

July 11, 2022

Via Online Submission

Chair and Board Members, Historic Preservation Board
City of Miami Beach, Planning Department
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Letter of Intent for a Certificate of Appropriateness, Demolition Approval, and a Variance for the Venue Located at 1445 Pennsylvania Avenue, Miami Beach, Florida

Dear Chair and Board Members:

Our Law Firm represents 1445 Pennsylvania Ave LLC (the "Applicant"), the owner of the property located at 1445 Pennsylvania Avenue, Miami Beach, Florida 33139 (the "Premises"). Please allow this correspondence to serve as the Applicant's Letter of Intent in support of the enclosed application seeking a Certificate of Appropriateness, approval for demolition, and a variance for hours of operation for the outdoor bar counter located on the rooftop from the Historic Preservation Board.

The Premises was originally constructed in 1939 with a 54'-8" front by 72'-8" deep concrete block with two stories (although designed for three stories) consisting of a drug store on the corner and two additional store fronts. In 1945, an eight unit apartment house with spread footing foundation and a flat roof, as designed by Moses Jacob Nadel was constructed.

The Premises is located within the CD-2 (Commercial, Medium Intensity District) zoning district, which provides for commercial activities, services, offices and related activities which serve the entire city. *Sec. 142-301 City Code*. The main permitted uses in this zoning district are commercial uses (including, for example, personal service establishments); apartments; apartment hotels, hotels, hostels, and suite hotels...and alcoholic beverage establishments...*Sec. 142-302 City Code*.

The Applicant purchased the property in 2021 with a development plan centered on the adaptive reuse of the existing building to operate a 103 seat restaurant and a 7 room hotel. In order to operate the Premises with these uses, the Applicant is seeking approval for a Certificate of Appropriateness for the approval of the exterior renovations as shown on the architectural plans as prepared by Charles H. Benson & Associate Architects, P.A. The Applicant is also seeking demolition approval of the existing roof deck as further detailed on the architectural plans. A demolition permit has been approved and issued for the interior of the Premises on both levels, which is also detailed on the enclosed plans, however, the demolition under the approved permit does not seek to alter any architecturally significant features and/or public interior. The only new construction being proposed is a new staircase as shown on the architectural plans to comply with current code(s) from the ground level to the roof deck. The new assembly area on the roof

deck will include 3 restrooms, a bar, water features including lagoons, both open and covered seating, back of house, and perimeter landscaping as depicted on the architectural plans.

The Applicant anticipates the combination of the patron occupant content of the restaurant together with the hotel's rooftop accessory roof deck will exceed the threshold for a Neighborhood Impact Establishment, and therefore the Applicant intends to apply to the Planning Board for a Conditional Use Permit.

Accessory outdoor bar counters are permitted in the CD-2 zoning district. While permitted, a property which is adjacent to a property with an apartment unit may not be operated or utilized between 8:00 p.m. and 8:00 a.m. The Applicant is seeking a variance from Section 142-304 of the City's Zoning Regulations in order to operate the outdoor bar counter until 2:00 a.m.

Variance Review Criteria: The City's Zoning Code establishes seven (7) criteria by which requests for variances are evaluated. In addition, the City of Miami Beach Charter, Subpart B, Article I, Section 2 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 the land, so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done."

The above referenced seven criteria are listed below in bold text, with our response following each criteria in plain text. We believe our responses below will show that there are practical difficulties and unnecessary hardships associated with the request sufficient to grant a variance.

(1) Special conditions and circumstances exist are peculiar to land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning districts:

The Applicant differs from other restaurants in the CD-2 zoning district because its physical location requires that a variance be granted in order for the outdoor bar counter to operate consistent with the remainder of the operations on the rooftop. This Property is located within the heart of the historic district near Espanola Way and will service both the residents and visitors in the area.

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

The Applicant did not construct the Property.

(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:

Throughout the City of Miami Beach and on Espanola Way, several variances have been granted with regards to the hours of operation for outdoor bar counters and therefore, no special privilege will be conferred on the Applicant.

(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 land development regulations would place an undue hardship on the Applicant. Similar variances have been granted through the City of Miami Beach and on Espanola Way. The granting of this variance will allow for the Applicant to operate the outdoor bar counter consistent with the hours of operation for the remainder of the rooftop operations.

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

The variance request is the minimum request that will make possible the reasonable use of the outdoor bar counter in order for the hours to be consistent with the hours of operation for the remainder of the rooftop.

(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 be injurious to the area involved or otherwise detrimental to the public welfare:

Approval of the variance will not be injurious or detrimental to the area or public welfare. The request is consistent with the purpose and intent of the City's Zoning Regulations and promotes the public welfare in the promotion of the restoration of historic properties

(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 variance would be consistent with the comprehensive plan's goal of providing development opportunities for and to enhance the desirability and quality of existing and/or new medium intensity commercial areas which serve the entire City. Furthermore, it does not affect or reduce levels of service as set forth in the comprehensive plan. The granting of this variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Below please find the Applicant's responses to each of the Sea Level Rise and Resiliency Review criteria pursuant to § 133-50 of the City's Land Development Regulations.

(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.

Please see enclosed architectural plans.

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

Please see enclosed architectural plans.

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

Please see enclosed architectural plans.

- (5) Whether adopted sea level rise projections in the Southeast Florida regional Climate Action Plan, as many be revised from time to time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation surrounding properties were considered.**

Not Applicable.

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

Please see enclosed architectural plans. A new ramp and steps were added to the main entrance due to flooding.

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

Please see enclosed architectural plans.

- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to 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 floor proofing systems will be provided in accordance with Chapter 54 of the City Code.**

Not Applicable.

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

A floor panel is not required, therefore, not applicable.

- (11) Cool pavement materials or porous pavement materials shall be utilized.**

Not Applicable.

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

Not Applicable.

In light of the foregoing, and the application materials submitted herewith, we respectfully request the Historic Preservation Board's approval of this application.

Very Respectfully Submitted,

/s/ James E. Rauh

James E. Rauh, Esquire
For the Firm