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Historic Preservation Board
City of Miami Beach
1700 Convention Center Drive
Miami Beach Florida 33139

**RE: Ocean Terrace – Certificate of Appropriateness
Accessory Outdoor Bar Counter within Approved Park Project
File No. HPB22-0517**

Chair and Members of the Board:

Our firm represents Ocean Terrace Holdings, LLC, OTH Streetscape, LLC, and their affiliates (collectively, “**Owner**”), the owner of several parcels of land located on the block along Ocean Terrace, Collins Avenue, 74th Street, and 75th Street (the “**Property**”). On September 27, 2021, through Order HPB19-0361 (the “**Prior Order**”), this Board approved the construction of an approximately \$14.8 million public park and related streetscape improvements, including a raised pavilion/café, within the vacated rights of way of Ocean Terrace and portions of 73rd, 74th, and 75th Streets between Ocean Terrace and Collins Avenue (the “**Park Project**”). Consistent with the Prior Order and with the Development Agreement between Owner and City for the Park Project, Owner hereby submits a Certificate of Appropriateness (“**COA**”) application for approval of a proposed accessory outdoor bar counter within the approved raised pavilion/café, including a variance to prospectively allow more reasonable hours of operations (the “**Proposed Project**”).

Approved Park Project

The Park Project’s approval in September 2021, culminated a years-long effort by the City, the Owner, area residents, and other stakeholders to revitalize North Beach consistent with the Ocean Terrace Neighborhood Design Plan. The approved Park Project will deliver a substantial public benefit to area residents and the City at large, will be a key destination in North Beach, and will link with existing greenspaces and parks to the north and south along the Beachwalk. The Park Project includes open public spaces with retail and dining areas that will integrate seamlessly into lush plantings inspired by native dune vegetation. Evoking timeless elegance through material and planting selections, the Park Project seamlessly melds with the surrounding historic architecture of North Beach, harmonizing the native dune ecology with the built environment.

Part of the Park Project includes a raised pavilion/café, to be located east of the Broadmoor Hotel property. The pavilion/café was specifically negotiated in the Development Agreement and is expressly allowed pursuant to Section 26.4 of the Development Agreement, subject to HPB approval, as indicated below:

26.4 Raised Pavilion/Café. Developer shall have the right to construct and operate a raised pavilion/café within the Park/Streetscape Site, generally consistent with the sidewalk café permit requirements as set forth in Chapter 82 of the City Code, and in accordance with the minimum standards, criteria, and conditions set forth in Sections 82-385 to 82-388 of the City Code, provided such pavilion/café is approved by the HPB. This Section shall survive the termination or expiration of this Agreement.

The Owner is requesting approval of an accessory outdoor bar counter to be installed within the raised pavilion/café. Condition I.C.1.f. of the Prior Order noted that the proposed accessory outdoor bar counter and all related apparatuses would require future approval and were not considered part of the Prior Order. When the Board approved the Park Project, the City administration desired additional time to review the proposed accessory outdoor bar counter and its consistency with the Development Agreement.¹ Accordingly, the City instructed the Owner to file this separate COA application for approval of the proposed accessory outdoor bar counter and its associated fixtures and furnishings.

Proposed Project

The accessory outdoor bar counter is an integral element of the approved Park Project and its raised pavilion/café. The Proposed Project will provide the community a central meeting place to come together and enjoy each other's company and stunning views of one of the best beaches in the country. After enjoying a long walk along the Park Project and nearby Beachwalk or a nice swim in the ocean, parkgoers will be able to take refuge from the Florida sun and enjoy a nice meal and a refreshing drink within the pavilion/café. Like the rest of the Park Project, the Proposed Project has a sleek yet earthy design which is inspired by native dune ecology and seamlessly melds with the neighboring historic architecture of North Beach. The pavilion is adorned with a 2 inch strip of plantings along the perimeter which can be easily maintained with use of a ladder.

The Proposed Project is located within the Government Use ("GU") and Mixed Use Entertainment ("MXE") zoning districts. The proposed accessory outdoor bar counter is permitted by right under Section 142-1109 of the Code (subject only to HPB design approval), because the bar counter is accessory to an outdoor café with at least 30 chairs. See Sec. 142-543 of the Code. Further, sensible fencing and thoughtful landscaping ensure that the bar counter itself it is not

¹ The Prior Order stated that the Owner must secure the City Commission's approval of the accessory outdoor bar counter prior to requesting a COA from this Board. However, City staff, including the City Attorney's office and the Planning Department, have determined that the proposed accessory outdoor bar counter is allowed within the parameters of Section 26.4 of the Development Agreement, which was previously approved by the City Commission. Accordingly, additional City Commission approval is not required.

visible to the pedestrian at any point along the adjacent rights-of-way of Ocean Terrace and the Beachwalk. Additionally, the Proposed Project complies with all Oceanfront Overlay regulations. When the pavilion is not in use, it will remain secured by the proposed 4 foot fence and security gate that surrounds the pavilion.

Variance Request

Along with approval of the Proposed Project, the Owner seeks one variance to allow the hours of operation for the accessory outdoor bar counter to extend until midnight (12:00 a.m.). Section 142-543(3) of the Code provides that accessory outdoor bar counters cannot operate from midnight to 8:00 a.m., except that accessory outdoor bar counters that are adjacent to a property with an apartment unit cannot operate from 8:00 p.m. to 8:00 a.m. The purpose of this regulation is to shield neighboring residential uses from any potential noise or light impact stemming from operation of bar after 8:00 p.m. Our variance request fully meets the intent of the Code.

Because the Proposed Project is part of a larger parcel that encompasses the Park Project, it could technically be said to be adjacent to residential uses along Ocean Terrace. However, the proposed accessory outdoor bar counter itself is *not* adjacent to any existing residential uses. The Proposed Project is located directly east of the Broadmoor Hotel property with municipal surface parking lots to the northeast and a string of other hotels to the southeast. The closest residential use is located at the opposite end of the block near 7400 Ocean Terrace. If the Proposed Project were to be carved out into an individual parcel, those residential uses would not be considered “adjacent” by any definition. In fact, the only properties that could stand to experience any impact from noise or light emanating from the Proposed Project are the Broadmoor Hotel (which the Owner controls), an adjacent parking lot, and perhaps certain hotel uses to the southeast, which may very well have their own accessory bar counters which are open until midnight to serve their hotels guests. There is sufficient distance between the Proposed Project and the closest residential uses far down the block to ensure that residents endure no impact from the operation of the accessory outdoor bar counter from 8:00 p.m. to midnight. Therefore, the intent of the Code is maintained.²

Sections 118-102(5) and 118-351(a)(2) of the City Code grant the Board the power to authorize variances from the Land Development Regulations in connection with applications that are subject to Board’s design review jurisdiction, so long as the variances “will not be contrary to the public interest” and “when, owing to special conditions, a literal enforcement of a provision

² The Applicant maintains that in the practical meaning of the word there are no residential uses adjacent to the pavilion. However, the Applicant notes that approved, but yet to be built, development in the area contemplates residential uses that can be considered adjacent to the pavilion. We note that the Applicant will take precautions to ensure impacts from the outdoor bar counter do not affect future residential uses. Further, we note that future residents will chose to live in Ocean Terrace precisely because of its liveliness and, therefore, should reasonably expect and tolerate minimum unavoidable impacts from the Ocean Terrace public park as a whole and the pavilion. As such, in an abundance of caution and to avoid unnecessary applications to this Board, the Applicant respectfully requests approval of the requested variance.

of these land development regulations would result in an unnecessary and undue hardship.” In addition, Section 118-353(d) of the Code establishes eight specific criteria by which the Board evaluates requests for variances. Our responses below demonstrate both the practical difficulties and unnecessary hardships associated with Owner’s requested variance.

- 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;*

Special conditions and circumstances exist which are peculiar to this land. As stated above, the Proposed Project is located on a much large parcel that encompasses the entire Park Project. Because the accessory outdoor bar counter will be located on this larger parcel, it technically could be said to be “adjacent” to existing residential uses. However, the closest existing residential use is on the complete opposite side of the block. If the Proposed Project could be separated into its own parcel, then this variance request would not be necessary because existing residential uses are too far away to be considered adjacent.

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

That the Proposed Project is included a larger parcel encompassing the entire Park Project does not result from the Owner’s actions. Realizing the Park Project was a complicated endeavor that required extensive collaboration between the City, the Owner, and numerous other stakeholders. The Property’s subdivision should not be altered to avoid this variance, particularly because the rights, including those of the City and the public, are memorialized in existing legal agreements that contemplate the existing configuration of lots and parcels.

- 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 variance will not confer on the Owner any special privilege. Any other property owner proposing an accessory outdoor bar counter in the MXE zoning district whose property is not adjacent to existing residential use may operate until midnight pursuant to Section 142-543(3) of the Code. Rather than conferring an additional benefit, granting the variance will put the Owner in equal footing with similarly situated property owners.

- 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;

A literal interpretation of the Code would deprive the Owner of the right to operate the accessory bar counter like similarly situated property owners are able to. Again, the Proposed Project is only considered adjacent to existing residential uses because it is part of the larger parcel encompassing the entire Park Project. The closest existing residential use is on the complete opposite side of the block and is not adjacent in the practical meaning of the word. Not granting the requested variance would eliminate four revenue-producing hours of operations from the accessory outdoor bar counter and would place the Owner at an economic disadvantage in relation to similar uses in the neighboring MXE zoning district. That would work an unnecessary undue hardship on the Owner.

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

The Owner is asking to stay open until midnight like similarly situated property owners are able to under the Code. The Owner is not requesting extended hours beyond what is contemplated in the Code. Granting this variance is the minimum variance necessary for the Proposed Project competitive in the market and economically feasible.

- 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; and*

As previously stated, granting this variance fully meets the intent of the Code. The intent of Section 142-543(3) is to shield adjacent residential uses from any potential noise or light impact stemming from operation of the bar counter from 8:00 p.m. and midnight. The closest existing residential use to the bar counter is near 7400 Ocean Terrace, which is located at the complete opposite side of the block. The residential use is too far away to be impacted by the use and as such the general intent and purpose of the Code is met granting the requested variance and will not be injurious to the area or otherwise detrimental to the public welfare.

- 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. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board voting on the applicant's request.*

Granting the requested variance is consistent with the Comprehensive Plan and does not reduce levels of service as set forth in the Plan.

- 8) *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.*

The Proposed Project complies with all sea level rise and resiliency criteria, as addressed below.

Sea Level Rise Criteria. The Proposed Project is consistent with the sea level rise and resiliency criteria outlined in Section 133-50 of the Code as follows:

- 1) *A recycling or salvage plan for partial or total demolition shall be provided;*

Not applicable.

- 2) *Windows that are proposed to be replaced shall be hurricane proof impact windows;*

Not applicable.

- 3) *Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided;*

Not applicable.

- 4) *Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided;*

The proposed landscape throughout the Park Project was previously approved by the Board and is designed to capture water on-site with planted retention areas. This will reduce flooding and urban run-off and will also naturally provide water for plants to minimize irrigation. There will be an overall reduction in hardscape area to further promote water percolation. The landscape will consist of primarily native South Florida plant species that are resilient to the particulars of this climate, including salt air, drought, flooding, and severe storms. The concept of bringing beach dune planting into the site will also help to mitigate flooding and sea-level rise. Additionally, there will be an increase in elevation to act as a secondary barrier, behind the primary dune, during major storm events.

- 5) *Whether 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, including a study of land elevation and elevation of surrounding properties were considered;

The Southeast Florida Regional Climate Action Plan projects that sea level will rise 6 to 10 inches by 2030, 14 to 26 inches by 2060, and 31 to 61 inches by 2100 above the 1992 mean sea level. This represents NGVD elevations of 1.10' to 1.43' by 2030, 1.77' to 2.77' by 2060, and 3.18' to 5.68' by 2100 at Mean Sea Level. At Mean High Water this represents NGVD elevations of 2.31' to 2.64' by 2030, 2.98' to 3.98' by 2060, and 4.39' to 6.89' by 2100. The Proposed Project does not contain enclosed habitable floor area, and all of the proposed improvements within the Park Project, including the Proposed Project, have been designed to withstand coastal surges from storm events. Also, the Park Project includes an increase in elevation to act as a secondary barrier, behind the primary dune, during major storm events.

- 6) *The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land;*

Not applicable.

- 7) *Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation;*

Not applicable.

- 8) *Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation;*

Not applicable.

- 9) *When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code;*

Not applicable.

- 10) *Where feasible and appropriate, water retention systems shall be provided.*

As stated for 4) above, the proposed landscape throughout the Park Project is designed to capture water on-site with planted retention areas. This will reduce flooding and urban run-off and will also naturally provide water for plants to minimize irrigation. There will be an overall reduction in hardscape area to further promote water percolation. The landscape will consist of primarily native South Florida plant species that are resilient to the particulars of this climate, including salt air, drought, flooding,

and severe storms. The concept of bringing beach dune planting into the site will also help to mitigate flooding and sea-level rise. Additionally, there will be an increase in elevation to act as a secondary barrier, behind the primary dune, during major storm events.


Conclusion

The City, the Owner, and other constituents and stakeholders have collaborated for years to realize public benefits projects that will breathe new life into the North Beach neighborhood. The Proposed Project builds on those efforts to deliver an additional public benefit to City residents who will now have a pleasant and unique meeting place to enjoy a nice meal and cool beverage while taking in stunning views of the ocean. Granting the requested variance is consistent with the Code and will allow the Proposed Project to stay competitive with the market and thrive at this important location in North Beach.

We look forward to discussing our application with you, and we remain grateful for your continued attention and consideration. Should you need any additional information, please do not hesitate to contact me.

Sincerely,

AKERMAN, LLP



Neisen O. Kasdin