMENDATION**

Approval of the Certificate of Appropriateness with conditions.

**Denial** of all variances.

#### **BACKGROUND**

On January 10, 2006, the Board reviewed and approved a Certificate of Appropriateness for the partial demolition, restoration, and renovation of the existing 7-story hotel, including the construction of a single story roof-top addition, and a new 14-story ground level addition at the rear of the property (HPB File No. 3383).

On July 11, 2006, the Board reviewed and approved modifications to a previously issued Certificate of Appropriateness for the partial demolition, restoration, and renovation of the existing 7-story hotel, including the construction of a single story roof-top addition, and a new 14-story ground level addition at the rear of the property. Specifically, the Board approved an increase in height of the new tower to 15-stories and modifications to the roof-top of the existing Sovereign Hotel.

On October 11, 2011, the Board reviewed and approved an After-the-Fact Certificate of Appropriateness for the installation of various structures throughout the site, including the construction of a new outdoor pergola, additional site fencing, and the installation of folding doors at the ground level pool storage area (HPB File No. 7265).

#### **EXISTING STRUCTURE**

Local Historic District:	Collins Waterfront
Status:	Contributing
Original Architect:	Roy France

Construction Date: 1941

### **ZONING / SITE DATA**

Legal Description: Lot 1, excepting the south seventy-five (75') feet thereof, of Block 39 of Miami Beach Improvement Company's Ocean Front Subdivision, according to the Plat thereof, AND the southern 75 feet of that certain tract marked and designated "R.P. Van Camp", on amended Map of Ocean Front Property of the Miami Beach Improvement Company, as recorded in Plat Book 5, pages 7 and 8, of the public records of Dade County, Florida.

Zoning:	RM-3, Residential, high intensity
Future Land Use Designation:	RM-3, Residential, high intensity
Lot Size:	36,433 S.F.
Existing FAR:	81,394 S.F. / 2.25 (Max FAR: 2.25)
Proposed FAR:	no change
Existing Height:	~70'-0" / 7-stories & 152'-4" / 15-stories
Proposed Height:	no change

### **THE PROJECT**

The applicant has submitted plans entitled "SOHO BEACH HOUSE – Mandolin Beach" as prepared by NC-office architecture / urbanism, dated July 25, 2016.

**The applicant is requesting an After-the-Fact Certificate of Appropriateness for design modifications within the rear yard, including after-the-fact variances from the required side setback, from the maximum size and required distance separation for structures, from the openness requirements, clear space height, and the required construction materials for structures, from the required open space, and from the maximum width of walkways within the Dune Overlay District in order to allow the retention of existing structures including a retractable roof at the rear of the property facing the Ocean..**

The applicant is requesting the following variances:

### **ASSOCIATED WITH THE TIKI BAR STRUCTURE. (Variances 1, 2, 3, 4 and 5)**

1. An after the fact variance to exceed by 2'-0" the maximum allowed clear space of 8'-0" between the roof covering and finish floor in order to retain an existing tiki hut bar structure with a clear space of 10'-0" measured from finish floor to the roof and located within the Dune Preservation Overlay District.
  2. An after the fact variance to retain an existing tiki hut bar structure not open on three (3) sides with a wood-framed 6-foot wall and shelves facing the south side property line and high shelves on the east and west sides, where open structures are required within the Dune Preservation Overlay District.
- Variance requested from:

#### **Sec. 142-774. - Uses and structures permitted.**

**(1) Shade structures and chickees shall be open on all sides and, with the exception of supporting columns, and shall have an unobstructed, clear space between the edge of the roof covering and finished floor of not more than eight feet.**

3. An after the fact variance to retain a patio constructed of concrete pavers adjacent to the tiki hut bar, where only wood materials are allowed within the Dune Preservation Overlay District.

- Variance requested from:

**Sec. 142-774. - Uses and structures permitted.**

(2) Decks and patios constructed of wood materials with or without built-in tables, chairs, lighting, and benches.

4. An after the fact variance to reduce by 10'-0" the minimum required side setback of 15'-0" within the Dune Preservation Overlay District in order to retain a deck at 5'-0" from the south side property line.

- Variance requested from:

**Sec. 142-775. - Development regulations**

(d) Minimum yards. Minimum yards in the dune preservation district shall be as follows:

(2) Fifteen feet adjacent to any side property line, municipal park, street end, or right-of-way.

5. An after the fact variance to exceed by 205 square feet the maximum 400 square feet of area allowed for structures in order to retain a tiki hut bar and deck with an area of 605 square feet located within the Dune Preservation Overlay District.

- Variance requested from:

**Sec. 142-775. - Development regulations**

(b) Size and spacing of chickees, shade structures and outdoor cafes. As the dune overlay regulations are intended to provide a natural beach environment, it is required that individual structures/decks be less than 400 square feet in floor area and that structures be separated by a distance of ten to 25 feet and that this area be landscaped. Nothing in this division shall be considered to allow development exceeding the maximum stated in subsection (a) of this section.

**ASSOCIATED WITH PERGOLAS AND RETRACTABLE ROOF STRUCTURES (VARIANCES 6,7 and 8)**

6. An after the fact variance to exceed by 1'-8" the maximum allowed clear space of 8'-0" between the roof covering and finish floor in order to retain a retractable roof structure with a clear space of 9'-8" measured from finish floor to the average height of the roof located within the Dune Preservation Overlay District.

- Variance requested from:

**Sec. 142-774. - Uses and structures permitted.**

(1) Shade structures and chickees shall be open on all sides and, with the exception of supporting columns, and shall have an unobstructed, clear space between the edge of the roof covering and finished floor of not more than eight feet.

7. An after the fact variance to retain two pergola structures constructed of metal clad in wood where only wood materials are allowed for structures located within the Dune Preservation Overlay District.

- Variance requested from:

**Sec. 142-774. - Uses and structures permitted.**

(2) Decks and patios constructed of wood materials with or without built-in tables, chairs, lighting, and benches.

8. An after the fact variance to exceed by 916 square feet the maximum 400 square feet of area allowed for structures in order to retain two pergola structures connected with a retractable roof with an area of 1,316 square feet located within the Dune Preservation Overlay District.

- Variance requested from:

**Sec. 142-775. - Development regulations**

(b) Size and spacing of chickees, shade structures and outdoor cafes. As the dune overlay regulations are intended to provide a natural beach environment, it is required that individual structures/decks be less than 400 square feet in floor area and that structures be separated by a distance of ten to 25 feet and that this area be landscaped. Nothing in this division shall be considered to allow development exceeding the maximum stated in subsection (a) of this section.

9. An after the fact variance to reduce by 30.5% (1,547 square feet) the minimum required open space of 80% (4,056 square feet) in order to retain a tiki hut bar, walkways, two pergola and roof structures and provide an open space of 49.5% (2,509 square feet) within the Dune Preservation Overlay District.

- Variance requested from:

**Sec. 142-775. - Development regulations**

(a) Minimum open space requirements. At least 80 percent of the site shall remain open to the sky, landscaped or maintained as sand beach. All areas covered by the uses permitted above, other than portable beach furniture, shall be considered in the lot coverage calculation.

10. An after the fact variance to reduce by 4'-11" the minimum distance separation of 10'-0" between structures located within the Dune Preservation Overlay District in order to retain a tiki hut bar structure, pergolas and retractable roof structures with a distance separation of 5'-1".

- Variance requested from:

**Sec. 142-775. - Development regulations**

(b) Size and spacing of chickees, shade structures and outdoor cafes. As the dune overlay regulations are intended to provide a natural beach environment, it is required that individual structures/decks be less than 400 square feet in floor area and that structures be separated by a distance of ten to 25 feet and that this area be landscaped. Nothing in this division shall be considered to allow development exceeding the maximum stated in subsection (a) of this section.

11. An after the fact variance to exceed by 1'-0" and 2'-0" the maximum width of 6'-0" for walkways located within the Dune Preservation Overlay District in order to retain portions of walkways with a width of 7'-0" and 8'-0".

- Variance requested from:

**Sec. 142-774. - Uses and structures permitted.**

- (6) Walkways and ramps constructed of wood materials and which are not more than six feet in width.

As per section 142-772 of the City Code, the purpose of the Dunes Preservation Overlay district is to "promote recreational, open space and related uses. Detailed review of all uses and structures is required because this area functions as a transitional zone between the intensely developed uplands and the dune and beach. It accommodates uses and structures which are compatible and supportive of the beachfront park system and the natural beach environment".

As indicated by the numerous after-the-fact variances requested by the applicant, the extent of the construction and uses does not comply with the intent and purpose of the Dunes Preservation Overlay District. None of the variances requested relate to the retention and preservation of the original 7-story hotel. Between 2006 and 2016 approvals were granted and construction completed, for the construction of a new 15-story hotel addition to the site. This addition maxed out the developable floor area for the property. Staff can find no practical difficulty or hardship in complying with the required regulations for the Dunes Preservation Overlay District. The result of the combined variances is the over intensification of the rear of the site, which, as stated in the district's purpose, is to promote recreational, open space and related uses. The more intensive restaurant operation proposed, along with the associated construction, is contrary to this purpose, and as such, staff recommends **denial** of all variance requests.

**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 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.

#### **COMPLIANCE WITH ZONING CODE**

A preliminary review of the project indicates that the application, as proposed, is not consistent with the following City Code sections, with the exception of the variances requested herein.

1. Section 142-774. Storage of bikes is not a permitted use within the Dunes Overlay area.
2. Section 142-775. Existing electric panels and their supporting structure along the south interior property line shall comply with the required side setback within the Dune Overlay.
3. Section 142-802. It is not clear if the site complies with the required 50% open space within the Oceanfront Overlay District.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

#### **CONSISTENCY WITH 2025 COMPREHENSIVE PLAN**

A preliminary review of the project indicates that the proposed **hotel 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.  
**Satisfied**
  - 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.  
**Satisfied**
  - b. General design, scale, massing and arrangement.  
**Satisfied**
  - c. Texture and material and color.  
**Satisfied**
  - d. The relationship of a, b, c, above, to other structures and features of the district.  
**Satisfied**
  - 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 Applicable**
  - g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.  
**Not Satisfied**  
**An historic resources report has not been submitted.**
  - 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.  
**Not Satisfied**  
**The reduction of natural landscape in order to increase the width of walkways is not consistent within the highly sensitive ecological environment of the Dune Preservation Overlay.**

- 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.  
**Not Satisfied**  
**The applicant has applied for variances.**
- 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.  
**Not Satisfied**  
**The reduction of natural landscape is not consistent within the highly sensitive ecological environment of the Dune Preservation Overlay.**
- 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 reduction of natural landscape is not consistent within the highly sensitive ecological environment of the Dune Preservation Overlay.**
- 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.  
**Not Applicable**
- 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 Applicable**
- h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.



**Not Satisfied**

**The reduction of natural landscape is not consistent within the highly sensitive ecological environment of the Dune Preservation Overlay.**

- 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.

**Satisfied**

- 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).

**Satisfied**

- 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.

**Not Satisfied**

**The existing bamboo screening and added landscape material located along the eastern property line significantly limits views into the site from the public boardwalk.**

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

**Not Applicable**

- 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).

**Satisfied**

- 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.

**Not Satisfied**

**The existing bamboo screening and added landscape material located along the eastern property line significantly limits views into the site from the public boardwalk.**

- 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 Applicable**

## **ANALYSIS**

Subsequent to the original approvals for this property, the applicant reprogrammed the eastern most portion of the site, from a passive landscaped area to a more intensive dining venue. Unfortunately, modifications were made to accommodate this new use without obtaining the required City approvals. These modifications include the introduction of four pergola structures with an intermediate retractable awning and the removal of previously approved landscape material which was replaced with additional hardscape and sand. Although staff does not find the pergola structures to be an inappropriate addition to this casual beachfront area, staff is concerned with regard to the reduction of natural landscape within the highly sensitive ecological environment of the Dune Preservation Overlay. If the Board finds that the applicant has satisfied the Hardship Criteria for the variances requested, staff would recommend at a minimum, that the northern portion of the Dune Preservation Overlay which is currently being used as a non-permitted storage area, be redesigned in a manner substantially consistent with the original approved building permit and that no walkways be greater than 6'-0" in width. Additionally, staff would note that bamboo screening and non-permitted landscape material has been introduced along the far eastern portion of property significantly limiting views into the site from the public boardwalk. Consequently, staff would recommend that the screening and unpermitted landscape material be removed.

If the Board finds that the applicant has not satisfied the hardship criteria and does not grant the requested variances, staff would recommend that the pergola structures be redesigned in a manner that satisfies the requirements set forth in Chapter 142, Article III, Division 2 (Dune Preservation Overlay) of the City Code.

## **VARIANCE ANALYSIS**

The original 7-story contributing building was constructed adjacent to the west property line facing Collins Avenue with ample open space toward the ocean. A rooftop addition to the existing building and the construction of a 15 story hotel addition was approved by the Board in 2006 (HPB File No. 3383). The project finalized construction in 2010. In the same year, a Conditional Use Permit (CUP) was granted to operate an aggregate of uses including a ground floor restaurant, wine bar, courtyard bar, a Tiki hut bar in the rear, a second floor dining area and bar, an eighth floor rooftop bar, indoor sitting room, and private dining room. Also, a variance was granted in 2010 (Board of Adjustment File No. 3462) to extend the allowable hours of operations for four (4) bars. On 2011, the applicant obtained an after-the fact Certificate of Appropriateness for the installation of various structures throughout the site without appropriate permits, including the construction of a new outdoor pergola, additional site fencing, and the installation of folding doors at the ground level pool storage area. (HPB File No. 7265).

Although a building permit was obtained for the construction of the tiki bar, which is in part the subject of some of the requested variances, the structure was not constructed according to the approved plans in reference to height, setbacks, deck, and overall area; all part of the variances requested as noted on page S-1 of the building permit reference plans provided by the applicant.

The site has been substantially improved throughout the years; the hotel operation has been upgraded with a neighborhood impact establishment, after the fact certificate of appropriateness for work executed without permits, variances to extend the hours of operations of 4 bars, which in all contribute to a more than reasonable use of the property. However, more construction has been added to the site without the required appropriateness review, building permits or Board approvals. Staff is very concerned with the significant reduction in required open space and possible negative environmental impact of the structures and intense use within the Dunes

Preservation Overlay District. Staff finds that the site is currently overdeveloped and recommends that all variances be **denied** for lack of hardship or practical difficulties.

Furthermore, the site has open building violation BV16000632 for concrete restoration without approved permits and violation BV15001063 for failing to obtain a required 40-year recertification. Due to the existing after the fact construction to increase the occupant load of the Mandolin restaurant at the rear, the applicant is also requesting after the fact modifications to the Conditional Use Permit for a Neighborhood Impact Establishment under Planning Board File PB16-0052, f.k.a. File No. 1959 to be reviewed on September 27, 2016.

### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends the Certificate of Appropriateness for the pergola structures be approved and that all 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: September 13, 2016

FILE NO: HPB0716-0049

PROPERTY: 4385 Collins Avenue

APPLICANT: Beach House Owner, LLC

LEGAL: Lot 1, excepting the south seventy-five (75') feet thereof, of Block 39 of Miami Beach improvement Company's Ocean Front Subdivision, according to the Plat thereof, AND the southern 75 feet of that certain tract marked and designated "R.P. Van Camp", on amended Map of Ocean Front Property of the Miami Beach Improvement Company, as recorded in Plat Book 5, pages 7 and 8, of the public records of Dade County, Florida.

IN RE: The application for a an After-the-Fact Certificate of Appropriateness for design modifications within the rear yard, including after-the-fact variances from the required side setback, from the maximum size and required distance separation for structures, from the openness requirements, clear space height, and the required construction materials for structures, from the required open space, and from the maximum width of walkways within the Dune Overlay District in order to allow the retention of existing structures including a retractable roof at the rear of the property facing the Ocean.

**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 Collins Waterfront Local 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 'g' in Section 118-564(a)(2) of the Miami Beach Code.
  3. Is not consistent with Certificate of Appropriateness Criteria 'a – e', 'h', 'k' & 'n' in Section 118-564(a)(3) 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. Revised elevations, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:

a. The pergola structures shall be redesigned in a manner consistent with the development regulations set forth in Chapter 142, Article III, Division 2 (Dune Preservation Overlay) of the City Code, 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. Final details of all exterior surface finishes and materials, including samples, 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.

c. The bamboo screens located along the eastern property line shall be removed.

2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:

a. The landscape plan for the northern and eastern portions of the Dune Preservation Overlay shall be redesigned in a manner substantially consistent with the approved 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.

b. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the final revised landscape plan.

c. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.

**In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.**

## II. Variance(s)

A. The applicant filed an application with the Planning Department for the following variance(s), which were either approved by the Board with modifications, or denied (Underlying denotes new language and strikethrough denotes stricken language):

1. ~~An after the fact variance to exceed by 2' 0" the maximum allowed clear space of 8' 0" between the roof covering and finish floor in order to retain an existing tiki hut bar structure with a clear space of 10' 0" measured from finish floor to the roof and located within the Dune Preservation Overlay District. (Variance denied)~~
2. ~~An after the fact variance to retain an existing tiki hut bar structure not open on three (3) sides with a wood framed 6-foot wall and shelves facing the south side property line and high shelves on the east and west sides were open structures are required within the Dune Preservation Overlay District. (Variance denied).~~
3. ~~An after the fact variance to retain a concrete pavers deck adjacent to the tiki hut bar where only wood materials are allowed within the Dune Preservation Overlay District. (Variance denied).~~
4. ~~An after the fact variance to reduce by 10' 0" the minimum required side setback of 15' 0" within the Dune Preservation Overlay District in order to retain a deck at 5' 0" from the south side property line. (Variance denied).~~
5. ~~An after the fact variance to exceed by 205 square feet the maximum 400 square feet of area allowed for structures in order to retain a tiki hut bar and deck with an area of 605 square feet located within the Dune Preservation Overlay District. (Variance denied).~~
6. ~~An after the fact variance to exceed by 1' 8" the maximum allowed clear space of 8' 0" between the roof covering and finish floor in order to retain a retractable roof structure with a clear space of 9' 8" measured from finish floor to the average height of the roof located within the Dune Preservation Overlay District. (Variance denied).~~
7. ~~An after the fact variance to retain two pergola structures constructed of metal clad in wood where only wood materials are allowed for structures located within the Dune Preservation Overlay District. (Variance denied).~~
8. ~~An after the fact variance to exceed by 916 square feet the maximum 400 square feet of area allowed for structures in order to retain two pergola structures connected with a retractable roof with an area of 1,316 square feet located within the Dune Preservation Overlay District. (Variance denied).~~
9. ~~An after the fact variance to reduce by 30.5% (1,547 square feet) the minimum required open space of 80% (4,056 square feet) in order to retain a tiki hut bar, walkways, two pergola and roof structures and provide an open space of 49.5% (2,509 square feet) within the Dune Preservation Overlay District. (Variance~~

denied).

10. ~~An after the fact variance to reduce by 4' 11" the minimum distance separation of 10' 0" between structures located within the Dune Preservation Overlay District in order to retain a tiki hut bar structure, pergolas and retractable roof structures with a distance separation of 5' 4". (Variance denied).~~
11. ~~An after the fact variance to exceed by 1' 0" and 2' 0" the maximum width of 6' 0" for walkways located within the Dune Preservation Overlay District in order to retain portions of walkways with a width of 7' 0" and 8' 0". (Variance denied).~~

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

The applicant has submitted plans and documents with the application that also **DO NOT** indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

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

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

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

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

- C. The Board hereby **DENIES** the requested variance(s) and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:



1. Building permits shall be obtained for the modifications to the existing structures including detailed, dimensioned plans showing materials and shaded diagrams with area calculations, to verify compliance with the required 50% open space within the Oceanfront Overlay District, in a manner to be reviewed and approved by staff.
2. All violations shall be corrected, prior to zoning final approval of the building permits.

**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 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.
- B. The Final Order shall be recorded in the Public Records of Miami-Dade County, within 30 days of the Board approval.
- C. 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.
- D. 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.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- F. 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.



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.

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  
PRESERVATION AND DESIGN MANAGER  
FOR THE CHAIR

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by Deborah Tackett, Preservation and Design Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He 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 \_\_\_\_\_ ( )

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