

HPB17-0176 1685 Collins Av
2/8/2022 meeting "Exhibit A"



The Law Offices of Kent Harrison Robbins, P.A.

February 7, 2022

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Chairman and Members of the Historic Preservation Board
c/o Debbie Tackett, Chief of Historic Preservation
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: Objection to Application for Certificate of Appropriateness for the partial demolition, renovation and restoration of the existing building, including the reconstruction of original interior floor plates, modifications to the rear cabana building and site improvements for the property located at 1685 Collins Avenue, Miami Beach, Florida (Historic Preservation Board File No. 17-0176).

Dear Chairman and Members of the Historic Preservation Board,

I represent EBJ Sagamore, LLC ("Sagamore") and Di Lido Beach Hotel Corporation ("Ritz") concerning the above referenced matter. EBJ Sagamore, LLC is the owner of the property located at 1671 Collins Avenue, Miami Beach, Florida, which property is within 100 feet of and impacted by the Applicant Beach Hotel Associates, LLC's development project at 1685 Collins Avenue, Miami Beach, Florida. Di Lido Beach Hotel Corporation is the owner of the property located at 1669 Collins Avenue, Miami Beach, Florida which property is within 175 feet of and impacted by the Applicant Beach Hotel Associates, LLC's development project at 1685 Collins Avenue, Miami Beach, Florida. These properties were noticed and their immediate proximity to the Application

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Site is shown in the drawings submitted including A0.23 titled "Site Photo Locations for Neighboring Buildings."

The Sagamore and the Ritz hereby advise the Historic Preservation Board ("HPB" or "Board") of their objections to the proposed application. The new and modified structures will have an immediate adverse impact to their properties greater than what the community in general would have by virtue of their location separated by only one and two parcels respectively from the Application Site. This adverse impact will occur both during construction and after the project is built out. Further, the proposal to make modifications to the property contrary to the zoning code and without the notice and process required under the law for variances denies the Sagamore and the Ritz equal protection under the zoning laws and the uniform application of those zoning laws to which the Sagamore and the Ritz are subjected to and upon which the Sagamore and the Ritz rely.

The Historic Preservation Board¹ is mandated under §118-564(a)(3), Miami Beach Code, with the responsibility of examining architectural drawings for consistency with the criteria. The plans do not comply with §118-564(a)(3)(b), Miami Beach Code. The lack of compliance with the zoning requirements violates Historic Preservation Board criteria.

¹ The Historic Preservation Board Planning Staff failed to review plans and make recommendations as mandated by the Code and failed to consider and determine that the architectural plans did not comply with the zoning criteria mandated by the Code. A decision of the Historic Preservation Board on an "application for a certificate of appropriateness shall be based upon" certain specified evaluations, considerations, and examinations of architectural drawings for consistency with specific criteria. See generally §118-564(a) of the Land Development Regulations of the Miami Beach Code. Specifically, §118-564(a)(3), Miami Beach Code provides the criteria by which the Historic Preservation Board evaluates requests for a Certificate of Appropriateness. The Code mandates¹ the Historic Preservation Board and the Planning Department to "review plans" and the Planning Department is to make "recommendations" to the Historic Preservation Board concerning the criteria. Historic Preservation Board design review regulations, §118-564(a)(3), Miami Beach Code, make the examination of architectural drawings for consistency with applicable criteria mandatory "The Historic Preservation Board and Planning Department... shall review plans based upon the below criteria." §118-564(a)(3), Miami Beach Code.

In its original October 18, 2021 Letter of Intent² (attached hereto), the Applicant repeatedly acknowledges that the plans submitted require multiple variances. The Letter of Intent, according to proposed variances 1 through 4 for the stairs, ramps and related details, admitted that the plans do not comply with §142-247(a), Miami Beach Code, because they were in violation of:

1. the front setback zoning regulations on the west side of the property,
2. the side setback zoning regulations on the south side of the property,
3. the side setback zoning regulations on the north side of the property, and
4. the sum of the side setback zoning regulations.

See pages 4-5 of the October 18, 2021 Letter of Intent.

The Letter of Intent, according to the proposed variances 5 through 10 related to the dune and oceanfront overlay demonstrated and admitted that the existing conditions do not comply with:

5. the dune preservation overlay open space zoning regulations of §142-775(a), Miami Beach Code,
6. the dune preservation overlay zoning regulations limiting the square footage of structures and deck of §142-775(b), Miami Beach Code,
7. the oceanfront bulkhead setback zoning regulations of §142-802(3), Miami Beach Code,
8. the oceanfront open space zoning regulations of §142-807(7), Miami Beach Code,
9. the oceanfront view corridor zoning regulations of §142-802(8), Miami Beach Code, and
10. the rear setback zoning regulations of §142-1132(j), Miami Beach Code.

² The October 18, 2021 letter attached hereto is for the limited purpose of showing what particular variances were requested for which particular plans details, which details were identified by the Applicant to be inconsistent with the zoning code.

See pages 7-8 of the October 18, 2021 Letter of Intent.

The current plans before the Board continue to show the conditions requiring the variances identified as 1 through 4. Additionally, many of the proposed dune preservation overlay variances and the oceanfront bulkhead setback, open space, and view corridor variances were attempts to secure after-the-fact approval of some of the illegal conditions that were not approved through the permitting and variance process and for which no variances have been received in the past. To legitimize the existing conditions described in variances 6 through 10, the Applicant sought Board approval of plans showing existing structures and setbacks not previously approved by the jurisdiction having authority.

Section 118-564(a)(3), Miami Beach Code, Decisions on Certificates of Appropriateness, provides the criteria for Certificate of Appropriateness review, which includes a determination whether the structure complies with the zoning code requirements:

The examination of architectural drawings for consistency with the criteria 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 historic preservation board and planning department shall review plans based upon the below stated criteria and recommendations of the planning department may include, but not be limited to, comments from the building department. The criteria referenced above are as follows:

- 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.

Section 118-564(a)(3)(b), Miami Beach Code. It is undisputed that the proposed structures and existing conditions described by the variances in the October 18, 2021 Letter of Intent would not be in compliance with the requirements of the underlying zoning district to which the Applicant as well as the Sagamore and the Ritz must comply.

The Historic Preservation Board is mandated under §118-564(a)(3), Miami Beach Code, with the responsibility of examining architectural drawings for consistency with the criteria. The plans do not comply with the Code and the HPB criteria and are not compliant with the zoning code regulations.

Further, to avoid scrutiny of the six zoning violations in the dune preservation overlay and the oceanfront bulkhead setback, open space and view corridors, the Applicant is trying to sever the rear half of the site from review by this Board by adding hash lines on a part of the latest Site Plan and providing the caveat "Portion of Rear Yard Not in Scope for this Approval." Compare copies of the original and current Applicant Site Plans, A2.00 attached hereto.

The Code does not authorize the severance or bifurcation of the "[c]omplete site plan" for HPB review of an Application for a Certificate of Appropriateness. The Code requires that an Application for Certificate of Appropriateness "shall include . . . (3) Complete site plan." See Application, §118-562(b)(3), Miami Beach Code. Further, under Site Plan §118-1, Miami Beach Code, "site plans" are defined and that definition specifies what is mandated to be in a Site Plan which "shall show [inter alia] the following:

- (4) boundaries of property involved . . . other existing physical features in . . . the project

* * *

- (8) location and dimensions of proposed lots, setback lines and easements and proposed reservations for . . . open spaces and other common areas,
- (9) location with respect to each other and to lot lines of all proposed buildings and structures.

Site Plan §118-1, Miami Beach Code. The only way that a site plan can be complete is to comply with the definition and include the entire site, its property boundaries, its physical features, the location of setback lines and open spaces, and the location of the building and structures within those boundaries.

Removing a section of the Site Plan from HPB review is contrary to the application requirements for a Certificate of Appropriateness which requires a “complete site plan” for review. Indeed, the removal of those portions of the site plan is contrary to the application requirement for a Certificate of Appropriateness to have a “Complete Site Plan” for review. Should the site plan be incomplete, the Application cannot be reviewed for compliance with the review criteria and the Applicant is not authorized by the Code to unilaterally remove those critical sections from the Site Plan on its whim. Indeed, Sheets A.1.02C and A 1.03B of the plans before the Board demonstrate that the Applicant intends to demolish structures and hardscape in the same area on which the Applicant drew its hash marks on the current Site Plan and in that same area that Applicant unilaterally contends to be in the “Portion of the Rear Yard Not in the Scope for this Approval.” See Site Plan A.2.00.

By purportedly removing portions of the Site Plan from review by this Board, it is removing sections of the plans that the Board is compelled by the Code to review and for the criteria which Board decisions must consider including, but not limited to, §118-56(2)a, b, c, d, f and h and consideration of the architectural drawings including, but not limited

to, §118-56(3)b, c, d, e, d, h, j and m. By removing these portions, the Applicant is also seeking to defer consideration of these issues in these public proceedings and revert to the administrative process to avoid notice to and public scrutiny by the proximate owners of property. Those proximate properties would be adversely impacted by these changes in structures and design, and by these "site improvements". By circumventing the process, due process would be denied to these proximate owners.

Respectfully submitted,

Kent Harrison Robbins

Kent Harrison Robbins
Attorney for EBJ Sagamore, LLC and Di Lido Beach Hotel Corporation

Enclosures

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October 18, 2021

VIA HAND DELIVERY

Chair and Members of the Historic Preservation Board ("HPB")
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

RE: 1685 Collins Avenue – Certificate of Appropriateness for partial demolition and renovation, hardship letter for variances (HPB17-0176)

Dear Mr. Mooney:

Our firm represents Beach Hotel Associates, LLC ("Owner" or "Applicant") the owner of the hotel located at 1685 Collins Avenue (the "Property" or "Hotel"), which is a contributing historic structure in the Ocean Drive/Collins Avenue Historic District and the Miami Beach Architectural District. Although the Hotel was historically known as the "Delano," the current proposed project is not affiliated with the DELANO Brand luxury/lifestyle hotels. The historical 'Delano Hotel' signage is a contributing feature of the building and will be maintained as required by the City of Miami Beach Historic Preservation Board ("HPB").

The Hotel is one of the most storied places in the history of Miami Beach. Originally designed by B. Robert Swartburg and opened in 1948, it achieved international attention as perhaps the most famous of the new genre of boutique hotels when it re-opened in 1995 after a dramatic redesign by Philippe Starck. The owner is currently seeking a substantial investment to upgrade and modernize the Hotel for the first time since 1995 (the "Proposed Project")

The Hotel was one of the first post-World War II hotels in Miami Beach and one of the first hotels to be fully air-conditioned, signaling a change of the Miami Beach economy from a winter-only resort destination to a year-round city. The Hotel also showed a transition in architectural style, from the rectilinear Art Deco to the more inventive elements of Postwar Modern, now known as MiMo (Miami Modern).

Overview of Proposed Project

In general, the Proposed Project will bring back some of the original 1948 features, including terrazzo floors in the lobby and eliminating the front hedge at the western façade. The Proposed Project consists of a contemporary reinterpretation of the original design, which honors and revives original aspects such as the recreation of the dining room in the back of the first floor and the mezzanine. The scope of the Proposed Project includes (but is not limited to):

- **Hurricane impact windows and doors:** Replacement of all windows and doors with hurricane impact glass, to generally match the historic configuration.
- **Façade:** Minor façade modifications including: (1) select demolition of the southern façade for windows at the fourth floor; (2) reconfiguration of the eastern façade including the ground floor porch for outdoor dining and fourth floor addition, as described in further detail below; and (3) the conversion of existing windows to door openings at the front western elevation for ADA access, which are concealed behind existing columns.
- **Ramps for ADA access:** Modifications to the front entry to allow for ADA access, including the proposed variances (nos. 1 through 4) described below. The addition of an ADA-compliant accessible ramp on the south side of the Property provides access to the lobby level of the building from the front of the Property, and the rear of the building to the outdoor dining and terrace. Currently, the ADA accessible route comes into the Property from the north side (17th Street) and enters into the basement level of the building. The new accessible route offers a greatly improved ADA experience and entrance to the Hotel.
- **Lobby:** Complete renovation of the lobby and ground floor amenities, including removal of many of the Starck elements, and introducing new finishes to honor the original design elements of the historic hotel, such as the terrazzo floors. The basement level is also being renovated to contain hotel amenities including a spa, gym and area for back of house.
- **Reconstruction of the Mezzanine:** Section 118-395(b)(3) of the City code permits the HPB to approve the reconstruction of original interior floor plates if, prior to June 4, 1997, such floors were removed, even if the underlying lot is currently nonconforming as to FAR. Demolition plans from the Starck renovation (dated 1995) indicate that the original bridge which crossed the lobby area was removed. See relevant sheets from the 1995 demolition plans enclosed as **Exhibit A**. The Proposed Project will reconstruct the original bridge which crossed the lobby area and the existing southern mezzanine (now mechanical area only), which will be partially repurposed into a public area as originally constructed.
- **First floor rear dining "porch" and open dining terrace:** Reconstruction of the first floor rear historic dining area as a porch, in addition to a new covered terrace with a retractable roof for outdoor dining.
- **Fourth floor rooftop pool, cabanas, hotel amenities and bar:** Creation of hotel amenities on the fourth floor including a pool with cabanas and bar area. This will result in the removal of existing hotel rooms currently on the fourth floor, resulting in a reduction in the number of hotel rooms from 194 to 169 (also resulting from the consolidation of certain rooms).
- **Pool and landscaping:** Modifications to the non-historic pool including rounding the corners on the west side. The existing garden is comprised primarily of exotic plant materials that are being maintained in unnatural forms, oftentimes to the detriment of the plant's health. Our proposed garden scheme will focus on reintroducing regionally appropriate plant material that is suitable for the oceanfront ecosystem unique to the Property. The plants will be carefully selected so that they can mature into their natural forms. Along Collins Avenue, the existing *Ficus benjamina* hedge will be replaced by specimen *Clusia rosea* trees and Florida native palms to create an arrival experience that is teeming with biodiversity. The dramatic allee of *Washingtonia robusta* palms on the east side of the hotel will be preserved as best possible. In an instance where a *Washingtonia robusta* is

slated to be relocated, it will be moved to a location that will maintain the integrity of the alley. At the easternmost end of the garden, the native dune system will appear to spill over into our property, creating a seamless transition between the public and private spaces.

- **Rear bar and Kitchen:** The existing rear bar and kitchen will be reconfigured, and the existing conditions will be brought into greater compliance with the Dune and Oceanfront overlay regulations. A retractable roof will be added to cover the seating area in the Oceanfront overlay. See below for additional details regarding the variances for the Dune and Oceanfront overlays.
- **Bungalows:** Minor modifications to the elevation, interior and exterior of the bungalows.
- **Signage:** The historic sign on the spire will be maintained. In addition, the historic pylon sign at front entry will be reconstructed (with updated copy), pursuant to Section 138-55(b)(2) of the City Code.

Sea Level Rise Criteria

In order to ensure that the Project is resilient in light of the effects of sea level rise, the sea level rise and resiliency review criteria from Section 133-50 of the LDRs is addressed below:

1. A recycling or salvage plan for partial or total demolition shall be provided.

A recycling plan will be provided as part of the submittal for a demolition permit to the building department. It is planned to reuse as much of the material as possible.

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

All windows in the renovated building will be replaced with hurricane proof impact windows.

3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

Single hung windows will be provided in all hotel guestrooms.

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.

All new landscaping will consist of Florida friendly plants.

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.

The existing lobby level of the historic hotel is situated at over 13' NGVD, which is above the base flood elevation of 8' NGVD; the basement is approximately 3' NGVD but the structure cannot be raised due to its historical designation. All mechanical systems will be removed from the basement and relocated above base flood elevation.

6. **The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-way 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 additional feet in height.**

Collins Avenue shows an elevation of approximately 4.8 in front of the Property; the driveway ramps up to approximately 8' NGVD, which will be above the anticipated future roadway elevations.

7. **As applicable to all new construction, all critical mechanical and electrical systems shall be located above base flood elevation. All redevelopment projects shall, whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood elevation.**

All critical mechanical and electrical systems will be located above base flood elevation and on roofs when available.

8. **Existing buildings shall, wherever reasonably feasible and economically appropriate, be elevated up to base flood elevation, plus City of Miami Beach Freeboard.**

The first floor elevation of the Hotel is currently at approximately 13.23' NGVD, which is 5.23' above base flood elevation (8.0'). Therefore the existing first floor/lobby level meets the base flood elevation, plus City of Miami Beach freeboard.

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.**

If required, the building will provide dry flood proofing systems for the habitable spaces located below the base flood elevation.

10. **As applicable to all new construction, stormwater retention systems shall be provided.**

The site is currently built-out. There are insufficient open spaces to incorporate water retention systems. Therefore such a system is not feasible at this time.

11. **Cool pavement materials or porous pavement materials shall be utilized.**

Cool pavement materials will be utilized.

12. **The design of each project shall minimize the potential for heat island effects on-site.**

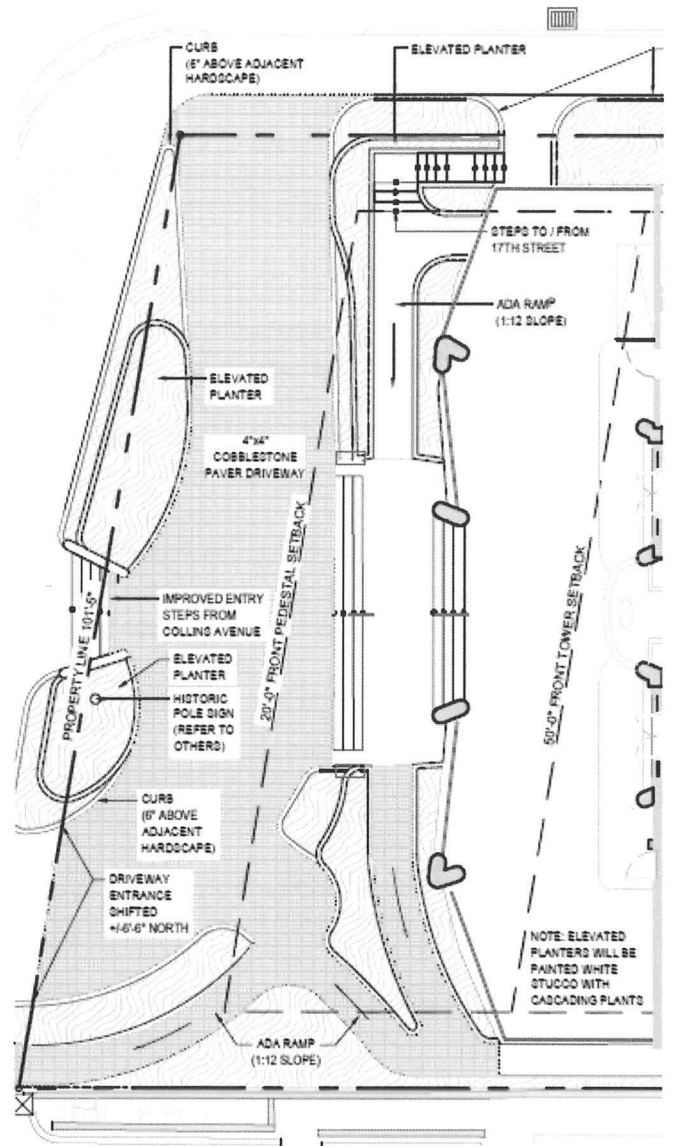
Hardscape areas will be limited. Landscaped areas will be planted with green lawns, bushes and trees for shade.

Setback Variances related to ADA-accessible ramps

The Proposed Project requires the approval of four (4) variances that are directly attributable to the addition of an ADA-accessible ramp to the front of the Property. The variances requested are as follows:

1. **Front setback (west):** A variance to waive 20' of the required pedestal front side (west) yard setback of 20' in order to build a new ADA-accessible ramp with railings for a proposal of 0' setback (Sec. 142-247(a)).
2. **Side setback (south):** A variance to waive 8'1" of the required pedestal interior side (south) yard setback of 8'1" in order to build a new ADA-accessible ramp with railings for a proposal of 0' setback (Sec. 142-247(a)).¹
3. **Side setback (north):** A variance to waive 8'1" of the required pedestal side (facing a street, north) yard setback of 8'1" in order to rebuild the stairs for a proposal of 0' setback, in order to maintain pedestrian access to 17th Street (Sec. 142-247(a)).² Currently there is a pedestrian ramp connecting 17th Street to a set of stairs, which leads to the terrace of the main lobby. To accommodate the above mentioned ADA-accessible ramp, the proposed ramp will require the removal of the existing stairs (due to the new slope) and replacement with the proposed stairs as shown in the north setback area for continuity of pedestrian access to 17th Street.
4. **Sum of side setback:** A variance to waive 16'2" of the required pedestal sum of the side yard setbacks of 16'2" in order to build a new ADA-accessible ramp with railings with a 0' setback along the southern property line and maintain a stair case and connectivity to 17th Street with a 0' setback along the

northern property line (Sec. 142-247(a)).³



¹ Grade is 3.72' NVGD. Lot width is 101'5" so required pedestal side yard is 8% of lot width = approximately 8'1"

² Grade is 3.72' NVGD. Lot width is 101'5" so required pedestal side yard is 8% of lot width = approximately 8'1"

³ Lot width is 101.41' so required pedestal sum of the side yards is 16% of lot width = approximately 16'2".

The above variances will be collectively referenced as the "ADA Setback Variances." The City Code establishes seven (7) individual criteria by which requests for variances are evaluated by the HPB. These criteria are listed below in bold and underline text, with our response following each criterion in plain text.

The City Charter, Subpart B, Article I, Sec. 2 also states, "*Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of said Zoning Ordinance, the Board of Adjustment shall have the power in passing upon appeals, to vary or modify any regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done.*"

We believe our responses below will demonstrate that there are both practical difficulties and unnecessary hardships associated with our request for the Setback Variances.

(1) 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;

The ADA Setback Variances are related to the addition of a handicapped-accessible ramp on the west and south side of the building. Currently the only accessible route into the Hotel is from entering the Property on the north side and going into the basement level of the building and then up into the lobby level through an elevator.

The ADA encourages the main accessible route to be generally equivalent in stature and treatment to the main non-accessible route and the current route through the basement does not achieve that goal. Building a ramp on the west and south side of the building provides a route from the front of the Property along Collins directly into the lobby of the Hotel through the proposed new doors at the entrance.

(2) The special conditions and circumstances do not result from the action of the applicant;

The Owner is proposing to bring the site more into conformance with the ADA guidelines and while the ADA ramp itself is exempt from setback regulations the railings are not.

Currently there is a pedestrian ramp connecting 17th Street to a set of stairs, which leads to the terrace of the main lobby. To accommodate the above mentioned ADA-accessible ramp, the proposed ramp will require the removal of the existing stairs (due to the new slope) and replacement with the proposed stairs as shown in the north setback area for continuity of pedestrian access to 17th Street. A north side setback variance is proposed, in order to maintain pedestrian access at 17th Street and accommodate the new ramp. The unique configuration of adding ADA access to the historic property, and modifications to accommodate such, does not result from the action of the Applicant.

(3) Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;

Granting the ADA Setback Variances is unique to the ADA accessible route proposed for this historic Property, and maintaining safe connectivity to pedestrians along 17th Street.

(4) Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;

The literal interpretation of the setback requirements would work unnecessary and undue hardship on the Owner because the Owner is trying to upgrade the ADA accessible route in accordance with ADA guidelines, and also maintain a safe pedestrian experience.

(5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

There is just enough room on the south side of the Property to install the ADA ramp so the ADA Setback Variances would be the minimum variances necessary. The slope and angle of the ADA ramp create the need for the additional north side setback variance, to rebuild the stairs and maintain connectivity and pedestrian access at 17th Street.

(6) The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

The requested ADA Setback Variances would be in harmony with the land development regulations because it would allow for the proper and equal treatment of the ADA route.

(7) 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.

Granting the Setback Variances would be consistent with the comprehensive plan and it does not reduce levels of service as set forth in the comprehensive plan.

Setback Variances related to the Dune and Oceanfront Overlay

The Proposed Project requires the approval of two (2) variances from the Dune Preservation Overlay ("Dune") regulations and three (3) variances from the Oceanfront Overlay ("Oceanfront") regulations, and one (1) variance from Section 142-1132(j) (collectively referenced as the "Rear, Dune and Oceanfront Overlay Variances"). The variances requested are summarized as follows:

5. **Dune Open Space:** Section 142-775(a) requires at least 80% of the Dune overlay area to remain open to the sky, landscaped or maintained as sand beach. Currently the existing landscaped area open to the sky within the Dune overlay area is approximately 22%; the proposed landscaped area open to the sky within the Dune overlay area is approximately 55%. Although

the modifications are a significant improvement, the proposal still requires a variances to waive an addition 25% of the Dune Preservation open space.

6. **Dune Deck requirement:** Section 142-775(b) requires individual structures/decks within the Dune area to be less than 400 square feet in floor area; however there is 1,011 square feet of deck within the Dune Preservation Overlay, therefore requiring a variance to waive 611' of additional contiguous deck area in the Dune Preservation Overlay.
7. **Oceanfront Bulkhead Setback:** Section 142-802(3) requires that there be a minimum required 10-foot setback from the bulkhead line. The wood deck is located 0' from the bulkhead setback line; therefore, a variance to waive 10' of the required setback is required.
8. **Oceanfront Open Space:** Section 142-802(7) requires that 50% of the rear yard be open to the sky and landscaped. Currently, the existing landscaped area open to the sky within the Oceanfront overlay area is approximately 10%; the proposed landscaped area open to the sky is approximately 22%. Although modifications are a significant improvement, the proposal still requires a variance to waive an additional 28% of the Oceanfront Open Space.
9. **Oceanfront View Corridor:** Section 142-802(8) requires a view corridor (by maintaining a minimum of 50% of the required rear yard setback open and unencumbered, apart from landscaping and decorative open picket type fences from the erosion control line to the rear setback line). Currently, the view corridor would be considered 0%; the proposed view corridor is approximately 13%. Although modifications significantly improve the existing conditions, the proposal still requires a variance to waive an additional 37% of the Oceanfront view corridor requirement.
10. **Thirty Percent Rear Setback Variance:** Section 142-1132(j) indicates that Hot tubs, showers, whirlpools, toilet facilities, decks and cabanas may be constructed in a required rear yard, provided such structures do not occupy more than 30 percent of the area of the required rear yard. Here the proposed deck and structure area is 39%, therefore requiring a variance to waive an additional 9% of the Thirty Percent Rear Setback Variance.

The City Code establishes seven (7) individual criteria by which requests for variances are evaluated by the HPB. These criteria are listed below in bold and underline text, with our response following each criterion in plain text.

The City Charter, Subpart B, Article I, Sec. 2 also states, "Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of said Zoning Ordinance, the Board of Adjustment shall have the power in passing upon appeals, to vary or modify any regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done."

We believe our responses below will demonstrate that there are both practical difficulties and unnecessary hardships associated with our request for the Rear, Dune and Oceanfront Overlay Variances (variances no. 5 through 10).

(1) 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;

The improvements which require the Rear, Dune and Oceanfront Overlay Variances are consistent in scope and scale with other oceanfront properties in the same zoning district (RM-3). When viewed from the City's boardwalk and when experienced from within the Property, there is a sense of continuity and good design between these oceanfront properties and no sense that the improvements stand apart and do not comply with the RM-3 zoning regulations. The special conditions of the Property containing a contributing historic structure that pushes the pool amenities closer towards the bulkhead line and into the Oceanfront Overlay Zone does not allow the Property to have normal amenity improvements without the need for the Variances.

(2) The special conditions and circumstances do not result from the action of the applicant;

As mentioned above, the Property was improved consistent with pool, deck, and similar improvements of other oceanfront properties in the RM-3 zoning district. The proposed modifications will bring the Rear, Dune and Oceanfront criteria into greater compliance than the existing conditions, which were not the result of the Applicant.

Further, there are existing public showers right outside of the Property, along the public Boardwalk, which currently attract loiterers. The current conditions in the rear of the Property isolate the Hotel from the Boardwalk. The proposed modifications will activate and connect the Property to the Boardwalk, resulting in better connectivity to the public and will greatly improve that portion of the public Boardwalk.

(3) Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;

There are many other oceanfront properties in the RM-3 district that have nonconforming improvements in the Rear, Dune Preservation and Oceanfront Overlay Zones (including decks and other similar improvements), and thus granting the Variances will not confer any special privileges to the Applicant. The Applicant is complying with the spirit of the City's Code by bringing many of the existing elements into greater conformity with the Code .

(4) Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;

The improvements in the rear of the Property are consistent with standards of modern luxury oceanfront hotels, and consistent with surrounding oceanfront properties in the RM-3 district. These improvements have been in existence for many years (without complaints from the public). To retroactively apply the zoning standards would be an undue hardship on the Applicant and deprive the Applicant of rights commonly enjoyed by other similarly situated properties. Currently the conditions in

the rear of the Property completely close off the public Boardwalk to the Property; the proposed modifications would activate the Property from the Boardwalk for a better pedestrian experience.

(5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

As depicted in the enclosed plans and compared to the development pattern of the historic Property, the Rear, Dune and Oceanfront Overlay Variances will generally bring the Property more into compliance with City's code. For example, the Oceanfront and Dune open space requirements will be greatly enhanced compared to the existing conditions.

The existing bungalow building on the north side and the resulting very narrow width of the pool area necessitate the Variances sought. Full compliance with the current regulations is below the standard for modern luxury oceanfront hotels and condominiums, and below what other similarly scaled oceanfront RM-3 properties owners are able to enjoy.

(6) The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

Approval of the Rear, Dune and Oceanfront Overlay Variances will not be injurious or detrimental to the area or public welfare. As stated, the improvements addressed herein have been in existence for years. The Applicant is drastically reducing the degree of nonconformity with the Dune and Oceanfront Overlay requirements. For example, the existing (and historical) open space within the Dune overlay area is approximately 22%; the proposed open space within the Dune overlay area is approximately 55% (an increase of 150%). Similarly, the existing (and historical) open space within the Oceanfront area is approximately 10%; the proposed open space is approximately 22% (an increase of 120%).

Finally, there will be a public benefit by increasing connectivity and openness to the Boardwalk for a better pedestrian experience.

(7) 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.

Granting this request would be consistent with the comprehensive plan and it does not reduce levels of service as set forth in the comprehensive plan.

For all of the reasons as stated herein, we respectfully request the Historic Preservation Board's favorable review of the Proposed Project.

Sincerely,

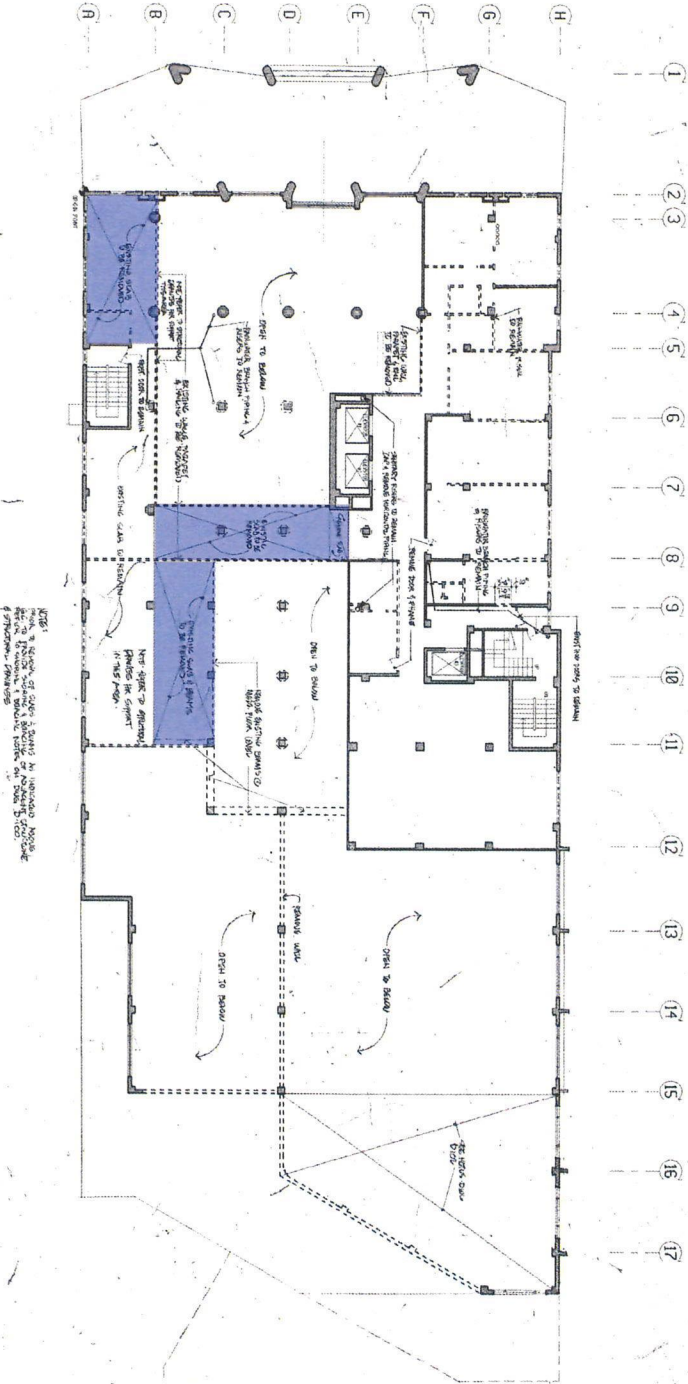
AKERMAN, LLP


Neisen O. Kasdin

"Exhibit A"



Historic Interior Floor Area that was demolished in 1995 that will be reconstructed in accordance with Section 118-395(b)(3) of the City Code.



RECORDED
FILE # 11 800
DATE 11/11/01

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1665 HOTEL

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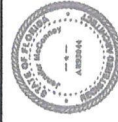
REVISIONS

1665 HOTEL
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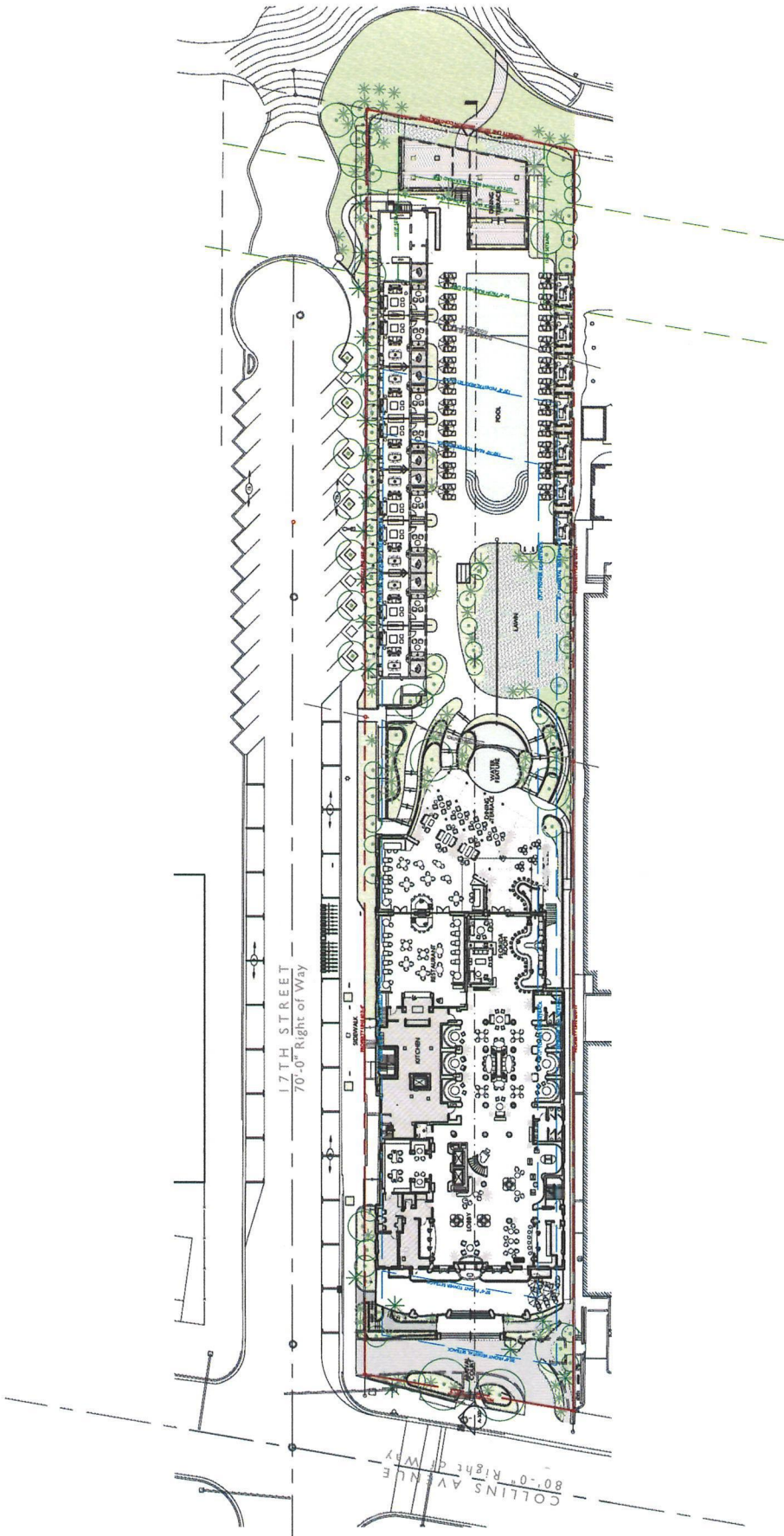
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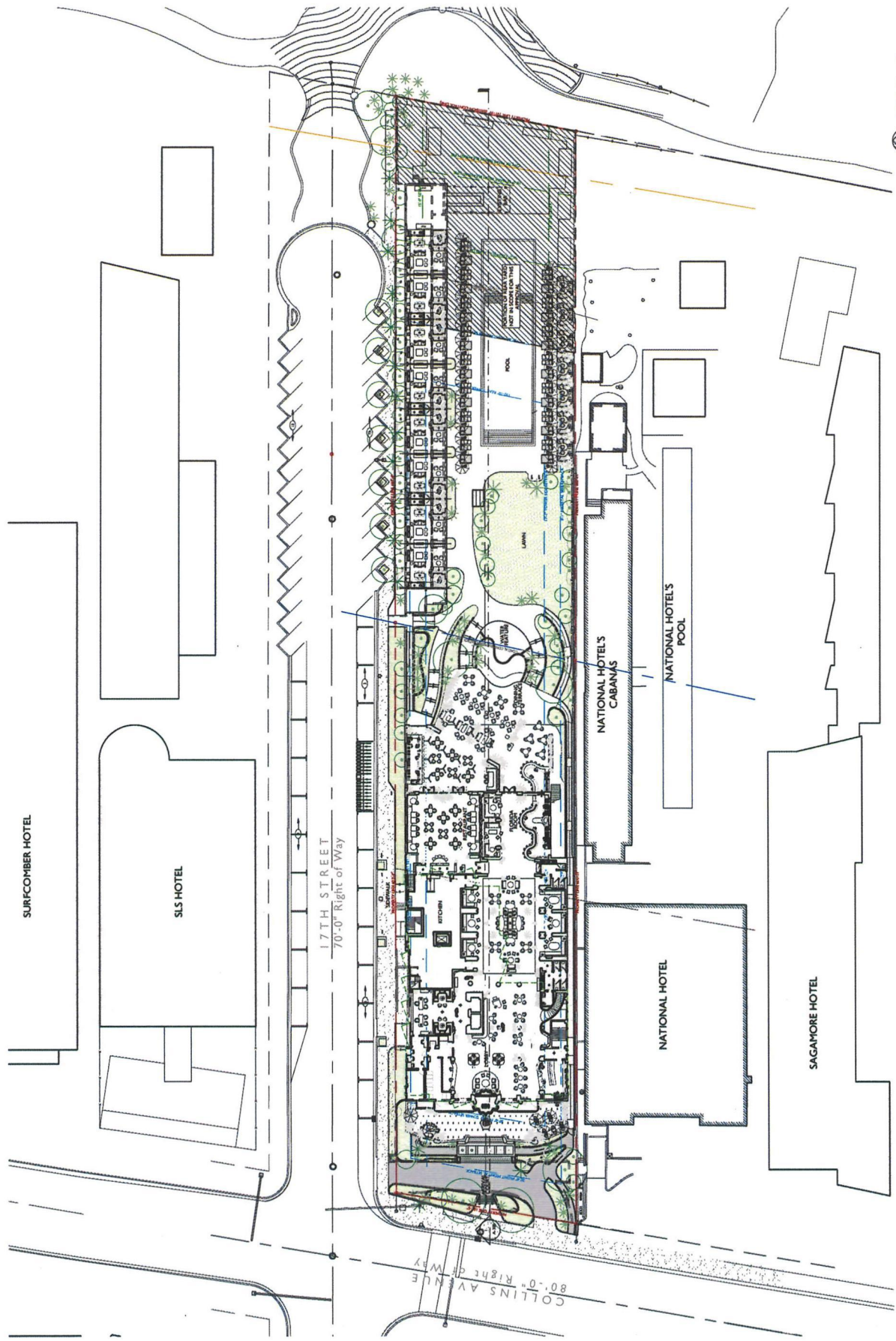
Delano Hotel
1665 Collins Avenue
Miami Beach, Florida

- STARCK**
3101 ST. LA ROQUE
1665 HOTEL
1665 HOTEL
1665 HOTEL
- PM Architects**
1665 HOTEL
1665 HOTEL
1665 HOTEL
- BEHLSON ARCHITECT PA**
1665 HOTEL
1665 HOTEL
1665 HOTEL
- SILVER PELLER P.C. INC.**
1665 HOTEL
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1665 HOTEL
- RIVA, KLEIN & TILANDS**
1665 HOTEL
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- COASTAL TECH**
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- MARIA SCHWARTZ, INC.**
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- LANDSCAPE ARCHITECT**
1665 HOTEL
1665 HOTEL
1665 HOTEL
- 1665 HOTEL CORPORATION**
1665 HOTEL
1665 HOTEL
1665 HOTEL
- OWNER**
1665 HOTEL
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1665 HOTEL



REGISTERED LANDSCAPE ARCHITECT - FLORIDA, LICENSE NO. 15024
SHAMSHIRI JUNGLES, INC.
1685 COLLINS AVENUE, SUITE 102
PALM BEACH, FLORIDA 33480
TEL: 561-833-1111 FAX: 561-833-1112
WWW.SHAMSHIRIJUNGLES.COM
SCALE: 1/8" = 1'-0"
CHECK: JMG
DATE: 08/20/20





Ⓢ SITE PLAN 1:50