

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: April 12, 2022

FROM: Thomas R. Mooney, AICP  
Planning Director

SUBJECT: HPB22-0506 a.k.a. HPB21-0457, **1 Lincoln Road and 1671 Collins Avenue – The Ritz-Carlton and Sagamore hotels.**

An application has been filed requesting a rehearing of the December 13, 2021, decision of the Historic Preservation Board wherein it denied without prejudice a Certificate of Appropriateness for the partial demolition and renovation of two buildings on the site, the total demolition of one building, the construction of an attached ground level addition at the northeast corner of the site and the construction of an attached addition and modifications to the rear yard site plan. If the request for a rehearing is granted, the matter may be heard immediately.

### **RECOMMENDATION**

Denial of the Petition for Rehearing

### **EXISTING STRUCTURES**

Legal Description:

#### **Parcel 1 (1 Lincoln Road)**

Lots 1 thru 4, Lot 17 & South ½ of Lots 5 & 16, Block 29 and a strip of land described in DB 3781-543 and Lots 18-19 & 20, Block 29 and a portion of land being a part of the platted Lincoln Road right-of-way, according to the plat thereof recorded in Plat Book 2, Page 77 of the public records of Miami Dade County, Florida.

#### **Parcel 2 (1671 Collins Avenue)**

Lot 6 and Lot 15 and the north 25 feet of lot 5 and lot 16, Block 29 of Fisher's First Subdivision of Alton Beach, According to the Plat Thereof, as Recorded in Plat Book 2, Page 77, of the Public Records of Miami-Dade County, Florida, together with a portion of the 30 foot wide right-of-way as shown on said Fisher's First Subdivision of Alton Beach, According to the Plat Thereof, as Recorded in Plat Book 2, Page 77, of the Public Records of Miami-Dade County, Florida.

Local Historic District:

Ocean Drive/Collins Avenue

### **1 Lincoln Road (Ritz-Carlton Hotel)**

Classification: Contributing  
Construction Date: 1953  
Architect: Melvin Grossman & Morris Lapidus

### **1 Lincoln Road (Retail & Office Building)**

Classification: Contributing  
Construction Date: 1949  
Architect: Igor Polevitsky

### **1671 Collins Avenue (Sagamore Hotel)**

Classification: Contributing  
Construction Date: 1948  
Architect: Albert Anis

## **STATEMENT OF FACTS**

The subject of the Petition for Rehearing, filed by Di Lido Beach Hotel Corp., EBJ Sagamore LLC, Lionstone Di Lido Retail Lessor LLC, Di Lido Beach Resort LLC, and Sobe Sky Development LLC ("Petitioners"), is the Historic Preservation Board's ("HPB" or "Board") decision, dated December 13, 2021, to deny, without prejudice, a Certificate of Appropriateness for improvements to properties located at 1 Lincoln Road (The Ritz-Carlton Hotel) and 1671 Collins Avenue (The Sagamore Hotel), including the partial demolition and renovation of two buildings on the site, the total demolition of one building, the construction of an attached ground level addition at the northeast corner of the site and the construction of an attached addition and modifications to the rear yard site plan (HPB21-0457) (the "Application"). The Application was filed by Di Lido Beach Hotel Corp., EBJ Sagamore LLC and Lionstone Di Lido Retail Lessor LLC (the "Applicants"). The Board's denial without prejudice was memorialized in the Order rendered on January 24, 2022.

Subsequently, the Petitioners filed a petition for rehearing of the December 13, 2021 HPB denial (the "Petition"). The Petition raises several arguments, none of which establish a basis under the narrow scope of the Code for the HPB to grant a rehearing. Petitioners have both failed to identify "newly discovered evidence which is likely to be relevant to the decision of the board," and failed to articulate that the HPB has "overlooked or failed to consider something which renders the decision issued erroneous." See City Code Section 118-9(a)(2)(C). Accordingly, the Planning Director respectfully requests that the HPB deny the Petition.

## **PARTIES ELIGIBLE TO REQUEST A REHEARING**

Pursuant to City Code Section 118-9(a)(2), a petition for rehearing of a decision of the Historic Preservation Board may be filed by the original applicant, the City Manager, an affected person, the Miami Design Preservation League, or the Dade Heritage Trust. For purposes of this section, "affected person" shall mean either "a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project." In this case, the Petitioners are the original applicants, and are therefore eligible to request a rehearing.

## **STANDARD OF REVIEW**

In order to be granted by the Board, a petition for rehearing must demonstrate the following: "(i) [n]ewly discovered evidence which is likely to be relevant to the decision of the board, or (ii) [t]he

board has overlooked or failed to consider something which renders the decision issued erroneous.” City Code Section 118-9(a)(2)(C).

**ARGUMENT**

For the reasons set forth below, Petitioners have failed to establish, pursuant to City Code Section 118-9(a)(2)(C), that they are entitled to a rehearing of the December 13, 2021 HPB denial without prejudice.

**A. The Board did not overlook or fail to consider applicable zoning regulations when it denied the Application.**

**1. The Staff Report properly analyzed the Project as a unified development site.**

Petitioners assert that a rehearing is warranted because the HPB relied on “mischaracterizations” by representatives of the Delano and National hotels, of the City’s zoning regulations, as a reason for denying the application. However, a close examination of the staff report would reveal that the Board was provided with competent substantial evidence that the application was consistent with the City’s Land Development Regulations including staff’s analysis of the project as a unified development site. Below is an excerpt from the Staff Report & Recommendation dated December 13, 2021 which clearly identifies that two lots (1 Lincoln Rd and 1671 Collins Avenue) will be combined as one development site:

Zoning:	RM-3, Residential Multi-family, high intensity
Future Land Use Designation:	RM-3, Residential Multi-family, high intensity
Lot Size (1 Lincoln Rd):	163,813 S.F. / 3.00 Max FAR Hotel Amenity Additional FAR 20,000 S.F.
Lot Size (1671 Collins Av):	44,848 S.F. / 2.00 Max FAR
Maximum FAR (1 Lincoln Rd):	511,439 S.F.
Maximum FAR (1671 Collins Av):	89,696 S.F.
Maximum Aggregate FAR:	601,135 S.F.
Existing FAR (1 Lincoln Rd):	417,874 S.F.
Existing FAR (1671 Collins Av):	62,548 S.F.
Proposed Aggregate FAR:	601,135 S.F.
Existing Height	Not provided
Proposed Height:	200’-0”
Existing Use:	Hotel
Proposed Use:	Hotel & multi-family residential

The transcript of the HPB proceedings, including testimony by the Planning Director, clearly demonstrates that the HPB was properly informed of the unified development site regulations. And the Board members clearly understood that the Applicants proposed a unified development site.

**2. The HPB understood that the Code permits the Applicants to construct a 200-foot residential tower.**

Petitioners assert that a rehearing is warranted because the HPB did not properly consider the project in accordance with the 2019 Code Amendment allowing for a maximum height of up to 200'-0" for ground level additions. However, a close examination of the application and staff report would reveal that the Board was provided with competent substantial evidence that the application was consistent with the City's Land Development Regulations including the maximum allowable height for a ground level addition on the subject unified development site. The Staff Report clearly indicated that a height of 200'-0" was proposed for the new 16-story residential tower at the northeast corner of the site. Staff analyzed the design of the tower and, notably, recommended in favor of its approval. Additionally, the HPB understood that the proposed height is permitted under the Code. One Board member recognized, "I think the answer to why 200 feet is pretty easy. It's because that's what's allowed and that's why we see this." The Petitioners have not provided any evidence that the HPB failed to review the project in accordance with the allowable height regulations.

**3. The HPB was properly apprised of the Applicants' use of additional FAR for hotel amenities, which is expressly permitted under the RM-3 district regulations.**

Petitioners assert that a rehearing is warranted because the HPB relied on the "misleading" testimony of representatives of the Delano Hotel regarding the use of additional FAR for hotel amenities. There is no evidence to support Petitioners' contention that the HPB overlooked or failed to consider the additional FAR permitted under the RM-3 district regulations for hotel amenities. The record clearly demonstrates that the HPB understood it has no jurisdiction over the calculation of a project's FAR, which is within the sole purview of the Planning Director.

**4. The HPB did not improperly consider the project's parking and loading requirements.**

Petitioners assert that the HPB "improperly considered" the Decoplage Condominium's "parking and loading complaints as grounds for denial." Petitioners' argument exceeds the scope of a petition for rehearing under the Code. Petitioners fail to allege a parking or loading issue that was overlooked by the Board. Notwithstanding, there is no evidence to suggest the HPB improperly relied on Decoplage's testimony regarding these matters. Staff clearly stated on the record that the project complied with all applicable parking and loading requirements in the City Code, as quoted in the Applicants' Petition for Rehearing.

**B. The Board did not improperly rely on the images presented by the Delano.**

Petitioners assert that a rehearing is warranted because the HPB relied on "misleading and inaccurate" images presented by representatives of the Delano Hotel. Again, Petitioners' argument exceeds the scope of a petition for rehearing. However, there is no evidence to suggest that the HPB relied on these images during its deliberations. The record clearly demonstrates that the HPB based its decision on the project's inconsistencies with the Certificate of Appropriateness criteria.

**C. The Board did not overlook or fail to consider relevant information regarding Mr. Advakov's testimony.**

Petitioners assert that a rehearing is warranted because “the Board improperly rejected evidence to challenge the credibility of Mr. Advakov,” who appeared as an opposition expert. Petitioners argue they were unable to question Mr. Advakov regarding his opinion in support of a separate project, as part of the Shore Club redevelopment, which is pending review by the HPB. However, counsel for Petitioners was in fact able to lodge his objections on the record:

[MR. GONZALEZ:] Now there – you saw comments about other projects in the area. Yes, the Raleigh this Board approved last year, it was an approved project, and referenced to the Shore Club. . . . [O]ur footprint is 45 percent smaller than the Raleigh, what was approved for the Raleigh last year, it's a much smaller tower, and what's being proposed by the Shore Club from the submittals is over –

MR. FINGLASS: We're not talking about the Shore Club. That's not –

MR. GONZALEZ: I understand, but Paul Savage provided rebuttal – opposition documents dealing with the Shore Club, so he opened the door; otherwise, I would not have brought it up.

MR. FINGLASS: That's not before us.

MR. GONZALEZ: I understand. But since you have one part of the record, I want to be clear on the rest.

But I also want to – for the record, you heard from the so-called expert Steven Advakov who provided reports for both the National and Delano and sat here and said how inappropriate it is to propose a 200 foot tower behind a 154 foot Ritz-Carlton and a 7-story Sagamore, but at the same time he's providing reports that it's appropriate to – to build a 200 foot tower, substantially larger than we're proposing, behind the 3-story Shore Club, and I just want the record to be clear.

See Transcript of December 13, 2021 HPB proceedings, 110:18-111:24.

Petitioners also argue that “Mr. Advakov is a hired gun.” However, Mr. Advakov's opinion regarding a completely separate project is not relevant to the Board's decision on **this** application. Staff can only assume that a paid consultant's analysis of each project is made on a case-by-case basis, just like the analysis of any other architect, attorney, engineer, or other representative appearing on behalf of an applicant. There is no evidence to suggest that the Board overlooked or failed to consider anything with regard to Mr. Advakov's testimony that would have made the Board's decision erroneous.

**D. The Board did not overlook the Staff Report.**

Petitioners assert that a rehearing is warranted because the HPB relied on “misstatements of law” by the National challenging the sufficiency of the Staff Report. The City agrees that the Planning Department's Staff Report, and the testimony of the City's professional staff, constitute competent substantial evidence. However, Petitioners fail to point to any evidence that the Board overlooked

or failed to consider the City's Staff Report. The record clearly demonstrates that the HPB lawfully based its decision on the Certificate of Appropriateness criteria.

**E. The Petitioners have not pointed to any newly discovered evidence that is likely to be relevant to the Board's decision.**

**1. New shade studies for the National and the Delano.**

There is no evidence to support that the HPB would have made a different decision if additional shade studies were presented by the Applicants. The record clearly demonstrates that the HPB based its decision on the Certificate of Appropriateness criteria. Moreover, newly commissioned shade studies are *not* "newly discovered evidence."

**2. The view of the Petitioners' site from the beach.**

There is no evidence to support that the HPB would have made a different decision if additional photographic documentation had been presented relative to the historical significance of the eastern portion of the property. The record clearly demonstrates that the HPB based its decision on the Certificate of Appropriateness criteria.

**3. The Delano's withdrawal of its request for a code interpretation.**

There is no evidence to support that the HPB would have made a different decision if it had known that the Delano Hotel would withdraw its request for an administrative interpretation from the Planning Director. The record clearly demonstrates that the HPB understood it has no jurisdiction with regard to zoning interpretations—such as a project's FAR calculations or the City's unified development regulations. As the City advised the HPB at the hearing, the Project's zoning issues, including FAR, are outside the Board's review for a Certificate of Appropriateness, and therefore not relevant to the Board's decision.

**4. The Applicants' new request for a code interpretation.**

There is no evidence to support that the HPB would have made a different decision if it had known that the Petitioners would file a new request for an administrative interpretation from the Planning Director. The record clearly demonstrates that the HPB understood it has no jurisdiction with regard to zoning interpretations of the Planning Director. This particular request, which relates to the project's FAR calculations, is outside the scope of the HPB's review. Moreover, the record indicates that this matter did not influence the HPB's decision-making process.

**CONCLUSION**

In summary, Petitioners fail to establish, as a matter of law, how the HPB overlooked or failed to consider any evidence which would render its decision erroneous. Further, the Petitioners fail to identify newly discovered evidence which is likely to be relevant to the decision of the board. Accordingly, no basis for a rehearing has been provided.

In view of the foregoing analysis, the Planning Director recommends that the petition for rehearing of the subject application be **DENIED**.

**HISTORIC PRESERVATION BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: April 12, 2022

PROPERTY/FOLIO: 1 Lincoln Road / 02-3234-123-0001  
1671 Collins Avenue / 02-3234-019-0530

FILE NO: HPB22-0506 a.k.a. HPB21-0457

IN RE: An application has been filed by Di Lido Beach Hotel Corp., EBJ Sagamore LLC, Lionstone Di Lido Retail Lessor LLC, Di Lido Beach Resort LLC, and Sobe Sky Development LLC requesting a re-hearing of the December 13, 2021, decision of the Historic Preservation Board wherein it denied without prejudice a Certificate of Appropriateness for the partial demolition and renovation of two buildings on the site, the total demolition of one building, the construction of an attached ground level addition at the northeast corner of the site and the construction of an attached addition and modifications to the rear yard site plan. If the request for a re-hearing is granted, the matter may be heard immediately.

LEGAL: Parcel 1 (1 Lincoln Road)  
Lots 1 thru 4, Lot 17 & South ½ of Lots 5 & 16, Block 29 and a strip of land described in DB 3781-543 and Lots 18-19 & 20, Block 29 and a portion of land being a being a part of the platted Lincoln Road right-of-way, according to the plat thereof recorded in Plat Book 2, Page 77 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:

The petition submitted by the re-hearing applicants Di Lido Beach Hotel Corp., EBJ Sagamore LLC, Lionstone Di Lido Retail Lessor LLC, Di Lido Beach Resort LLC, and Sobe Sky Development LLC, inclusive of all exhibits and testimony, fails to establish that the standard for the granting of a re-hearing has been satisfied for the Historic Preservation Board's denial without prejudice, dated December 13, 2021, of a Certificate of Appropriateness.

Following argument of the parties, the Historic Preservation Board determined that the petition for rehearing failed to demonstrate, pursuant to City Code Section 118-9(a)(2)(C), “(i) [n]ewly discovered evidence which is likely to be relevant to the decision of the board, or (ii) [t]he board has overlooked or failed to consider something which renders the decision issued erroneous.”

IT IS HEREBY ORDERED, based upon the foregoing finding 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 recommendation, that the subject Petition for Rehearing is **DENIED**.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

HISTORIC PRESERVATION BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
DEBORAH TACKETT  
HISTORIC PRESERVATION & ARCHITECTURE OFFICER  
FOR THE CHAIR

STATE OF FLORIDA            )  
  )SS  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by Deborah Tackett, Historic Preservation & Architecture Officer, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.

\_\_\_\_\_  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: \_\_\_\_\_

Approved As To Form:  
City Attorney’s Office: \_\_\_\_\_ (                    ) )

Filed with the Clerk of the Historic Preservation Board on \_\_\_\_\_ (                    ) )