

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: September 13, 2022

FROM: Thomas R. Mooney, AICP  
Planning Director

SUBJECT: HPB21-0499, **1445 Pennsylvania Avenue.**

An application has been filed requesting a Certificate of Appropriateness for the partial demolition, renovation and restoration of the existing building, the construction of a 1-story rooftop addition and active roof deck and variance to exceed the hours of operation for an outdoor bar counter.

#### **RECOMMENDATION**

Approval of the Certificate of Appropriateness with conditions.  
Denial of the variance request.

#### **EXISTING STRUCTURE**

Local Historic District:	Espanola Way
Classification:	Contributing
Construction Date:	1939
Architect:	M. J. Nadel

#### **ZONING / SITE DATA**

Legal Description:	Lot 6, less the south 3 feet, Block 4A, of the Espanola Villas 1 <sup>st</sup> Addition Subdivision, according to the plat thereof, as recorded in Plat Book 9, Page 147, of the Public Records of Miami-Dade County, Florida.
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Zoning:	CD-2, Commercial medium intensity
Future Land Use Designation:	CD-2, Commercial medium intensity

Lot Size:	~4,680 sq. ft. / 2.0 Max FAR
Existing FAR:	7,852 sq. ft. / 1.67 FAR
Proposed FAR:	9,030 sq. ft. / 1.92 FAR
Existing Height:	26'-0"
Proposed Height:	35'-1"
Existing Use/Condition:	Restaurant and 8 hotel units
Proposed Use:	Restaurant with roof deck and 7 hotel units.

#### **THE PROJECT**

The applicant has submitted plans entitled "New Rooftop Addition, Restaurant & Hotel for: 1445 Pennsylvania Ave. LLC", as prepared by Charles H. Benson & Associates Architects, P.A., dated

July 11, 2022.

### **COMPLIANCE WITH ZONING CODE**

The application for Certificate of Appropriateness, as submitted, appears to be consistent with the requirements of the City Code with the exception of the variance requested herein.

As currently proposed, the project will require a Conditional Use Permit for a Neighborhood Impact Establishment to be reviewed by the Planning Board.

This shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

### **CONSISTENCY WITH 2040 COMPREHENSIVE PLAN**

A preliminary review of the project indicates that the existing **hotel use** is **consistent** with the Future Land Use Map of the Comprehensive Plan.

### **PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA**

The applicant has submitted plans and documents with the application that do not satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of the variances if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also do not indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

- That 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;
- That the special conditions and circumstances do not result from the action of the applicant;
- That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;
- That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;
- That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and
- That 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 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.

**COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.  
**Not Applicable**  
**The scope of demolition is minimal.**
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.  
**Satisfied**  
**Impact windows are proposed to be provided.**
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**Satisfied**  
**Operable windows are proposed to be provided.**
- (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.  
**Satisfied**
- (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.  
**Satisfied**  
**The land elevation of the site is consistent with the surrounding properties.**
- (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 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 (3) additional feet in height.  
**Not Applicable**
- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.  
**Satisfied**  
**Additional information shall be provided at the time of building permit review.**
- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.  
**Satisfied**  
**It would not be reasonable feasible or economically appropriate to elevate the building.**

- (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**  
**The first habitable level is located at approximately 17.5' NGVD.**
- (10) In all new projects, water retention systems shall be provided.  
**Not Applicable**
- (11) Cool pavement materials or porous pavement materials shall be utilized.  
**Satisfied**  
**Additional information shall be provided at the time of building permit review.**
- (12) The project design shall minimize the potential for a project causing a heat island effect on site.  
**Satisfied**

#### **COMPLIANCE WITH CERTIFICATE OF APPROPRIATENESS CRITERIA**

A decision on an application for a Certificate of Appropriateness shall be based upon the following:

- I. Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable, compliance with the following criteria pursuant to Section 118-564(a)(1) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
- a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time.  
**Satisfied**
  - b. Other guidelines/policies/plans adopted or approved by Resolution or Ordinance by the City Commission.  
**Satisfied**
- II. In determining whether a particular application is compatible with surrounding properties, the Board shall consider the following criteria pursuant to Section 118-564(a)(2) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
- a. Exterior architectural features.  
**Satisfied**
  - b. General design, scale, massing and arrangement.  
**Not Satisfied**  
**The height and proximity of the proposed elevated roof deck to the south and west facades has an adverse visual impact to the character of the Contributing building.**
  - c. Texture and material and color.  
**Satisfied**

- d. The relationship of a, b, c, above, to other structures and features of the district.  
**Satisfied**
  - e. The purpose for which the district was created.  
**Not Satisfied**  
**The height and proximity of the proposed elevated roof deck to the south and west facades has an adverse visual impact to the character of the Contributing building.**
  - f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.  
**Satisfied**
  - g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.  
**Satisfied**
  - h. The original architectural design or any subsequent modifications that have acquired significance.  
**Satisfied**
- III. The examination of architectural drawings for consistency with the criteria pursuant to Section 118-564(a)(3) of the Miami Beach Code and 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 criteria referenced above are as follows (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
- a. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.  
**Satisfied**
  - 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.  
**Satisfied**
  - c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the city identified in section 118-503.  
**Satisfied**
  - d. The proposed structure, and/or additions to an existing structure is appropriate to and compatible with the environment and adjacent structures, and enhances the

appearance of the surrounding properties, or the purposes for which the district was created.

**Satisfied**

- e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

**Satisfied**

- f. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

**Satisfied**

- g. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties and consistent with a City master plan, where applicable.

**Satisfied**

- h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

**Satisfied**

- i. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from Structures are adequately shielded from public view, adjacent properties and pedestrian areas.

**Satisfied**

- j. Any proposed new structure shall have an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

**Not Satisfied**

**The height and proximity of the proposed elevated roof deck to the south and west facades has an adverse visual impact to the character of the Contributing building.**

- k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a sidewalk street, or streets shall have residential or

commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.

**Satisfied**

- l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

**Satisfied**

- m. Any addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

**Not Satisfied**

**The height and proximity of the proposed elevated roof deck to the south and west facades has an adverse visual impact to the character of the Contributing building.**

- n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.

**Satisfied**

- o. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

**Satisfied**

#### **CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION EVALUATION CRITERIA**

Section 118-564 (f)(4) of the Land Development Regulations of the Miami Beach Code provides criteria by which the Historic Preservation Board evaluates requests for a Certificate of Appropriateness for Demolition. The following is an analysis of the request based upon these criteria:

- a. The Building, Structure, Improvement, or Site is designated on either a national or state level as a part of an Historic Preservation District or as a Historic Architectural Landmark or Site, or is designated pursuant to Division 4, Article X, Chapter 118 of the Miami Beach Code as a Historic Building, Historic Structure or Historic Site, Historic Improvement, Historic Landscape Feature, historic interior or the Structure is of such historic/architectural interest or quality that it would reasonably meet national, state or local criteria for such designation.

**Satisfied**

**The existing building is designated as part of the Espanola Way Local Historic District.**

- b. The Building, Structure, Improvement, or Site is of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense.

**Satisfied**

**The existing building is of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense.**

- c. The Building, Structure, Improvement, or Site is one of the last remaining examples of its kind in the neighborhood, the country, or the region, or is a distinctive example of an architectural or design style which contributes to the character of the district.

**Satisfied**

**The existing building is a distinctive example of an architectural or design style that contributes to the character of the district.**

- d. The building, structure, improvement, or site is a Contributing building, structure, improvement, site or landscape feature rather than a Non-Contributing building, structure, improvement, site or landscape feature in a historic district as defined in section 114-1, or is an architecturally significant feature of a public area of the interior of a historic or Contributing building.

**Satisfied**

**The building is classified as Contributing in the Miami Beach Historic Properties Database.**

- e. Retention of the Building, Structure, Improvement, Landscape Feature or Site promotes the general welfare of the City by providing an opportunity for study of local history, architecture and design or by developing an understanding of the importance and value of a particular culture and heritage.

**Satisfied**

**The retention of the building promotes the general welfare of the City by providing an opportunity for study of local history, architecture and design.**

- f. If the proposed demolition is for the purpose of constructing a parking garage, the Board shall consider it if the parking garage is designed in a manner that is consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, U.S. Department of the Interior (1983), as amended, and/or the design review guidelines for that particular district.

**Not Applicable**

**The demolition proposed in the subject application is not for the purpose of constructing a parking garage.**

- g. In the event an applicant or property owner proposes the total demolition of a Contributing structure, historic structure or architecturally significant feature, there shall be definite plans presented to the board for the reuse of the property if the proposed demolition is approved and carried out.

**Not Applicable**

**The applicant is not proposing the total demolition of the building.**

- h. The Dade County Unsafe Structures Board has ordered the demolition of a Structure without option.

**Not Applicable**

**The Miami Dade County Unsafe Structures Board has not ordered the demolition of the structure.**

**ANALYSIS**

The subject structure, originally known as the Pennway Apartments, was constructed in 1939 and designed by architect M. J. Nadel in the Streamline Moderne style of architecture. The building originally consisted of 2 stores at the ground level (the larger of which was the Pennway



Drugstore) and 8 apartment units at the second level. More recently, the ground level was used as a restaurant venue.



*1445 Pennsylvania Avenue, 1985*

The applicant is currently requesting approval for the construction of a partial 1-story rooftop addition, and active roof deck as part of the renovation and restoration of the existing building. The proposed rooftop addition is situated at the eastern side of the roof and will contain restrooms, a mechanical room and storage room. Additionally, in order to access the roof level, the existing eastern stair is proposed to be extended and a new elevator is proposed to be introduced. Staff would note that although the addition is setback approximately 13'-8" from the Espanola Way façade, it will be visible from across the street. The City Code does provide the Historic Preservation Board with discretion to modify the line of sight requirements for rooftop additions based on the following criteria:

- (i) the addition enhances the architectural contextual balance of the surrounding area;
- (ii) the addition is appropriate to the scale and character of the existing building;
- (iii) the addition maintains the architectural character of the existing building in an appropriate manner; and
- (iv) the addition minimizes the impact of existing mechanical equipment or other rooftop elements.

The new roof deck includes several water features, shade structures, a spa and built-in booth style seating. In order to introduce the new active roof deck, the applicant is proposing to replace the existing roof structure with a new structure that will be able to accommodate the proposed rooftop dining area and spa. Staff would note that the applicant is proposing to elevate the roof

deck to match the height of the existing parapet walls. In order to satisfy the criteria noted above and to minimize the visual impact, staff recommends that the deck including the guardrail be setback a minimum of 4'-0" from the outside face of the parapet walls.

Finally, staff would note that the applicant is proposing to restore the Espanola Way and Pennsylvania Avenue facades consistent with available historical documentation including the replacement of the existing non-original windows and the restoration of the original keystone cladding at the ground level. In summary, staff has no objection to the proposed project and recommends approval of the Certificate of Appropriateness as noted below.

### **VARIANCE ANALYSIS**

The applicant is requesting the following variance:

1. A variance to exceed the permitted hours of operation for an accessory outdoor bar counter until 2:00 a.m. Variance requested from:

#### **Sec. 142-304. – Accessory uses.**

*The accessory uses in the CD-2 commercial, medium intensity district are as required in article IV, division 2 of this chapter; and accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.*

The requested variance is associated with the operation of an outdoor bar counter as part of an approximately 220 seat ground level and rooftop venue. The regulations of the CD-2 zoning district permit accessory outdoor bar counters to operate between 8:00 a.m. and 8:00 p.m. daily when abutting a property containing a residential apartment unit. The applicant is requesting a variance to extend the hours of operation of the outdoor bar counter until 2:00 a.m. daily.

Staff finds the variance requested lacks any practical difficulties or hardship, as the restaurant and the interior bar can operate until up to 5:00 am, allowing for the reasonable use of the property. Further, in the context of this property, staff would note that the majority of the surrounding uses are residential or part of the Fienberg-Fisher K-8 Public School. As such, staff does not recommend approval of the variance request.

### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends the request for a Certificate of Appropriateness be **approved** and the variance request be **denied**, subject to the conditions enumerated in the attached draft Order, which address the inconsistencies with the aforementioned Certificate of Appropriateness criteria and Hardship and Practical Difficulties criteria, as applicable.

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

MEETING DATE: September 13, 2022

PROPERTY/FOLIO: 1445 Pennsylvania Avenue / 02-3234-015-0060

FILE NO: HPB21-0499

APPLICANT: 1445 Pennsylvania Ave LLC

IN RE: An application has been filed requesting a Certificate of Appropriateness for the partial demolition, renovation and restoration of the existing building, the construction of a 1-story rooftop addition and active roof deck and variance to exceed the hours of operation for an outdoor bar counter.

LEGAL: Lot 6, less the south 3 feet, Block 4A, of the Espanola Villas 1st Addition Subdivision, according to the plat thereof, as recorded in Plat Book 9, Page 147, of the Public Records of Miami-Dade County, Florida.

**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:

**I. Certificate of Appropriateness**

- A. The subject site is located within the Espanola Way Local Historic District.
- 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:
  1. Is consistent with Sea Level Rise and Resiliency Review Criteria in Section 133-50(a) of the Miami Beach Code.
  2. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
  3. Is not consistent with Certificate of Appropriateness Criteria 'b' & 'e' in Section 118-564(a)(2) of the Miami Beach Code.
  4. Is not consistent with Certificate of Appropriateness Criteria 'j' & 'm' in Section 118-564(a)(3) of the Miami Beach Code.
  5. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(f)(4) of the Miami Beach Code.

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- C. The project would be consistent with the criteria and requirements of section 118-564 and 133-50(a) if the following conditions are met:
1. Revised elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
    - a. The active roof deck including guardrail shall be setback a minimum of 4'-0" from exterior face of the south and west parapet walls, , in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
    - b. The south and west façades of the building shall be restored to the greatest extent possible consistent with available historical documentation including but not limited to the colored keystone cladding, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
    - c. The existing non-original windows shall be replaced with new impact resistant windows and shall incorporate a muntin configuration that is consistent with available historical documentation, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board. The window frames shall be clear anodized aluminum or powder coated grey or silver in color.
    - d. Final details of all exterior surface finishes and materials, including samples, shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
    - e. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and elevation drawings and shall be screened from view, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
  2. In accordance with Section 142-1161(d)(2) of the City Code, the requirement pertaining to the visibility of a rooftop addition when viewed at eye level (5'-6" from grade) from the opposite side of the adjacent right-of-way, is hereby waived.
  3. The applicant shall obtain Conditional Use approval for a Neighborhood Impact Establishment prior to the issuance of a building permit for the project, as applicable.
  4. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
    - a. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain.

- b. The project design shall minimize the potential for a project causing a heat island effect on site.
- c. Cool pavement materials or porous pavement materials shall be utilized, if applicable.

**In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.**

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

- A. The applicant filed an application with the Planning Department for the following variance, which was either approved by the Board with modifications, or denied:

The following variance was **denied** by the Board:

- 1. A variance to exceed the permitted hours of operation for an accessory outdoor bar counter until 2:00 a.m.

- B. The applicant has submitted plans and documents with the application that do not satisfy Article 1, Section 2 of the Related Special Acts allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that do not indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That 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;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

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That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That 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 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.

- C. The Board hereby **denies** the requested variance imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:
1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.

**The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.**

**III. General Terms and Conditions applying to both 'I. Certificate of Appropriateness' and 'II. Variances' noted above.**

- A. The applicant agrees and shall be required to provide access to areas subject to this approval (not including private residences or hotel rooms) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the plans approved by the Board and conditions of this order.
- B. The issuance of a building permit is contingent upon meeting Public School Concurrency requirements, if applicable. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed. No building permit may be issued unless and until the applicant obtains a written finding from Miami-Dade County Public Schools that the applicant has satisfied school concurrency.
- C. The relocation of any tree shall be subject to the approval of the Environment & Sustainability Director and/or Urban Forester, as applicable.
- D. 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.

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- E. All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street.
- F. 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.
- G. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- H. 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.
- I. The 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.
- J. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- K. 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.
- L. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.

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 amended and adopted by the Board, that the application 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 "**New Rooftop Addition, Restaurant & Hotel for: 1445 Pennsylvania Ave. LLC**", as prepared by **Charles H. Benson & Associates Architects, P.A.**, dated **July 11, 2022**, as approved by the Historic Preservation 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 \_\_\_\_\_ 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 \_\_\_\_\_ (            )

DRAFT