

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: November 10, 2020

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: HPB20-0378, **4360 & 4370 Collins Avenue.**

An application has been filed requesting a Certificate of Appropriateness for the construction of a new 5-story building to replace the existing surface parking lot and pedestrian bridge over the 44th Street right-of-way, including variances to reduce the front, street side, interior side and sum of the sides setbacks for the subterranean, pedestal and tower levels, to reduce the residential or commercial use required facing the streets when providing parking at the ground level and to reduce the required setback for columns from the drive aisle.

RECOMMENDATION

Continuance of the application to a date certain of December 8, 2020.

BACKGROUND

On June 24, 2020, the City Commission approved at first reading an ordinance which would allow for ballrooms and meeting space to be introduced on the subject property through the conditional use process. The proposed ordinance will also reduce the required parking for such uses. A second reading/public hearing has been set for July 29, 2020.

On June 29, 2020, the Planning Board reviewed and approved an application for conditional use for the construction of a new 5-story accessory commercial structure to The Fontainebleau Hotel, including the approval of a Neighborhood Impact Establishment with mechanical parking, pursuant to Chapter 118, Article IV, Chapter 142, Article V, Division 6, Chapter 130 Article II of the City Code (PB20-0347).

On October 13, 2013, the Board reviewed and continued the subject application to a date certain of November 10, 2020.

EXISTING SITE

Local Historic District:

Morris Lapidus/Mid-20th Century

ZONING / SITE DATA

Legal Description:

Parcel 1 (4360 Collins Avenue):

Lot 2, Block 40, of the Miami Beach Improvement Company Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 8, of the Public Records of Miami-Dade County, Florida.

Parcel 2 (4370 Collins Avenue) east:

The east ½ of Lot 1, less the westerly 19.1 feet, Block 40, of the Miami Beach Improvement Company Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 8, of the Public Records of Miami-Dade County, Florida.

Parcel 3 (4370 Collins Avenue) center:

The west 19.1 feet of the east ½ of Lot 1, Block 40, of the Miami Beach Improvement Company Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 8, of the Public Records of Miami-Dade County, Florida.

Parcel 4 (4370 Collins Avenue) west:

The portion of Lot 1, Block 40 described beginning at the NW corner of Lot 1 thence easterly 112.5 feet, southerly 100 feet, westerly 110 feet, northerly 100.125 feet to the point of beginning & the south 4.55 feet of the unnumbered tract designated as J H Snowden lying north and adjacent to Lot 1, Block 40 & tracts opposite same facing Indian Creek Drive, of the Miami Beach Improvement Company Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 8, of the Public Records of Miami-Dade County, Florida.

Zoning:	RM-2, Residential multifamily, medium intensity
Future Land Use Designation:	RM-2, Residential multifamily, medium intensity
Lot Size:	44,712 S.F. / 2.00 Max FAR = 89,424 S.F.
Proposed FAR:	88,794 S.F. / 1.989 FAR
Proposed Height:	74'-5"
Existing Use/Condition:	Surface parking lot
Proposed Uses:	Ballrooms, assembly space & parking garage

THE PROJECT

The applicant has submitted plans entitled "Parking Garage & Ballroom Expansion", as prepared by Nichols Brosch Wurst Wolfe & Associates, Inc., dated April 6, 2020.

The applicant is requesting the following variance(s):

1. A variance to reduce by 11'-1" the minimum required subterranean front setback of 20'-0" in order to construct a subterranean parking structure at 8'-11" setback from the front property line facing Collins Avenue.
2. A variance to reduce by 0'-8" the minimum required subterranean front setback of 20'-0" in order to construct a subterranean parking structure at 19'-4" setback from the front property line facing Indian Creek Drive.

3. A variance to reduce by 1'-8" the minimum required subterranean street side setback of 16'-4" in order to construct a subterranean parking structure at 14'-8" setback from the street side facing 44th Street.
4. A variance to reduce by 13'-10" the minimum required subterranean interior side setback of 16'-4" in order to construct a subterranean parking structure at 2'-6" setback from the interior south side property line.
5. A variance to reduce by 15'-6" the minimum required subterranean sum of the side yards of 32'-8" in order to construct a subterranean parking structure with a sum of the side yards of 17'-2".
6. A variance to eliminate the minimum required pedestal street side setback of 16'-4" in order to construct a multistory building with an elevated bridge structure at 0'-0" (zero) setback from the street side facing 44th Street.
7. A variance to reduce by 15'-10" the minimum required pedestal interior side setback of 16'-4" in order to construct a multistory building at 0'-6" setback from the interior south side property line.
8. A variance to reduce by 32'-2" the minimum required pedestal sum of the side yards of 32'-8" in order to construct a multistory building and elevated bridge structure with a sum of the side yards of 0'-6".

- Variances requested from:

Sec. 142-218. - Setback requirements.

(a) The setback requirements in the RM-2 residential multifamily, medium intensity district are as follows:

Subterranean and Pedestal, Front: 20'-0"

Subterranean and Pedestal, Side Interior, Lots equal or greater than 65 feet in width: Minimum 10'-0" or 8% of the lot width, whichever is greater and sum of the side yards shall equal 16% of the lot width.

Subterranean and Pedestal, Side facing a street: Lots equal or greater than 65 feet in width: Minimum 10'-0" or 8% of the lot width, whichever is greater and sum of the side yards shall equal 16% of the lot width.

9. A variance to exceed by 33% (6'-7") the maximum 25% (5'-0") projection allowed within the front yard of 20'-0" in order to construct an elevated open terrace encroaching up to 58% (11'-7") within the front yard facing Collins Avenue.

- Variance requested from:

Sec. 142-1132. Allowable encroachments within required yards.

(o) Projections. In all districts, every part of a required yard shall be open to the sky, except as authorized by these land development regulations. The following may project into a required yard for a distance not to exceed 25 percent of the required yard up to a maximum projection of six feet, unless otherwise noted.

(6) Porches, platforms and terraces up to 30 inches above the grade elevation of the lot, as defined in chapter 114.

10. A variance to reduce by 2'-6" the minimum required tower front setback of 44'-6" in order to construct a multistory building at 20'-0" setback from the front property line facing Collins Avenue.
11. A variance to reduce by 2'-6" the minimum required tower front setback of 44'-6" in order to construct a multistory building at 20'-0" setback from the front property line facing Indian Creek Drive.
12. A variance to reduce by 18'-4" the minimum required tower interior side setback of 18'-10" in order to construct a multistory building at 0'-6" setback from the south interior side property line.
13. A variance to reduce by 15'-6" the minimum required tower sum of the side yards of 35'-2" in order to construct a multistory building with a sum of the side yards of 16'-10".
 - Variances requested from:

Sec. 142-218. - Setback requirements.

(a) The setback requirements in the RM-2 residential multifamily, medium intensity district are as follows:

Tower, Front: 20 feet + 1 foot for every 1 foot increase in height above 50 feet, to a maximum of 50 feet, then shall remain constant.

Tower, Interior Side: Same as pedestal for structures with a total height of 60 feet or less. The required pedestal setback plus 0.10 of the height of the tower portion of the building. The total required setback shall not exceed 50 feet.

Tower, Side facing a Street: Sum of the side yards shall equal 16% of the lot width Minimum—7.5 feet or 8% of lot width, whichever is greater.

The subject property, currently operating as a surface parking lot, contains 4 platted lots with an area of approximately 45,000 sf, which is an unusually large site for the RM-2 zoning district. The new project contains two (2) levels of subterranean parking (one with stacked mechanical parking), open terraces at the ground level along with parking, loading spaces, vertical circulation, mechanical and electrical rooms. The second to fourth floor and roof top uses include ballrooms, meeting rooms, and back of house spaces. An elevated bridge at the 3rd level connects the site with the Fontainebleu Hotel to the north, by crossing over 44th Street. The bridge is also part of a separate application with variances to be reviewed by the Board for the portion included in the north property at 4441 Collins Ave (HPB20-0390).

The proposed project includes a request for 16 variances, the first 13 of which are detailed above. The aforementioned 13 variance requests are from the required setbacks at all levels and all sides for the 7-story structure including two (2) subterranean levels and five (5) levels above ground. As the property is larger than most properties in the RM-2 district, surrounded by three (3) street sides and no historic structures on the site, there is reasonable flexibility to construct a building that substantially complies with the zoning regulations. Variances 1-13 are created by the size and use of the project, as well as the development plan for the site.

The letter of intent submitted does not demonstrate how variances 1-13 satisfy the practical difficulty and hardship criteria in the Code. As such, at this time, staff is unable to support the approval of any of these variance requests, with the exception of those related to the construction

of the elevated pedestrian bridge. Accordingly, staff recommends that the application be continued in order to reduce the intensity and number of variances requested, as well as for the applicant to provide additional information or documentation that substantiates the need for the variances requested and how the negative impact of the variances is mitigated.

If additional information is provided, staff would not be opposed to further review of a lesser number of variances associated with the construction of the elevated bridge, as a result of the location of the structure, connecting the two properties. Staff would also recommend that, at a minimum, the interior subterranean, pedestal and tower side setbacks be increased to comply with the setbacks required and the supporting columns of the bridge at the ground level comply with the street side setbacks in order to mitigate any negative impact of the new building structure.

14. A variance to eliminate the residential or commercial use requirement at the ground level when parking is provided along 44th Street for the construction of a new multistory building.
15. A variance to reduce the residential or commercial use requirement at the ground level when parking is provided along Indian Creek Drive for the construction of a new multistory building.

- Variances requested from:

Sec. 142-219. - Regulations for new construction

In the RM-2, residential district, all floors of a building containing parking spaces shall incorporate the following:

- (1) Residential or commercial uses, as applicable, at the first level along every facade facing a street, sidewalk or waterway.

These variance requests (14 & 15) pertain to the elimination of active uses at the first level along 44th street in order to place mechanical equipment rooms and enclosed stairs and provide a continuous solid wall along 44th street. The street side facing Indian Creek also does not provide active uses for a portion of the front, except for an open terrace. The surrounding area has intense pedestrian activity and the elimination and reduction of this requirement could negatively impact the urban character of this part of the City. Also, the driveway proposed on Indian Creek Drive substantially exceeds the minimum width of 11'-0" for a one-way driveway.

Staff has worked closely with the applicant in order to mitigate the impacts of these variances, as the north side of 44th Street already lacks compliance with this requirement and presently functions as a service corridor for the Fontainebleau Hotel, which has resulted in a long standing negative experience for pedestrians walking along the north side of 44th Street. Before approving variances 14 & 15, staff recommends that the applicant to provide additional information or documentation that substantiates the need for the variances requested (hardship criteria and practical difficulties) as well as how the impact of the variances will be mitigated.

16. A variance to eliminate the required 1'-6" additional setback for columns parallel to a 22'-0" two-way driveway in order to construct columns associated with perpendicular parking abutting a two-way driveway.

- Variance requested from:

Sec. 130-63. Interior aisles.

Interior aisles shall meet or exceed the following minimum dimensions permitted: 90° parking—22'-0", with columns parallel to the interior drive on each side of the required drive, set back an additional 1'-6", measured from the edge of the required interior drive to the face of the column.

The Code requires additional space between columns and a two-way driveway associated with perpendicular parking in order to provide enough clearance for vehicle maneuvering. This type of variance is usually requested when a site has limited area for development and required parking clearance is challenging to accommodate. The subject site is substantially larger than most properties within the RM-2 district and this request is intrinsically related to the building design and location of the supporting columns. In this case, there are no practical difficulties or hardship related to the variance. Staff would recommend that the architect further study the location of the structure to comply with this requirement. As such, staff recommends denial of this variance.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that DO NOT satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of 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.
- The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

COMPLIANCE WITH ZONING CODE

The application, as submitted, except for the variances requested herein, appears to be inconsistent with the following requirements of the City Code:

1. Sec. 130-32: As proposed, the required parking for the proposed used is not satisfied. Revise calculations shall be provided for review and approval of staff at the time of the building permit.

This 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 **uses** are **consistent** with the Future Land Use Map of the Comprehensive Plan.

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 Applicable
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Not Applicable
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied
The dark tinted low-E glass will reduce heat gain and help to passively cool the interior space.
- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 126 of the City Code.
Satisfied
- (5) The project applicant shall consider the adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.
Satisfied
The land elevation of the site is consistent with the surrounding properties.
- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.
Satisfied

- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.
Satisfied
- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.
Not Applicable
- (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.
Not Applicable
- (10) In all new projects, water retention systems shall be provided.
Satisfied
Additional information will be required at the time of building permit review.
- (11) Cool pavement materials or porous pavement materials shall be utilized.
Satisfied
Additional information will be required at the time of building permit review.
- (12) The project design shall minimize the potential for a project causing a heat island effect on site.
Not Satisfied
The lack of compliance with minimum setback requirements has a negative impact on the amount of landscape available, as well as open space. Additional information will be required at the time of building permit review.

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.
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.
Satisfied
 - 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.
Not Applicable
- 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.
Not Satisfied
See Compliance with Zoning Code section of this report.
 - 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.

Satisfied

- 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.

Satisfied

- 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

Residential or commercial uses have not been provided at the ground floor along 44th Street and a portion of Indian Creek Drive.

- 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).

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

No transparency into the building has been provided at the first level along any of the street frontages.

- 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.

Satisfied

ANALYSIS

The applicant is proposing to construct a new 5-story building on the site of an existing surface parking lot located at 4360 & 4370 Collins Avenue. This highly prominent site has street frontage on three sides, Collins Avenue to the east, 44th Street to the north and Indian Creek Drive to the west. The new structure will contain accessory ballroom and meeting spaces for the Fontainebleau Hotel and will be connected to the hotel property via an elevated pedestrian walkway over 44th Street. Additionally, a 2-level basement parking garage is proposed to be constructed below grade and will be for the use of hotel employees. A companion Certificate of Appropriateness application (HPB20-0390) was approved on October 13, 2020 for associated work to the Fontainebleau Hotel site.

Staff commends the applicant for proposing to construct a high quality structure in place of the existing surface parking lot. Over time, the existing parking lot, although well maintained, has had an increasing negative impact on the developed urban context of Collins Avenue as well as the surrounding historic district. The design of the building has been developed in a manner that appropriately responds to the unique architectural character of the Morris Lapidus/Mid-20th Century Historic District. In this regard, the upper facades are defined by a dynamic folded glass curtain walls that take inspiration from the folded plane design elements commonly found in Post

War Modern architecture. Further, the new building is well within the scale of the surrounding historic district.

Staff has only one concern about the proposed project, which is the treatment of the first level. The City Code requires that all floors of a building containing parking spaces along a street or waterway be screened with active residential or commercial uses. The applicant is requesting variances in order to provide no active uses along the frontages of 44th Street and only a portion of Indian Creek Drive. The applicant has done a good job of addressing Collins Avenue, and, for the most part, Indian Creek Drive. However, as noted in the variance analysis, additional detail and documentation regarding the treatment of non-active spaces along 44th Street and Indian Creek Drive is needed, including the rationale for an excessively wide one-way drive on Indian Creek Drive.

Finally, it is important to note that the proposed project has been reviewed and approved by the Planning Board (PB20-0347), with regard to important issues related to the operations of the project, including parking, traffic, noise, deliveries, sanitation and security.

VARIANCE ANALYSIS

The applicant is requesting 16 variances for the construction of a 5-story building with 2 levels of subterranean parking and storage. The variances requested are related to the use, design and size of the proposed building, which encroaches into the required yards on all four (4) sides below and above ground. The documentation provided by the applicant has not demonstrated satisfaction of the practical difficulties or hardship criteria for approval of the 16 variances requested and staff is not supportive of all the variances at this time.

Staff would recommend continuance of the application for further modifications and study of how the negative impact of the variances are mitigated.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application be **continued to a date certain of December 8, 2020** in order to address the concerns noted herein, including the substantial lack of zoning compliance. In the event the Board should approve the application, including the variances requested, staff recommends that the conditions in the attached draft order be included, which address the inconsistencies with the aforementioned Certificate of Appropriateness criteria and/or Practical Difficulty and Hardship criteria, as applicable.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: November 10, 2020

PROPERTY/FOLIO: 4360 Collins Avenue / 02-3226-001-2220
4370 Collins Avenue / 02-3226-001-2200,
02-3226-001-2210,
02-3226-001-2190

FILE NO: HPB20-0378

IN RE: An application by Fontainebleau Florida Hotel, LLC for a Certificate of Appropriateness for the construction of a new 5-story building to replace the existing surface parking lot and pedestrian bridge over the 44th Street right-of-way, including variances to reduce the front, street side, interior side and sum of the sides setbacks for the subterranean, pedestal and tower levels, to reduce the residential or commercial use required facing the streets when providing parking at the ground level and to reduce the required setback for columns from the drive aisle.

LEGAL: Parcel 1, 4360 Collins Avenue:
Lot 2, Block 40, of the Miami Beach Improvement Company Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 8, of the Public Records of Miami-Dade County, Florida.

Parcel 2, 4370 Collins Avenue east:
The east ½ of Lot 1, less the westerly 19.1 feet, Block 40, of the Miami Beach Improvement Company Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 8, of the Public Records of Miami-Dade County, Florida.

Parcel 3, 4370 Collins Avenue center:
The west 19.1 feet of the east ½ of Lot 1, Block 40, of the Miami Beach Improvement Company Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 8, of the Public Records of Miami-Dade County, Florida.

Parcel 4, 4370 Collins Avenue west:
The portion of Lot 1, Block 40 described beginning at the NW corner of Lot 1 thence easterly 112.5 feet, southerly 100 feet, westerly 110 feet, northerly 100.125 feet to the point of beginning & the south 4.55 feet of the unnumbered tract designated as J H Snowden lying north and adjacent to Lot 1, Block 40 & tracts opposite same facing Indian Creek Drive, of the Miami Beach Improvement Company Subdivision, according to the Plat Thereof, as Recorded in Plat Book 5, Page 8, of the Public Records of Miami-Dade County, Florida.

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 Morris Lapidus/Mid-20th Century 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 Sea Level Rise and Resiliency Review Criteria in Section 133-50(a) of the Miami Beach Code.
 - 2. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
 - 3. Is not consistent with Certificate of Appropriateness Criteria 'a' in Section 118-564(a)(2) of the Miami Beach Code.
 - 4. Is not consistent with Certificate of Appropriateness Criteria 'b', 'g', '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 and 133-50(a) if the following conditions are met:
 - 1. Revised elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
 - a. The outdoor decks shall be programmed with active uses, 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 design and details of the overhead doors leading to the parking garage shall be provided and such doors shall be of a high quality design and materials, 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. Final design and details of the interior and exterior lighting plans 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. The interior lighting shall be shielded to inhibit direct views of all internal light sources from either the street or surrounding properties.

- d. Final design and details of the proposed curtain wall and storefront systems 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.
- e. 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.
- f. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and elevation drawings and shall be screened from view, 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. If the applicant proceeds with construction of the basement area, the applicant shall implement comprehensive stormwater management and floodproofing systems in consultation with the Building and Public Works Departments. The systems shall incorporate the following:
 - i. The stormwater management system shall be designed in accordance with the 10/25-year storm event criteria, as determined by the Building Official.
 - ii. The stormwater management system shall include a combination of bio-swales and/or rain gardens, exfiltration trenches, and stormwater injection wells.
 - iii. A conventional cistern shall be provided to collect and store runoff from roof and deck drains and shall include an overflow system to divert runoff to the drainage wells.
 - iv. The existing and proposed basement area shall be dry floodproofed to BFE +1. The basement driveway entrance and exit shall be dry floodproofed to BFE +4.
 - v. Sump pumps shall be provided in the basement and shall have the capacity to remove accumulated water, as well as all vapor and seepage of water during a flooding event.
 - vi. All construction materials below BFE +1 shall be flood damage resistant.
 - vii. A Floodproofing Emergency Operations Plan and a Floodproofing Inspection and Maintenance Plan shall be filed with the Building Department.
- h. The applicant shall submit an engineering analysis confirming that the basement area could be modified to expand water management capacity at a future point in time where the basement is compromised and can no longer serve other functions, in a manner to be reviewed and approved by the Planning Department, in consultation with the Building and Public Works Departments.

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 consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board. 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. 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.
 - b. A tree evaluation by an ISA Certified Arborist or ASCA Consulting Arborist shall be submitted and all specimen trees in good condition shall be preserved or relocated and all non-specimen trees in good condition shall be relocated, subject to the approval of the Environment & Sustainability Director and/or Urban Forester, as applicable.
 - c. The project design shall minimize the potential for a project causing a heat island effect on site.
 - d. Cool pavement materials or porous pavement materials shall be utilized.

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:

The following variances were **approved** by the Board:

1. A variance to reduce by 11'-1" the minimum required subterranean front setback of 20'-0" in order to construct a subterranean parking structure at 8'-11" setback from the front property line facing Collins Avenue.
2. A variance to reduce by 0'-8" the minimum required subterranean front setback of 20'-0" in order to construct a subterranean parking structure at 19'-4" setback from the front property line facing Indian Creek Drive.
3. A variance to reduce by 1'-8" the minimum required subterranean street side setback of 16'-4" in order to construct a subterranean parking structure at 14'-8" setback from the street side facing 44th Street.
4. A variance to reduce by 13'-10" the minimum required subterranean interior side setback of 16'-4" in order to construct a subterranean parking structure at 2'-6" setback from the interior south side property line.

5. A variance to reduce by 15'-6" the minimum required subterranean sum of the side yards of 32'-8" in order to construct a subterranean parking structure with a sum of the side yards of 17'-2".
6. A variance to eliminate the minimum required pedestal street side setback of 16'-4" in order to construct a multistory building with an elevated bridge structure at 0'-0" (zero) setback from the street side facing 44th Street.
7. A variance to reduce by 15'-10" the minimum required pedestal interior side setback of 16'-4" in order to construct a multistory building at 0'-6" setback from the interior south side property line.
8. A variance to reduce by 32'-2" the minimum required pedestal sum of the side yards of 32'-8" in order to construct a multistory building and elevated bridge structure with a sum of the side yards of 0'-6".
9. A variance to exceed by 33% (6'-7") the maximum 25% (5'-0") projection allowed within the front yard of 20'-0" in order to construct an elevated open terrace encroaching up to 58% (11'-7") within the front yard facing Collins Avenue.
10. A variance to reduce by 2'-6" the minimum required tower front setback of 44'-6" in order to construct a multistory building at 20'-0" setback from the front property line facing Collins Avenue.
11. A variance to reduce by 2'-6" the minimum required tower front setback of 44'-6" in order to construct a multistory building at 20'-0" setback from the front property line facing Indian Creek Drive.
12. A variance to reduce by 18'-4" the minimum required tower interior side setback of 18'-10" in order to construct a multistory building at 0'-6" setback from the south interior side property line.
13. A variance to reduce by 15'-6" the minimum required tower sum of the side yards of 35'-2" in order to construct a multistory building with a sum of the side yards of 16'-10".
14. A variance to eliminate the residential or commercial use requirement at the ground level when parking is provided along 44th Street for the construction of a new multistory building.
15. A variance to reduce the residential or commercial use requirement at the ground level when parking is provided along Indian Creek Drive for the construction of a new multistory building.
16. A variance to eliminate the required 1'-6" additional setback for columns parallel to a 22'-0" two-way driveway in order to construct columns associated with perpendicular parking abutting a two-way driveway.

- B. The applicant has submitted plans and documents with the application that 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 indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

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

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

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

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

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

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

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

The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

- C. The Board hereby **Approves** the requested variance(s) #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15 and # 16, as noted and imposes the following conditions 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. The applicant agrees and shall be required to provide access to areas subject to this approval (not including private residences or hotel rooms) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the plans approved by the Board and conditions of this order.
- B. The issuance of a building permit is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed. No building permit may be issued unless and until the applicant obtains a written finding from Miami-Dade County Public Schools that the applicant has satisfied school concurrency.
- C. The relocation of any tree shall be subject to the approval of the Environment & Sustainability Director and/or Urban Forester, as applicable.
- D. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- E. 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.
- F. 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.
- G. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- H. 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.
- I. 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.

- J. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- K. 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.
- L. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.

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 "**Parking Garage & Ballroom Expansion**", as prepared by **Nichols Brosch Wurst Wolfe & Associates, Inc.**, dated **April 6, 2020**, 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 _____ ())