

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: January 12, 2021

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.

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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 consistent with Certificate of Appropriateness Criteria 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 digital kiosk shall not be approved.
 - b. The driveway widths shall be reduced to the greatest extent possible, 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 bowtie paving pattern shall not extend into the right-of-way, unless approved by the Public Works Department.
 - d. 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.



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- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. 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-swailes 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.

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- j. 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**, **Modified**, or **Denied** by the Board as noted:

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. This variance shall only be applicable to 'Basement Level 2'. 'Basement level 1 shall fully comply with the required setbacks.
Variance approved as modified.
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 10'-4" setback from~~

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~~the front property line facing Indian Creek Drive.~~

Variance Denied.

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.
Variance Approved.
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.
Variance Approved.
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".
Variance Approved.
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.
Variance Approved.
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.
Variance Approved.
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".
Variance Approved.
- ~~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 Denied.~~
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.
Variance Approved.
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.
Variance Approved.



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12. A variance to reduce by 18'-4" the minimum required lower interior side setback of 18'-10" in order to construct a multistory building at 0'-6" setback from the south interior side property line.
Variance Approved.
 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".
Variance Approved.
 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.
Variance Approved.
 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.
Variance Approved.
 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 Approved.
- 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;



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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, #3, #4, #5, #6, #7, #8, #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. Landscaping shall be introduced within an approximately 3,000 s.f. area at the roof level and shall include a soil depth to accommodate shade trees, where feasible, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 2. 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.
 3. Employees of the Fontainebleau Hotel shall be provided parking spaces within the garage portion of the development.

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

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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



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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 **December 11, 2020** and **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 2 day of February, 2021

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: 
DEBORAH TACKETT
CHIEF OF HISTORIC PRESERVATION
FOR THE CHAIR

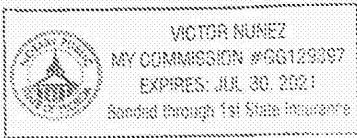
STATE OF FLORIDA)



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COUNTY OF MIAMI-DADE)SS
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The foregoing instrument was acknowledged before me this 2nd day of February 2021 by Deborah Tackett, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.



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

Approved As To Form: [Signature]
City Attorney's Office: [Signature] (1/28/2021)

Filed with the Clerk of the Historic Preservation Board on Jan 9th (2/2/21)

[Handwritten mark]