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July 26, 2021

Via E-Mail

Alina T. Hudak
City Manager, City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
CityManager@miamibeachfl.gov

Re: 310 Meridian Avenue Apartment-Hotel Conversion

Dear Manager Hudak,

I write to you on behalf of several *South of Fifth* residents who have been directly and adversely impacted by the City's issuance of Building Permit (No. BC1704920) approving the conversion of an abandoned non-conforming apartment building located at 310 Meridian Avenue into an apartment-hotel (the "Project"). For the reasons set forth below, the Building Permit should not have been issued and must be rescinded.

THE PROPERTY & THE PROJECT PLANS

The subject property is located at 310 Meridian Avenue and is a contributing historic two-story property located *South of Fifth* in the R-PS2 zoning district and in the City's Ocean Beach Historic District (the "Subject Property"). Until it was abandoned several years ago, the Subject Property was a residential apartment building. The proposed plans for conversion of the Subject Property (the "Project Plans") call for a gut renovation of the entire building both inside and out as well as the overall redevelopment and change of use of the property into a 16 unit "apartment-hotel." As shown in the photos below, the demolition of the Subject Property is extensive and well underway:



Inevitably, the Subject Property will be used for transient Short Term Rentals (“STR”).

CITY OVERSIGHT

We have identified, at a minimum, three (3) significant errors made by Staff in granting the Building Permit (which includes a demolition permit) for the Project:

1. The City Wrongfully Waived the Certificate of Appropriateness Requirement

Pursuant to the City Code, a Certificate of Appropriateness “shall be required prior to the issuance of any permit for new construction, demolition, alteration, rehabilitation, renovation, restoration, signage or any other physical modification affecting any building, structure, improvement, landscape feature, public interior or site . . . located within an historic district[.]”¹ A *Certificate of Appropriateness* is “a certificate issued by the historic preservation board indicating that new construction, alteration or demolition of an historic structure or an improvement within an historic district is in accordance with chapter 118, article X of this Code.”²

With respect to the Subject Property, the following facts are undisputed:

- The conversion of the Subject Property involves substantial alterations to a contributing historic structure within a historic district;
- City Code requires a Certificate of Appropriateness (“COA”) prior to permit issuance;
- the Historic Preservation Board neither reviewed the Project Plans nor issued a COA for the Project;

We understand that your Staff maintains that the Planning Department reviewed the Project Plans and that the mere issuance of the Building Permit to the permit applicant served as a *de facto* COA.³ As explained below, Staff is wrong and misguided for several reasons.

1 § 118-561, City Code.

2 §114-1, City Code.

3 In contrast, the correct process is reflected by the following two projects on the same block as the Subject Property, both of which submitted applications for Certificate of Appropriateness which were recently heard at a July 13, 2021 Historic Preservation Meeting:

HBP21-0465 – 360 Meridian Avenue. A Certificate of Appropriateness for the modification of a single north-facing façade of a *non-contributing* multi-family building in an historic district. City Staff (Ms. Deborah Tackett) explained at the HPB meeting that this “very minor” application would convert the property’s windows to sliding glass doors. The change would be “almost imperceivable . . . from the pedestrian point of view.”

HPB21-0462 – 326 Meridian Avenue. A Certificate of Appropriateness for the partial demolition of an accessory structure on this contributing historic property. Ms. Tackett highlighted the adaptive reuse of this historic property, which only included “some demolition” to the accessory structure.

Comparing the work contemplated in these two (relatively minor) COA applications to the Subject Property’s Project Plans (very significant redevelopment) clearly demonstrates that the work at the Subject Property, a complete gut

First: Section 118-561 of the Code mandates that a COA “shall be required *prior to* the issuance of any permit” for construction, demolition, or renovation of structures located within a historic district

. . . *which did not occur.*

Second: Section 118-562 of the Code mandates that a COA application “shall be on a form provided by the planning department”

. . . *which did not occur.*

Third: Section 118-562 provides that COA applications must contain certain information and exhibits which “are needed to allow for complete evaluation” of the COA application

. . . *which did not occur.*

Fourth: Section 118-564(d) provides that an approved COA “shall be in written form and attached to the site plan and/or the schematics submitted as part of the applications.” A copy of such COA “shall be kept on file with the board and shall be transmitted to the building official”⁴

. . . *but no such record exists.*

Fifth: Section 118-562(a) provides that copies of all filed COA applications “shall be made available for inspection by the general public.”

. . . *yet no such record was produced.*

The process of approving the Building Permit and calling it a Certificate of Appropriateness (instead of a separate and distinct review of a comprehensive COA application) is contrary to the plain language of the City Code, and is an apparent attempt by Staff to “sweep under the rug” its failure to critically evaluate the Subject Property for compliance with the City’s Land Development Regulations. In effect, the City improperly waived its own Code requirement of an application for, and subsequent approval of, a COA. Because a COA was not validly approved *prior to* the issuance of the Building Permit, the Building Permit must be rescinded.

2. The Subject Property Must Conform to Current Land Development Regulations

The Code provides a mechanism for bringing non-conforming buildings into compliance with current Land Development Regulations. Specifically, nonconforming buildings which are repaired or rehabilitated by less than 50% of the value of the building (as determined by the building official) are subject to less stringent standards than those nonconforming buildings which are repaired or rehabilitated by more than 50% of the value of the building.⁵ “The intent [of the

renovation and redevelopment of a contributing historic property, should have required an appropriate COA application and appearance before the Historic Preservation Board for a public hearing.

4 §118-564, City Code.

5 §118-395(b), City Code.

nonconformance provisions] is to encourage nonconformities to *ultimately be brought into compliance* with current regulations.”⁶ The Florida Building Code utilizes the same 50% threshold to determine whether an existing building must be brought into compliance with the current Building Code.⁷

Pursuant to the Building Code, the Building Official is responsible for setting the final valuation for a permit.⁸ This valuation is determinative not only of the permit fees, but also (with respect to the requirements under both the City Code and the Building Code) applicable to repair and rehabilitation of nonconforming buildings.

On its face, the Project’s permit application contemplates a “value of work” of \$710,000; supporting documentation submitted to the City during the permit approval process includes an appraisal⁹ dated January 24, 2018 that valued the existing improvements at \$1,460,000. A simple review of the Project Plans reveals that the work contemplated includes, among other things, complete interior demolition and replacement, replacement of all HVAC, plumbing, windows, and doors, floors and interior finishes, in addition to installation of life safety systems including fire alarms and sprinklers. It is inconceivable that this work can be performed for less than \$730,000 (i.e., under the 50% threshold).

All of this assumes that the appraisal provided by the applicant was valid and accurate, rather than a fraudulent submission to the City in attempt to remain under the 50% threshold. Tellingly, in 2020 the Miami-Dade County Property Appraiser valued the improvements at \$902,000, *substantially lower* than the appraised valuation provided to the City. Then, within nine months from the date the Building Permit was issued, the applicant filed a petition contesting the Property Appraiser’s valuation, contending that \$902,000 was *still too high* a value for the existing improvements. Based on the evidence presented and testimony provided at the Value Adjustment Board hearing, the Special Magistrate agreed with the applicant and issued a decision recommending the valuation of the improvements be reduced to \$365,563.00.¹⁰

The Building Permit, as issued December 16, 2019, reflects the same “value of work” (\$710,000) on the permit application, and the Building Official apparently accepted both this value of work and the value of the existing improvements without any further inquiry, effectively waiving the requirements for bringing the Subject Property into conformance with the Code.

It is the responsibility of the Building Official to critically review and establish the value not only of proposed work but also of the existing building, and ultimately determine whether a repair or

⁶ §118-390(a), City Code (emphasis added).

⁷ The Florida Building Code uses the same 50% threshold to determine whether construction on an existing building constitutes “substantial improvement.” §202, Florida Building Code 2017 (“Substantial Improvement. Any repair, reconstruction, rehabilitation, alteration, addition or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started.”).

⁸ §109.3, Florida Building Code, 2017.

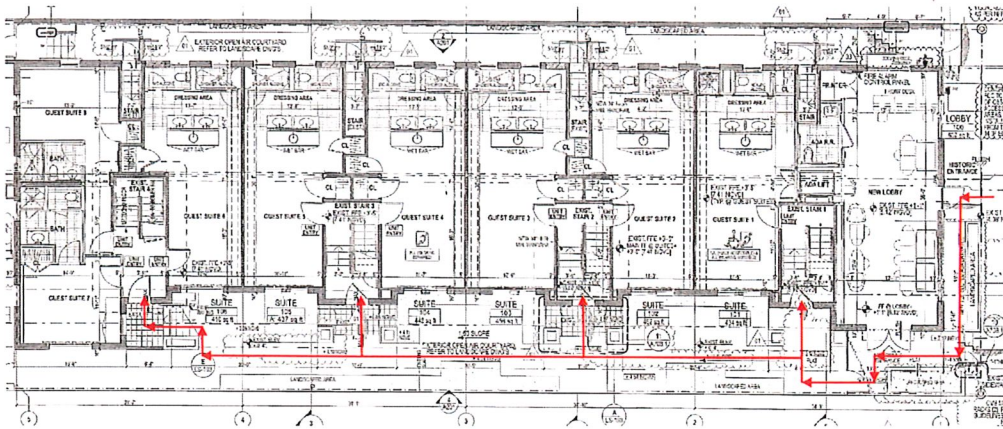
⁹ The appraisal itself is questionable, as explained below.

¹⁰ See Recommendation of Special Magistrate.

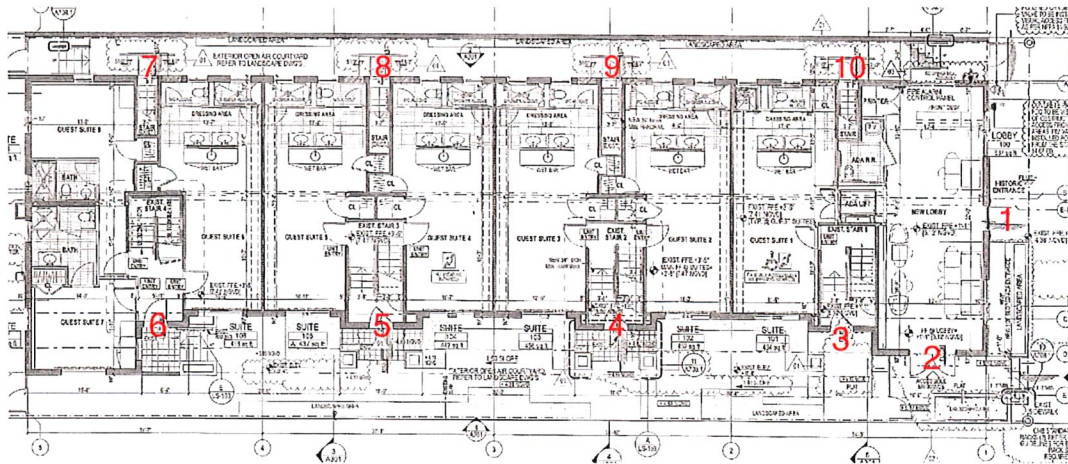
rehabilitation is in excess of 50% of the value of the building. Whether through error on the part of the Building Official, or an abuse of discretion, it appears this critical review never took place. The Building Permit must be rescinded so that review can occur.

3. City Staff Approved a Hotel Where Such Use is Prohibited

Hotels are not permitted in the City’s R-PS2 zoning district.¹¹ “Apartment hotels” are permitted, and are defined under the City Code as “having an inner lobby through which **all tenants must pass to gain access.**”¹² Despite this requirement, the Project Plans plainly show that **only** “Guest Suite 1” is accessible from the proposed lobby and that tenants of all units **may bypass the lobby altogether:**



In fact, the Project Plans contemplate not one, but *ten separate entrances to the building:*



As provided by the City Code, “no use is permitted on a parcel . . . unless it can be located on such parcel in full compliance with all of the performance standards and other requirements of these

¹¹ §142-693, City Code.

¹² §114-1, City Code (emphasis added). This requirement stands in stark contrast to a “hotel” and a “suite hotel” where “ingress or egress **may or may not be through a common lobby.**” §114-1, City Code (emphasis added). Notably, hotels and suite hotels are not permitted in R-PS2. §142-693(a), City Code.

land development regulations applicable to the specific use and parcel in question.¹³ By definition, the Project does not conform to the City Code; the Project Plans do not contemplate an Apartment Hotel, as defined in the Code, they contemplate a Hotel – a use which is strictly prohibited in the R-PS2 zoning district.¹⁴ Nevertheless, Staff approved the Project Plans and issued the Building Permit. Accordingly, the Building Permit must be rescinded.

ENFORCEMENT & REVOCATION

The Land Development Regulations of the City of Miami Beach “shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare.”¹⁵ It is the duty of the administration to enforce the provisions of these Land Development Regulations and to refuse to approve any permit for any building or for the use of any premises, which would violate any of the provisions of these Land Development Regulations.¹⁶ Further, it is public policy of the City of Miami Beach to preserve historic properties located in the City.¹⁷

As explained above, the Project Plans were mistakenly approved due to clear oversights by City Staff.

The City Code contemplates such shortcomings. The Building Official is vested with the authority to stop work on projects which violate these Land Development Regulations.¹⁸ The Code provides that any property owner who makes an alteration to an historic property or property located in an historic district without a certificate of appropriateness “must make application to the historic preservation board . . . prior to any further work taking place on site.” See § 118-533, City Code (emphasis added). The Historic Preservation Board, in turn, “shall determine whether the property shall be returned to its condition during the period of historic significance prior to the alteration.” *Id.* (emphasis added). Because a Certificate of Appropriateness was not validly issued, the plain language of Section 118-533 makes clear that these obligations of the Owner and the City are mandatory.

I urge you to critically review the enclosed Project Plans (including the photos of work in progress at the Subject Property) and take immediate action to prevent any further work that does not fully comport with City Code, the Land Development Regulations, and the City’s policy objective of preserving historic properties.

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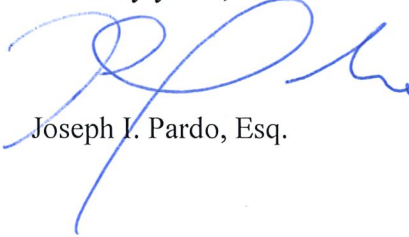
*

13 §142-692, City Code.
14 §142-693, City Code.
15 §114-2(b), City Code.
16 §114-7(a), City Code.
17 See § 118-501, City Code.
18 §114-2(d), City Code.

Letter to City Manager Alina Hudak
July 26, 2021
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If you have any questions for which I can be of assistance, please contact me at your convenience.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'JP', with a long horizontal flourish extending to the right.

Joseph I. Pardo, Esq.

Encls.
Recommendation of Special Magistrate

Cc (via e-mail):

Thomas Mooney, Planning Director (ThomasMooney@miamibeachfl.gov)
Ana Salgueiro, Building Official (AnaSalgueiro@miamibeachfl.gov)
Deborah Tackett, Historic Preservation Chief (DeborahTackett@miamibeachfl.gov)
Jack Finglass, Chair of the Historic Preservation Board (JackFing@msn.com)
Rafael A. Paz, Chief Deputy City Attorney (RafaelPaz@miamibeachfl.gov)
Nicholas Kallergis, First Assistant City Attorney (NickKallergis@miamibeachfl.gov)
Mayor Dan Gelber (DanGelber@miamibeachfl.gov)
Commissioner Micky Steinberg (MickySteinberg@miamibeachfl.gov)
Commissioner Mark Samuelian (MarkSamuelian@miamibeachfl.gov)
Commissioner Michael Góngora (Michael@miamibeachfl.gov)
Commissioner Steven Meiner (stevenmeiner@miamibeachfl.gov)
Commissioner Ricky Arriola (RickyArriola@miamibeachfl.gov)
Commissioner David Richardson (DavidRichardson@miamibeachfl.gov)



**DECISION OF THE VALUE ADJUSTMENT BOARD
VALUE PETITION**

DR-485V
R. 01/ 17
Rule 12D-16.0 02
F.A.C.
Eff. 01/17

Miami-Dade County

The actions below were taken on your petition.

These actions are a recommendation only, not final These actions are a final decision of the VAB

If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 196.151, and 197.2425, Florida Statutes.)

| | |
|---|---|
| Petition # 2020-20240 | Parcel ID 02-4203-009-5190 |
| Petitioner name STUART B. FEINER The petitioner is: <input type="checkbox"/> taxpayer of record <input checked="" type="checkbox"/> taxpayer's agent <input type="checkbox"/> other, explain: | Property address 310 MERIDIAN AVE Miami Beach, FL 33139-8724 |

Decision Summary Denied your petition Granted your petition Granted your petition in part

| Value Lines 1 and 4 must be completed | Value from TRIM Notice | Before Board Action Value presented by property appraiser Rule 12D-9.025(10), F.A.C. | After Board Action |
|---|---------------------------|--|-----------------------|
| 1. Just value, required | 2,372,000.00 | 2,372,000.00 | 1,835,563.00 |
| 2. Assessed or classified use value,* if applicable | 2,372,000.00 | 2,372,000.00 | 1,835,563.00 |
| 3. Exempt value,* enter "0" if none | 0.00 | 0.00 | 0.00 |
| 4. Taxable value,* required | 2,372,000.00 | 2,372,000.00 | 1,835,563.00 |

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reasons for Decision Fill-in fields will expand or add pages, as needed.

Findings of Fact
(See Attached)

Conclusions of Law
reconciled evidence supports market value reduction

Recommended Decision of Special Magistrate Finding and conclusions above are recommendations.

| | | |
|---|------------------------------|--------------------|
| JOSE A. ORTEGA Signature, special magistrate | JOSE A. ORTEGA Print name | 12/08/2020 Date |
| VAB Clerk Signature, VAB clerk or special representative | VAB Clerk Print name | 02/26/2021 Date |

If this is a recommended decision, the board will consider the recommended decision on _____ at _____
Address

If the line above is blank, the board does not yet know the date, time, and place when the recommended decision will be considered. To find the information, please call 305-375-5641 or visit our web site at <http://vabprod.miamidade.gov/Axis>

Final Decision of the Value Adjustment Board

| | | |
|--|------------|------------------------|
| Signature, chair, value adjustment board | Print name | Date of decision |
| Signature, VAB clerk or representative | Print name | Date mailed to parties |

Findings of Fact for Petition 2020-20240:

subject is a parcel of 7,000 sf improved with 17 units of 7,013 sf built in 1940. pa land sales are not adequate. improved sales are from different area. tp presented proforma income indicating little building contribution to land. pa proforma rent estimate is high.

Land Value: Before \$1,470,000.00, After \$1,470,000.00

Building Value: Before \$902,000.00, After \$365,563.00

Extra Value: Before \$0.00, After \$0.00