

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: September 8, 2015

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: HPB File No. 7554, **1776 Collins Avenue.**

The applicant, SOBE Hotel Miami Beach, LLLP, is requesting a variance to extend the hours of operation for an accessory outdoor bar counter adjacent to a residential unit.

STAFF RECOMMENDATION

Approval of the variance with conditions.

EXISTING STRUCTURE

Local Historic District:	Museum
Status:	Contributing
Original Construction Date:	1951
Original Architect:	N. A. Seiderman

ZONING / SITE DATA

Legal Description:	Lots 9 and 10, Block 27 of Fishers First Subdivision of Alton Beach, according to the plat thereof recorded in plat book 2, at page 77 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:	19,135 S.F. (2.0 Max FAR)
Existing FAR:	38,185 S.F./ 1.99
Proposed FAR:	No Change
Existing Height:	3-stories
Proposed Height:	No Change
Existing Use/Condition:	Mixed-use hotel/restaurant
Proposed Use:	No Change

THE PROJECT

The applicant has submitted plans entitled "The Redbury Hotel Rooftop Bar" as prepared by URVANX and Carlos Bravo R.A., signed and sealed June 19, 2015.

The applicant is requesting a variance to extend the hours of operation for an accessory outdoor bar counter adjacent to a residential unit.

The applicant is requesting the following variance:

1. A variance to exceed the allowable hours of operation of an accessory outdoor bar counter until 11:00 p.m. during the week and until 12:00 am on Saturdays, Sundays and holidays.
 - 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 8-seat outdoor bar counter was approved by the Historic Preservation Board on October 14, 2014 to provide beverage services to hotel guests using the rooftop pool. Currently the hotel offers pool-side beverage service from the ground level restaurant. The new outdoor bar counter is not permitted to operate between 8:00 pm and 8:00 am due to the existence of residential units across the street on the north side of the property. The applicant is proposing to extend the hours of operations to 11 pm on weekdays and up to 12 am on Saturdays, Sundays and holidays.

The previous approval for the outdoor bar under HPB file number 7475 includes several operating conditions that prohibit the use of speakers in the outdoor area and also restrict the use of electronic amplification devices by hotel guests. The applicant currently has a business license to operate the rooftop seating area accessory to the restaurant, which allows the sale of alcoholic beverages until 2:00 am. The proposed hours for the accessory outdoor bar counter would be a reduction in hours of operations in reference to the rooftop seating area.

This type of variance has been approved several times in the past by the Board of Adjustment. Although staff is concerned regarding the noise that can be generated from an outdoor bar, staff believes that with the proper operating conditions imposed by the Board, the variance should be able to be granted without causing negative impacts to the surrounding neighborhood.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents with the application comply with the following hardship criteria, 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.

COMPLIANCE WITH ZONING CODE:

The application, as submitted, appears to be consistent with the applicable requirements of the City Code, with the exception of the variance(s) requests herein. 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.

VARIANCE ANALYSIS

The subject structure was renovated in 2013 including the construction of a new rooftop pool and deck. The applicant obtained approval by the Historic preservation Board for a new outdoor rooftop bar counter in October 2014 (HPB File No. 7475). Several operating conditions were imposed due to the fact that the bar is located near a multifamily residential property at 1800 Collins Avenue. Among other conditions, the outdoor bar would have to close between 8:00 pm and 8:00 am seven days a week. The applicant is requesting a variance to extend the operating hours in order to offer extended beverage service for guests using the rooftop deck amenities.

Staff would note that the rooftop seating area, associated with the restaurant at the ground level, currently include beverage service and there is no open noise violations issued for the property. As such, staff has no objection to this application and recommends approval of the variance as proposed.

RECOMMENDATION

In view of the foregoing analysis, staff recommends the application be **approved** subject to the conditions enumerated in the attached draft Order, which address the inconsistencies with the Practical Difficulty and Hardship criteria, as applicable.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: September 8, 2015

FILE NO: 7554

PROPERTY: 1776 Collins Avenue

APPLICANT: SOBE Hotel Miami Beach, LLLP.

LEGAL: Lots 9 and 10, Block 27 of Fishers First Subdivision of Alton Beach, according to the plat thereof recorded in plat book 2, at page 77 of the public records of Miami-Dade County, Florida.

IN RE: The Application for a variance to extend the hours of operation for an accessory outdoor bar counter adjacent to a residential unit.

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 Certificate of Appropriateness has not been requested as part of this application.

II. Variance(s)

A. The applicant filed an application with the Planning Department for the following variance:

1. A variance to exceed the allowable hours of operation of an accessory outdoor bar counter until 11:00 p.m. during the week and until 12:00 am on Saturdays, Sundays and holidays.

B. The applicant has submitted plans and documents with the application that 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 also 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.

C. The Board hereby grants the requested variance(s) and imposes the following condition 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.
2. The outdoor bar counter shall cease operation no later than 11 PM Monday through Friday and at 12 AM on Saturdays, Sundays and Holidays. The remainder of the rooftop shall close no later than 2 AM daily.

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

- A. No dance or entertainment license shall be approved.
- B. The Historic Preservation Board shall retain jurisdiction of this file. The applicant must present a progress report to the Board three months after obtaining a CO or CC; the Board shall then determine the necessity and timing of subsequent reports.
- C. This approval is granted to SOBE Hotel Miami Beach, LLLP., only. Any change of operator, or ownership by fifty (50) percent or more of stock ownership, partnership interest, or the equivalent, shall require review and approval by the Historic Preservation Board as a modification to this Order. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Variance approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address problems and to determine the timing and need for future progress reports.
- D. The Historic Preservation Board shall retain the right to call the operators back before them and modify the hours of operation should there be issuance of written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual night noise.
- E. If the outdoor rooftop bar use should cease for any reason (except for temporary closure during a season or remodeling, both for a period up to six (6) months, excluding periods during which an active building permit is in effect or there is evidence of non-intent to abandon the premises), the variance shall be subject to Section 118-356, City Code, for revocation or modification of the variance.
- F. The property owner shall be responsible for compliance with all of the conditions of this variance. The current operator and any subsequent operators of the business shall be specially apprised of all conditions. Subsequent operators shall be required to appear before the Historic Preservation Board to affirm their understanding of the conditions listed, herein.
- G. 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 Order and subject to the remedies as described in the City of Miami Beach Code.
- H. 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.
- I. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- J. 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.

- K. 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.
- L. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- M. 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 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 "The Redbury Hotel Rooftop Bar" as prepared by URVANX and Carlos Bravo R.A., signed and sealed June 19, 2015, 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
PRESERVATION AND DESIGN MANAGER
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, Preservation and Design Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He 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 _____ ()