

**DESIGN REVIEW BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: December 6, 2016

FILE NO: DRB File No.22868 (DRB16-0069)

PROPERTY: **850 Commerce Street**

APPLICANT: Commerce Street Properties LLC

LEGAL: Lots 10-12, Block 51, Ocean Beach Florida Addition No. 3, according to the Plat Thereof, as recorded in Plat Book 2 at Page 81, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for the construction and installation of a new glass storefront system to enclose an existing outdoor terrace and the deletion of the operating conditions from the DRB File No. 22868 Final Order.

**SUPPLEMENTAL MODIFIED ORDER**


The applicant filed an application with the City of Miami Beach Planning Department for Design Review Approval and for one or more variances.

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

**I. Design Review**

- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not a individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with Design Review Criteria in Section 118-251 of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-251 if the following conditions are met:
  1. All of the original conditions of approval by this Board shall remain in full force and effect under the Final Order dated September 4, 2012 and March 4, 2014 and for DRB File No. 22868 except as modified herein:

Condition 8 The Applicant agrees to the following operational conditions for all permitted uses and shall bind itself, lessees, permittees, concessionaires,



renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment.

a. OPERATIONAL CONDITIONS

- i. ~~The Noise and Operational Conditions below are issued to the Applicant, 850 Commerce Restaurant, LLC ("Operator") as tenant and operator of the proposed restaurant on the property. Any change of the operator shall require review and approval by the Design Review Board as a modification of this approval. Subsequent operators shall be required to appear before the Board, within ninety (90) days of change of operator to affirm their understanding of the conditions listed herein. The Board reserves the right to determine the timing and need for future progress reports for the new operator.~~
- ii. ~~Within ninety (90) days of the issuance of the TCO or CO for the project, the Operator shall make a progress report to the Design Review Board. The Board reserves the right to modify the conditions of this approval at the time of a progress report in a non-substantive manner, to modify the hours of operation, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports.~~
- iii. The hours of operations shall be as follows:  
Sunday—Thursday:  
Inside—11:30 a.m.—1:00 a.m.  
Outside—11:30 a.m.—11:00 p.m.  
  
Friday—Saturday:  
Inside—11:30 a.m.—2:00 a.m.  
Outside—11:30 a.m.—12:00 a.m.  
  
Operations shall cease no later than 2:00 a.m.  
  
Operations in outdoor or open air areas shall cease no later than 12:00 a.m.
- iv. ~~All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.~~
- v. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.



- vi. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one pick up of garbage per day will be necessary.
- vii. Garbage dumpster covers shall be closed at all times except when in active use.
- ~~viii. Garbage pickups and service deliveries shall not take place between 7PM and 8AM.~~
- ix. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors will be contained within the premises. All kitchens and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors.
- x. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- xi. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter on Commerce Street and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
- xii. The Operator will make best efforts to ensure that patrons wait inside the building ~~or under the fixed canopy and the green roof structure~~ while waiting to be seated and for valet pick-up.
- ~~xiii. When the outdoor courtyard is covered with the green roof containing skylights, fixed canopy and concrete eyebrow (collectively the "green roof structure"), and the sound system is completely installed but before the Business Tax Receipt has been issued, the sound system shall be tested under the supervision of a qualified acoustical consultant acceptable to Planning staff, to ensure that noise generated underneath the green roof structure does not leak up through the green roof structure and that all aspects of the sound system's performance comply with the design intent of this application. A final report issued by such acoustical consultant shall be submitted to staff.~~

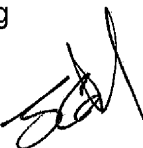
b. NOISE CONDITIONS

- i. No outdoor bar counters shall be permitted on the premises.
- ii. The Design Review Board (DRB) or the Planning Director shall retain the right to call the owners and/or operators back before the DRB, at the expense of the owners and/ or operators, to impose and/or modify the hours of operation, or amend or impose other conditions, should there be a valid violation (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise or other conditions of this approval. An adverse adjudication of a violation against the owner or operator is not necessary for the board to have jurisdiction over the matter under this



condition. This condition vests jurisdiction independent of any other condition hereof.

- iii. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this approval and subject the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first paragraph of this subparagraph paragraph b.ii.
  - iv. Exterior speakers, except those required to address Building and Life Safety Code, shall not be attached to the exterior of any building or structure on the property. Small, ground level speakers may be permitted, but only for ambient, background music, which does not interfere with normal conversation.
  - v. All music played at the establishment, both inside and outside, shall be limited to ambient, background music.
  - ~~vi. The installation plan for the sound system, including the location of all the speakers and sound system controls shall be submitted to staff for review and approval prior to obtaining a building permit.~~
  - ~~vii. The restaurant shall close the outdoor dining area and the exterior door system on the west elevation of the existing structure, if approved, and turn off the outdoor speakers by 11:00 p.m., Sunday—Thursday, and 12:00 a.m., Friday—Saturday. Neither patrons nor staff shall open the exterior door system or access the outdoor dining area after these times, except for emergencies.~~
  - viii. No indoor or outdoor live music shall be permitted at any time, inclusive of percussion, musical instrument, or vocal.
  - ix. No DJ shall be permitted inside or outside the establishment.
  - x. Liquor served outside shall only be served with meals at outdoor tables.
  - xi. Entertainment establishments, as well as dance halls, as defined in the Miami Beach City Code, shall be prohibited, and the applicant will not seek permits therefore.
  - xii. Commercial use of any rooftop throughout the property shall be prohibited.
2. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
- a. The final design and details of all exterior and interior lighting shall be provided, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board. Interior lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding area. No florescent or intensive 'white' lighting



(or similar intensive lighting) visible from the adjacent public rights or way or adjacent properties shall be permitted.


- b. Final details of all proposed storefront systems and associated details shall be provided for all of the structures on the project sites, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- c. Color samples for the glass shall be submitted for the review and approval of staff.
- d. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
- e. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit

**In accordance with Section 118-262, the applicant, or the city manager on behalf of the City Administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for rehearing shall not be reviewed by the Commission.**

## **II. Variance(s)**

- A. No variance(s) were filed as part of this application.

## **III. General Terms and Conditions applying to both 'I. Design Review Approval and 'II. Variances' noted above.**

- A. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney. If there is a roadway or right-of-way between parcels, that parcel separated from the remaining development shall not be considered a unified development site and shall not be joined into the covenant in lieu of unity of title or unity of title for the actual unified development site.
  - B. The applicant shall execute and record a covenant in lieu of unity of title for the required parking spaces to be located at an off-site facility, as may be applicable, in a form acceptable to the City Attorney.
  - C. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
  - D. The Supplemental Modified Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
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- E. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.
- F. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
- G. The Supplemental Modified Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
- H. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- I. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations which were adopted by the Board, that the Application for Design Review approval is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "850 Commerce Street" as prepared by **STA Architectural Group** signed sealed and dated 10/14/16, and as approved by the Design Review Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

~~The issuance of the approval does not relieve the applicant from obtaining all other required~~ Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit



for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Order** shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated this 9<sup>th</sup> day of December, 2016.

DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: James G. Murphy

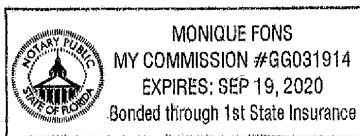
JAMES G. MURPHY  
CHIEF OF URBAN DESIGN  
FOR THE CHAIR

STATE OF FLORIDA )

)SS

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of December, 2016 by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the Corporation. He is personally known to me.



L. Panfili  
NOTARY PUBLIC

Miami-Dade County, Florida

My commission expires: 9/19/2020

Approved As To Form:

City Attorney's Office: David A. Burt ( 12/9/16 )

Filed with the Clerk of the Design Review Board on Jessica G. Murphy ( 12/9/16 )

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