


# MIAMI BEACH

## PLANNING DEPARTMENT

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### BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP   
Planning Director

DATE: November 4, 2016 Meeting

RE: File No. ZBA16-0020  
**6801 Collins Avenue**  
**Appeal of an Administrative Determination**

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On July 14, 2016, South Carillon Beach Condominium Association, Inc., had filed a request for zoning determination by the Planning Director concerning the hours of operation of a proposed outdoor bar counter (described in HPB File No. 7624 (HPB0416-0001)) at the center tower of the Carillon located at 6801 Collins Avenue, Miami Beach, Florida. Pursuant to Section 142-1109, and Sections 142-144(3) and (4), of the City Code, the Planning Director determined that an outdoor bar counter on the site may not operate between 8:00 pm and 8:00 am.

#### **STAFF RECOMMENDATION:**

Denial of the appeal.

#### **ZONING / SITE DATA**

Legal Description:

The north 25' of Lot 48, all of Lots 49 through 53, inclusive, Block 1 of Amended Second Ocean Front Subdivision, according to the plat thereof recorded in Plat Book 28, Page 28 of the public records of Miami Dade County, Florida.

Zoning: RM-3, Residential multifamily, high intensity

Future Land Use Designation: RM-3, Residential multifamily, high intensity

#### **BACKGROUND:**

On July 14, 2016 a request for a zoning determination letter concerning the hours of operation of a proposed outdoor bar counter (described in HPB File No. 7624) at the center tower of the Carillon located at 6801 Collins Avenue, Miami Beach, FL, was submitted to the Planning Director.

On August 2, 2016, the Planning Director responded to the request for the zoning interpretation, indicating that any accessory outdoor bar counter on the subject site may not be operated or utilized between 8:00 p.m. and 8:00 a.m.



For reference, the map below outlines the boundary of the Carillon property located at 6801 Collins Avenue, which includes a north tower, the original central Carillon tower, the location of the subject outdoor bar counter, and the south tower.



**BOARD POWERS AND DUTIES:**

Pursuant to Article I, Section 2 of the Related Special Acts, and Section 118-136 of the City Code, Powers and duties of the Board of Adjustment, the Board of Adjustment shall have the following powers and duties:

(1) ~~To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations with the exception of appeals pursuant to section 118-197 and section 118-262. In the event of an administrative appeal to the board of adjustment, the planning director may engage the services of an attorney for the purpose of representing the administrative officer who made the decision that is the subject of the appeal.~~

In exercising this power, the board of adjustment, may upon appeal, reverse or affirm, wholly or partly, the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of five members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under these land development regulations.

**STAFF ANALYSIS:**

The subject property is currently zoned **RM-3, Residential Multifamily, High Intensity**. The main permitted uses in the RM-3 residential multifamily, high intensity district are single-family detached dwelling; townhomes; apartments; apartment-hotels; and hotels.

Based upon City records, 6801 Collins Avenue is a unified development site and contains three primary towers; a 35-story north tower with 105 residential apartment units (BCO09009, Exhibit A1), the 16-story restored original Carillon central tower with 150 hotel units **AND 80 residential apartment units** (BCO09026, Exhibit A2), and a 21-story south tower with 143 residential apartment units (BCO11185, Exhibit A3). The central tower and south tower are connected with a lower multistory pedestal base, and the north tower is physically separated from the central and south towers. In total, the site contains 328 apartment units (69% of the total 478 units) and 150 hotel units (31% of the total 478 units). All are part of one unified development site, and no single building has a certificate of occupancy solely for a hotel. The central tower is the only portion of the property which contains hotel units, in addition to residential apartment units.

The subject site contains stand-alone residential apartment buildings (the north and south towers) and an apartment-hotel (the central tower). Notwithstanding the shared pedestal between the central and south tower, the central tower would still be classified as an apartment-hotel. The site does not contain a structure that would be classified as a stand-alone hotel. As per Section 114-1 of the City Code, Apartment building, Apartment hotel, and Hotel are defined below:

***Apartment building*** means a building with or without resident supervision occupied or intended to be occupied by more than two families living separately with separate cooking facilities in each unit.

***Apartment hotel*** means a building containing both apartment units and hotel units, under resident supervision, and having an inner lobby through which all tenants must pass to gain access.

***Hotel*** means a building occupied or intended to be occupied by transient residents, with all residents occupying hotel units and where ingress or egress may or may not be through a common lobby or office that is supervised by a person in charge at all times.

Section 142-1109 of the City Code, provides that outdoor bar counters are allowed as an accessory use *only*. Included in the Carillon application (HPB File No. 7624), is an outdoor café with an *accessory outdoor bar counter*. The relevant code sections relating to this accessory use are found at Section 142-244(3) of the City Code provides the following specific requirements for permitted accessory outdoor bar counters in the RM-3 district:

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

The subject property, and in particular the central Carillon tower, contains a mixture of hotel and apartment units. The provisions of the second clause in section (3), above, apply. The use must terminate between 8:00 p.m. and 8:00 a.m.

The Carillon argues that Section 142-244(4), of the City Code should apply, which section states:

*(4) Oceanfront hotels with at least 100 hotel units may operate and utilize an accessory outdoor bar counter, notwithstanding the above restriction on the hours of operation, provided the accessory outdoor bar counter is (i) located in the rear yard, and (ii) set back 20 percent of the lot width (50 feet minimum) from any property line adjacent to a property with an apartment unit thereon.*

The subject property, and in particular the central Carillon tower, contains a mixture of Hotel and Apartment units. As such, the central tower is considered an 'Apartment-Hotel', as opposed to a stand-alone Hotel. This is substantiated by City records, as noted previously. An Apartment-Hotel is treated differently in the code from a stand-alone Hotel.

As noted above, section 142-244(4) of the City Code allows expanded hours of operation for accessory outdoor bar counters for oceanfront hotels with at least 100 units, and does not include Apartment-Hotel in this exception. In the case of 6801 Collins Avenue, residential units under separate ownership are located in the same building and on the same site as the Hotel units. As such, as an "Apartment-Hotel," the Carillon would not be considered an applicable oceanfront hotel and would not be allowed to utilize the expanded hours of operation for a Hotel accessory bar counter.

The Carillon argument relating to 'condo hotel' is irrelevant, as that is a form of ownership, not distinguished in the City's Code. The use is what is distinguished – temporary transient use (hotel) and residential use (Apartment); or Apartment-Hotel, which contains both. The actual use is what defines the building designation for zoning purposes. An Apartment building comprised of residential units is noted as an Apartment building in the City Code.

The sole word 'condominium', with no other qualifier in the context of the City Code, refers to a form of ownership, and is treated as same under the City Code. A residential Apartment building with a condo form of ownership may include commercial condo units where such accessory uses are allowed. The City Code does not utilize the word 'condominium' as the use is what controls for zoning purposes and not the ownership makeup of the building or property.

Were the Board of Adjustment to agree with the Carillon, that Subsection 142-244(4) applies, then the property would be allowed to have an accessory outdoor bar counter that could operate between 8:00 a.m. and 5:00 a.m., daily. In other words, the accessory outdoor bar counter would only need to be closed for three hours in a 24 hour period (5:00 am – 8:00 am). See the City Commission Memorandum dated July 17, 1996, which summarizes the legislative action creating current sections 142-244(3) and (4), attached as 'Exhibit B', which states, in relevant part:

This section of the proposed amendment includes the newly defined "Accessory Out Door Bar Counter" as a prohibited use ... in RM-3, ... except for accessory outdoor bar counters operated between 8:00 a.m. and 12 midnight. In the RM-3 ... District, the amendment further provides that an accessory outdoor bar counter would **not be restricted by the time limitation (closed between 12 midnight and 8:00 a.m.)** when said use is an accessory use at the rear of oceanfront hotels with at least 100 hotel units and is setback .... These exceptions do not imply that alcoholic beverages are permitted to be served/sold 24 hours a day. Section 12 of the Zoning Ordinance further provides that restaurant, bars and nightclubs cannot serve or offer for sale alcoholic beverages between the hours of



5:00 a.m. and 8:00 a.m....

The City has serious concerns with the Carillons interpretation in this instance, as there are clearly residential and transient uses on the unified development site and in the same building.

Lastly the reference to a noise study is completely irrelevant in the context of this appeal.

Based upon the foregoing, any accessory outdoor bar counter on the subject site may not be operated or utilized between 8:00 p.m. and 8:00 a.m.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends that the subject appeal be DENIED.

TRM:MAB

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# MIAMIBEACH

Building Department  
1700 Convention Ctr Drive, 2nd Floor  
Miami Beach, Florida 33139  
(305) 673-7610 Ext. 6868

'EXHIBIT A1'

## PAYMENT RECEIPT

(This is not a permit, it is only a receipt of payment)

10-25-2016

Activity Number: BCO09009  
APPROVED

Receipt: Status:

Date Applied: 10/08/2008  
Date Completed:

Date Issued: 10/21/2008  
Date Expired:

Entered By: BUILRAMH

Site Address: 6801 COLLINS AV MBCH  
Parcel #: 32110070460

Balance Due: \$0.00  
Valuation: \$0.00

Applicant: KMI/ PLAZA  
120 NE 27TH ST., # 600  
MIAMI FL 33137

Owner: NORTH CARILLON LLC  
801 BRICKERLL AVE # 1100  
MIAMI FL 33131

Description: PCO for the Northcore ( 35 story 105 condo units ).

### Payments made for this receipt:

Type	Method	Desct.	Amount
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Payment Made:	Accepted By:
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Total Payment:	.00	Payee:
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### Current Payment Made to the Following Items:

### Account Summary for Fees and Payments:

Item#	Description	Account Code	Tot Fee	Paid	Prev. Pmts	Cur. Pmts
240	Certificate of Occupancy	0118000322600	7,000.00	7,000.00	7,000.00	.00

[RECEIPT]

CITY OF MIAMI BEACH  
BUILDING DEPARTMENT  
1700 CONVENTION CENTER DR  
2ND FLOOR - CITY HALL  
MIAMI BEACH, FLORIDA 33139  
(305) 673-7610

## **COMPLETE DESCRIPTION**

DATE: 10-25-2016

PERMIT NUMBER: **BCO09009**

STATUS: APPROVED

JOB SITE ADDRESS: **6801 COLLINS AV MBCH**

CONTRACTOR: KM/ PLAZA

OWNER: NORTH CARILLON LLC

### **DESCRIPTION**

PCO for the Northcore ( 35 story 105 condo units ).  
Units distribution per floor as follow:

6th floor: 601, 602, 603  
7th floor: 701, 702, 703  
8th floor: 801, 802, 803  
9th floor: 901, 902, 903, 904, 905  
10th floor: 1001, 1002, 1003, 1004, 1005  
11th floor: 1101, 1102, 1103, 1104, 1105  
12th floor: 1201, 1202, 1203, 1204, 1205  
14th floor: 1401, 1402, 1403, 1404, 1405  
15th floor: 1501, 1502, 1503, 1504, 1505  
16th floor: 1601, 1602, 1603, 1604, 1605  
17th floor: 1701, 1702, 1703, 1704, 1705  
18th floor: 1801, 1802, 1803, 1804, 1805  
19th floor: 1901, 1902, 1903, 1904, 1905  
20th floor: 2001, 2002, 2003, 2004, 2005  
21th floor: 2101, 2102, 2103, 2104,  
22nd floor: 2201, 2202, 2203, 2204,  
23rd floor: 2301, 2302, 2303  
24th floor: 2401, 2403, 2404  
25th floor: 2501, 2503, 2504  
26th floor: 2601, 2603, 2604  
27th floor: 2701, 2703, 2704  
28th floor: 2801, 2803, 2804  
29th floor: 2901, 2903, 2904  
30th floor: 3001, 3004  
31st floor: 3101, 3104  
32nd floor: 3201, 3204,  
33rd floor: 3301, 3304  
[BDESCDOC]



34th floor: 3401, 3404  
35th floor: 3501, 3504

# MIAMIBEACH

Building Department  
1700 Convention Ctr Drive, 2nd Floor  
Miami Beach, Florida 33139  
(305) 673-7610 Ext. 6868

'EXHIBIT A2'

## PAYMENT RECEIPT

(This is not a permit, it is only a receipt of payment)

10-25-2016

Activity Number: BCO09026  
APPROVED

Receipt: Status:

Date Applied: 10/21/2008  
Date Completed:

Date Issued: 11/05/2008  
Date Expired:

Entered By: BUILRAMH

Site Address: 6801 COLLINS AV MBCH  
Parcel #: 32110070460

Balance Due: \$0.00  
Valuation: \$0.00

Applicant: WSG DEVELOPMENT  
400 ARTHUR GODFREY # 200  
MIAMI BEACH, FL 33140  
305-673-3707

Owner: WSG DEVELOPMENT

Description: PCO for 230 condo units from floors 2 thru 16 for existing tower including basement. The Bldg has 150 hotel units and 80 condo units. ( Existing Tower )

### Payments made for this receipt:

Type	Method	Desct.	Amount
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Payment Made:

Accepted By:

Total Payment: .00

Payee:

### Current Payment Made to the Following Items:

### Account Summary for Fees and Payments:

Item#	Description	Account Code	Tot Fee	Paid	Prev. Pmts	Cur. Pmts
240	Certificate of Occupancy	0118000322600	7,125.00	7,125.00	7,125.00	.00

[RECEIPT]

CITY OF MIAMI BEACH  
BUILDING DEPARTMENT  
1700 CONVENTION CENTER DR  
2ND FLOOR - CITY HALL  
MIAMI BEACH, FLORIDA 33139  
(305) 673-7610

## COMPLETE DESCRIPTION

DATE: 10-25-2016

PERMIT NUMBER: **BCO09026**

STATUS: APPROVED

JOB SITE ADDRESS: **6801 COLLINS AV MBCH**

CONTRACTOR: WSG DEVELOPMENT

OWNER: WSG DEVELOPMENT

### DESCRIPTION

PCO for 230 condo units from floors 2 thru 16 for existing tower including basement. The Bldg has 150 hotel units and 80 condo units. ( Existing Tower )

Hotel units distribution description bellow:

2nd Floor Units: 210, 212, 209, 214, 211, 216, 215, 218, 220, 217, 222

3rd Floor Units: 301, 302, 307, 309, 310, 311, 312, 315, 316, 317, 318, 320, 322

4th Floor Units: 401, 402, 405, 407, 409, 410, 411, 412, 414, 416, 417, 418, 420, 422

5th Floor Units: 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 515, 516, 517, 518, 520, 522

6th Floor Units: 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 614, 615, 616, 617, 618, 620, 622

7th Floor Units: 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 714, 715, 716, 717, 718, 720, 722

8th Floor Units: 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 814, 815, 816, 817, 818, 820, 822

9th Floor Units: 901, 902, 903, 904, 905, 906, 908, 907, 909, 910, 911, 912, 914, 915, 916, 917, 918, 920, 922

10th Floor Units: 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1014, 1016, 1017, 1018, 1020, 1022

Condo units distribution bellow:

11th Floor Units: 1109, 1111, 1115, 1117, 1116, 1114, 1112, 1110, 1108, 1106, 1104, 1102, 1101, 1103, 1105, 1107

12th Floor Units: 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1214, 1215, 1216, 1217.

14th Floor Units: 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1414, 1415, 1416, 1417

15th Floor Units: LPH-01, LPH-02, LPH-03, LPH-04, LPH-05, LPH-06, LPH-07, LPH-08, LPH-09, LPH-10, LPH-11, LPH-12, LPH-14, LPH-15, LPH-16, LPH-17

16th Floor Units: PH-01, PH-02, PH-03, PH-04, PH-05, PH-06, PH-07, PH-08, PH-09, PH-10, PH-11, PH-12, PH-14, PH-15, PH-16, PH-17

[BDESCDOC]

total number of units on this PCO: 230

Note this PCO does not include the Spa and the pool on 5th floor



# MIAMIBEACH

Building Department  
1700 Convention Ctr Drive, 2nd Floor  
Miami Beach, Florida 33139  
(305) 673-7610 Ext. 6868

EXHIBIT A3

## PAYMENT RECEIPT

(This is not a permit, it is only a receipt of payment)

10-25-2016

Activity Number: BCO11185  
APPROVED

Receipt: Status:

Date Applied: 06/27/2011  
Date Completed:

Date Issued: 05/15/2014  
Date Expired:

Entered By: BUILRAMH

Site Address: 6801 COLLINS AV MBCH  
Parcel #: 32110070460

Balance Due: \$0.00  
Valuation: \$0.00

Applicant: CHARLEVILLE DEVELOPMENT CORP Owner: CENTRAL CARILLON BEACH CONDO  
7620 COQUINA DRIVE 6801 COLLINS AVE  
N BAY VILLAGE FL 33141 33141 MIAMI BEACH FL  
305 673-2750

Description: CO for new construction of a 21 floors 143 condo units Bldg, South Tower units distribution per floor as follow:

### Payments made for this receipt:

Type	Method	Desct.	Amount
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Payment Made: Accepted By:

Total Payment: .00 Payee:

### Current Payment Made to the Following Items:

### Account Summary for Fees and Payments:

Item#	Description	Account Code	Tot Fee	Paid	Prev. Pmts	Cur. Pmts
240	Certificate of Occupancy	0118000322600	10,170.00	10,170.00	10,170.00	.00

[RECEIPT]

CITY OF MIAMI BEACH  
BUILDING DEPARTMENT  
1700 CONVENTION CENTER DR  
2ND FLOOR - CITY HALL  
MIAMI BEACH, FLORIDA 33139  
(305) 673-7610

## **COMPLETE DESCRIPTION**

DATE: 10-25-2016

PERMIT NUMBER: **BCO11185**

STATUS: APPROVED

JOB SITE ADDRESS: **6801 COLLINS AV MBCH**  
CONTRACTOR: CHARLEVILLE DEVELOPMENT CORP  
OWNER: CENTRAL CARILLON BEACH CONDO

### DESCRIPTION

CO for new construction of a 21 floors 143 condo units Bldg, South Tower units distribution per floor as follow:

1st floor: units S101, S102, S103, S104, S105, S106, S107, S108, S109

Total units for this floor = 9

2nd floor: units S201, S202, S203, S204, S205, S206, S207, S-208, S209, S210, S211, S212

Total units for this floor = 12

3rd floor: units S301, S302, S303, S304, S305, S306, S307, S308, S309, S310, S311, S312,

Total units for this floor = 12

4th floor: units S401, S402, S403, S-404, S405, S406, S407, S408, S409, S410, S411, S412.

Total 12 units

5th floor: units S501, S502, S503, S504, S505, S506, S507, S508, S509, S510, S511, S512.

Total = 12 units

6th flr units 601 to 606 6 units

7th flr units 701 to 706 6 units

8th flr units 801 to 806 6 units

9th flr units 901 to 906 6 units

10th flr units 1001 to 1006 6 units

11th flr units 1101 to 1106 6 units

12th flr units 1201 to 1206 6 units

14th flr units 1401 to 1406 6 units

15th flr units 1501 to 1506 6 units

16th flr units 1601 to 1606 6 units

17th floor: 1701, 1702, 1703, 1704, 1705, 1706 total = 6 units

18th floor: 1801, 1802, 1804, 1805, 1806 total = 5 units

19th floor: CPH01, CPH02, CPH04, CPH05, CPH06 total = 5 units

20th floor: LPH01, LPH02, LPH04, LPH05, LPH06 total = 5 units

21st floor: PH01, PH02, PH04, PH05, PH06 total = 5 units

[BDESCDOC]

'EXHIBIT B'

# CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH FLORIDA 33139



COMMISSION MEMORANDUM NO. 445-96

**TO:** Mayor Seymour Gelber and  
Members of the City Commission

**DATE:** July 17, 1996

**FROM:** Jose Garcia-Pedrosa  
City Manager

**SUBJECT:** Second Reading Public Hearing - An Ordinance Amending Zoning Ordinance  
No. 89-2665 by:

1. Amending Section 3, Entitled "Definitions", Amending Subsection 3-2, Entitled "Terms Defined" by Modifying the Definition of Outdoor Cafe, Clarifying That an Outdoor Bar Counter Is Considered an Accessory Use and by Adding a Definition for "Accessory Outdoor Bar Counter"; and by,
2. Amending Section 6, Entitled "Schedule of District Regulations", Amending Subsection 6-3, Entitled "RM-2 Residential Multi Family, Medium Intensity District" by Listing Accessory Outdoor Bar Counters as a Prohibited Use, Amending Subsection 6-4, Entitled "RM-3 Residential Multi Family High Intensity" by Listing Accessory Outdoor Bar Counters, Provided That They Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use, Listing Accessory Outdoor Bar Counters at the Rear Yard of Oceanfront Hotels of 100 Units or More as Accessory Uses and Establishing a Setback Requirement from the Property Line, and Prohibiting All Other Accessory Outdoor Bar Counters; Amending Subsection 6-6, Entitled "CD-1 Commercial Low Intensity" by Listing Accessory Outdoor Bar Counters, Outdoor Entertainment Establishments and Open Air Entertainment Establishments as Prohibited Uses; Amending Subsection 6-7, Entitled "CD-2 Commercial Medium Intensity" by Listing Accessory Outdoor Bar Counters That Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use and Prohibiting All Other Accessory Outdoor Bar Counters; Amending Subsection 6-8, Entitled "CD-3 Commercial High Intensity" by Listing Accessory Outdoor Bar Counters That Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use, Listing Accessory Outdoor Bar Counters at the Rear Yard of Oceanfront Hotels of 100

AGENDA ITEM

R5E

DATE

7-17-96

Units or More as Accessory Uses and Establishing a Setback Requirement from the Property Line, and Prohibiting All Other Accessory Outdoor Bar Counters; Amending Subsection 6-14, Entitled "I-1 Light Industrial" by Listing Accessory Outdoor Bar Counters That Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use, and Prohibiting All Other Accessory Outdoor Bar Counters; Amending Subsection 6-16, Entitled "MXE Mixed Use Entertainment" by Listing Accessory Outdoor Bar Counters That Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use, Listing Accessory Outdoor Bar Counters at the Rear Yard of Oceanfront Hotels of 100 Units or More as Accessory Uses and Establishing a Setback Requirement from the Property Line, Listing Accessory Outdoor Bar Counters Located in the Cabaret Overlay District as Accessory Uses, and Prohibiting All Other Accessory Outdoor Bar Counters; and by,

3. Amending Section 20, Entitled "PS Performance Standard District", Amending Subsection 20-3, Entitled "Use Regulations" by Not Permitting Accessory Outdoor Bar Counters in the R-PS1, Medium-Low Density, R-PS2, Medium Density, R-PS3 Medium High Density, RMPS-1 Residential Mixed Use Districts and the R-PS4 High Density District, Except That an Accessory Outdoor Bar Counter Is Permitted as an Accessory Use in Oceanfront Hotels of 100 Units or More in the R-PS4 High Density District, and Listing Accessory Outdoor Bar Counters Operated until Midnight Only as Permitted Uses in the Following Districts: C-PS1 Commercial Limited Mixed Use; C-PS2 Commercial General Mixed Use; C-PS3 Commercial Intensive Mixed Use; C-PS4 Commercial Intensive Phased Bayside Districts, and by Not Permitting Outdoor Entertainment Establishments, Open Air Entertainment Establishments or Neighborhood Impact Establishments in the R-PS1, Medium-Low Density, R-PS2, Medium Density, R-PS3 Medium High Density, RMPS-1 Residential Mixed Use Districts and the R-PS4 High Density District, Except That Outdoor Entertainment Establishments, Open Air Entertainment Establishments and Neighborhood Impact Establishments Are Permitted as Accessory Uses in Oceanfront Hotels with 250 or More Hotel Units When Located in the R-PS4 High Density District, and Listing Outdoor Entertainment Establishments, Open Air Entertainment Establishments and Neighborhood Impact Establishments as Conditional Uses in the Following Districts: C-PS1 Commercial Limited Mixed Use; C-PS2 Commercial General Mixed Use; C-PS3 Commercial Intensive Mixed Use and C-PS4 Commercial Intensive Phased Bayside Districts.



**Providing for Inclusion in the Zoning Ordinance; Providing for Repealer,  
Severability and an Effective Date.**

**RECOMMENDATION**

The Administration recommends that the City Commission, upon holding a public hearing, adopt on second reading this amendment regarding the regulation of outdoor bar counters, along with the regulations for Outdoor Entertainment, Open Air Entertainment and Neighborhood Impact Establishments in the Performance Standards Districts within the South Pointe Redevelopment Area.

**BACKGROUND**

The subject amendment, regarding outdoor bar counters was part of a previous proposed amending ordinance heard by the Commission that also addressed the issues of the MXE regulations and citywide height restrictions. On January 24, 1996 the City Commission instructed staff to bifurcate that amendment into two individual amendments in order to address the items separately and remanded the amendments back to the Planning Board for further review and study.

The outdoor bar regulations were the topic of discussion at a workshop held by the Planning Board on August 2, 1995 and a public hearing on October 24, 1995. At that workshop, the original amending ordinance was substantially changed to address outdoor bar counters on a citywide basis, not just within the MXE District.

At the first reading public hearing on December 20, 1995 the Commission requested that the amendment be reviewed by the Historic Preservation Board, Design Review Board and the South Pointe Advisory Committee for comments prior to the second reading public hearing that had been tentatively set for January 24, 1996. Subsequently, due to comments and concerns from these municipal boards, the Commission remanded the amending ordinance back to the Planning Board for further study and recommendations regarding the regulations pertaining to outdoor bar counters on a citywide basis, as well as, within the South Pointe Redevelopment Area. Also, as a condition of that remandment, the Board was instructed to examine Outdoor Entertainment Establishments, Open Air Entertainment Establishments and Neighborhood Impact Establishments in the South Pointe Redevelopment Area. At the March 26, 1996 regular meeting of the Planning Board, the Board discussed the items at length and thus the new regulations, as set forth, herein. On April 23, 1996 the Planning Board held a public hearing and voted 5-0 (2 absentees) in favor of recommending adoption of the amending ordinance, as revised.

On June 5, 1996, the City Commission adopted on first reading, with some modifications, the attached Ordinance (the revised language as modified by the City Commissions concerns appears as shaded text). The modifications establish a visibility requirement for Accessory Outdoor Bar

Counters, and a setback requirement when Accessory Outdoor Bar Counters are adjacent to properties with apartment units.

## **OVERVIEW**

The definitions for outdoor cafe and outdoor bar were included in the original version of the amendment which prohibited these types of uses in the MXE District only. The attached amendment, as now modified, expands the regulations to allow these uses as accessory uses only, when permitted, and with other restrictions as provided, therein. Accessory outdoor bar counters would be prohibited to operate anywhere in the City between the hours of twelve midnight and 8:00 a.m., except in the RM-3, CD-3 and MXE Districts when said outdoor bar counter is an accessory use to an oceanfront hotel with at least 100 hotel units the time limitation would not be in effect. Also, within the Cabaret Overlay District in the MXE District (between 9th and 11th on Ocean Drive), the time constraint would not apply to an accessory outdoor bar counter. However, the regulations pertaining to the serving or offering for sale of alcoholic beverages as otherwise permitted in outdoor cafes and restaurants, bars and nightclubs would not be changed by this amending ordinance (see analysis below).

## **ANALYSIS**

What follows is a section by section analysis of the proposed amending ordinance.

### **Section 1.**

This section of the proposed ordinance clarifies the definition for "Cafe, Outdoor" and provides a definition for "Bar Counter, Accessory Outdoor", by specifically excluding Accessory Outdoor Bar Counters as a main permitted use. An outdoor bar counter would only be permitted as an accessory use to an outdoor cafe, as newly defined, with a minimum of 30 chairs, except when the outdoor bar counter is associated with a hotel pool deck there would be no minimum seating requirement. The definition also requires that an Accessory Outdoor Bar Counter shall not be visible from any property line adjacent to a public right-of-way.

### **Section 2.**

This section of the proposed amendment includes the newly defined "Accessory Out Door Bar Counter" as a prohibited use in the RM-2 and CD-1 Districts; prohibited use in the RM-3, CD-2, CD-3, I-1 and MXE Districts except for accessory outdoor bar counters operated between 8:00 a.m. and 12 midnight. In the RM-3, CD-3 and MXE Districts, the amendment further provides that an accessory outdoor bar counter would not be restricted by the time limitation (closed between 12

midnight and 8:00 a.m.) when said use is an accessory use at the rear of oceanfront hotels with at least 100 hotel units and is setback 20% of the lot width (50 feet minimum) from any property line adjacent to a property with an apartment unit thereon or in the MXE District when said accessory use would not be restricted by the time limitation within the Cabaret District (9th to 11th Streets, on the west side of Ocean Drive). These exceptions do not imply that alcoholic beverages are permitted to be served/sold 24 hours a day. Section 12 of the Zoning Ordinance further provides that restaurants, bars and nightclubs cannot serve or offer for sale alcoholic beverages between the hours of 5:00 a.m. and 8:00 a.m. Also, the amendment removes Outdoor Entertainment and Open Air Entertainment Establishments from the Conditional Use Category in the CD-1 District and lists these uses as prohibited. This change is in keeping with the residential character of the surrounding residential neighborhoods which could be negatively effected by said outdoor uses.

### Section 3.

This section of the amendment provides new regulations concerning the newly defined accessory outdoor bar counter within the South Pointe Redevelopment Area. This section also addresses regulations for Outdoor Entertainment, Neighborhood Impact and Open Air Establishments. As shown in the table of permitted uses on page 8 of the amendment, accessory outdoor bar counters would be prohibited in the R-PS 1,2,3 Districts; permitted in the R-PS4 District as accessory uses to hotels with at least 100 hotel units when operated between 8:00 a.m. and 12 midnight and permitted in the C-PS1,2,3,4 Districts, provided the use is not operated between the hours of 12 midnight and 8:00 a.m. The amendment further provides that Outdoor Entertainment, Open Air Entertainment and Neighborhood Impact Establishments would be prohibited in the R-PS 1,2,3 Districts; permitted in the R-PS4 District as accessory uses in oceanfront hotels with at least 250 or more hotel rooms with access to the establishment only from the interior lobby and not from the street and as Conditional Uses in the C-PS 1,2,3,4 Districts. All of these uses would be prohibited in the RM-PS1 District (Courts of South Beach).

The last sections of the amendment provide for inclusion in the Zoning Ordinance, repealer, severability and an effective date.

In reviewing a request for an amendment to the Zoning Ordinance or a change in land use, the City Commission shall consider the following:

1. Whether the proposed change is consistent and compatible with the Comprehensive Plan and any applicable neighborhood or Redevelopment Plans;

Consistent - The amendment does not contravene any policies within the Comprehensive Plan, the South Shore Revitalization Strategy, the Ocean Drive/Collins Avenue Design Strategy Plan or any other Neighborhood Plan.

2. Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts;

Consistent - The amendment would not change the underlying zoning district for any areas within the City.

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3. Whether the change suggested is out of scale with the needs of the neighborhood or the City;

Consistent - The amendment is in scale with the overall need of the City to control outdoor uses that may have a negative effect on neighboring properties unless properly regulated.

4. Whether the proposed change would tax the existing load on public facilities and infrastructure;

Consistent - The LOS for the area public facilities and infrastructure should not be negatively affected, if at all, by the proposed amending ordinance.

5. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change;

Not Applicable - This review criteria is not applicable to this Zoning Ordinance amendment.

6. Whether changed or changing conditions make the passage of the proposed change necessary;

Consistent - The operating of outdoor bars, past midnight, as well as outdoor entertainment activities within the City, has the potential to negatively effect the surrounding land uses; particularly with regard to the right to expect peaceful and orderly conduct at said establishments.

7. Whether the proposed change will adversely influence living conditions in the neighborhood;

Consistent - The proposed change should not negatively effect living conditions or the Quality of Life for the surrounding properties. Indeed, the control of outdoor bar counters and outdoor entertainment uses should help improve the Quality of Life for neighboring properties where such uses are permitted; by their limitation and regulation.



8. Whether the proposed change will create or excessively increase traffic congestion beyond the Level Of Service as set forth in the Comprehensive Plan or otherwise affect public safety;

Not Applicable - This review criteria is not applicable to this Zoning Ordinance amendment.

9. Whether the proposed change will seriously reduce light and air to adjacent properties;

Not Applicable - This review criteria is not applicable to this Zoning Ordinance amendment.

10. Whether the proposed change will adversely affect property values in the adjacent area;

Consistent - We believe that property values would not be negatively affected by the proposed amendment; indeed, values should be protected by the proposed measures.

11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations;

Consistent - The proposed amendment will not change the development regulations for adjacent sites which must comply with their own site specific development regulations. Furthermore, the proposed ordinance should not affect the ability for an adjacent property to be developed in accordance with said regulations.

12. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning;

Not Applicable - The proposed amendment does not change the underlying zoning district for any property.

13. Whether it is impossible to find other adequate Sites in the City for the proposed Use in a district already permitting such Use;

Not Applicable - This review criteria is not applicable to this Zoning Ordinance amendment.

### CONCLUSION

Based on the foregoing, the Administration has concluded that the City Commission should adopt on second and final reading the attached amendment, upon holding a public hearing.

  
JGP/HMS/DJG

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