

May 6, 2022

VIA HAND DELIVERY & ELECTRONIC DELIVERY

Mr. Kent Walia, AICP
Community Development Director
City of North Miami Beach
17050 NE 19th Avenue
North Miami Beach, FL 33162

Re: Soleste on the Bay (formerly known as Riverwalk South)
Letter of Intent for Planning and Zoning Application (the “**Application**”)
Property located at 16375 Biscayne Boulevard, North Miami Beach, Florida (Folio
Number 07-2216-042-0020) (the “**Property**”)

Dear Mr. Walia,

On behalf of Nomi South Holdings, LLC (the “**Owner**”), we respectfully submit the enclosed Application to modify the site plan previously approved at the above-referenced Property. Specifically, the Owner seeks to modify the 2015 Site Plan (defined herein) in order to (i) reduce the dual tower configuration into a single tower design; (ii) eliminate the hotel programming in favor of increased residential units, and (iii) increased retail and restaurant programming to enhance the activation at the ground level. The collective modifications will allow for a mixed use redevelopment of the Property with 363 residential units and 14,582 +/- square feet of ground floor commercial and restaurant space (the “**2022 Project**”). As part of the modification approval, the Owner is requesting approval of certain variances in accordance with the City of North Miami Beach (the “**City**”) Zoning and Land Development Code (the “**Zoning Code**”). The proposed modifications are intended to complement the local mixed use district with cohesive multi-family residential programming, improved vehicular and pedestrian connectivity and greenway paths to further enhance this growing pedestrian-friendly, waterfront neighborhood.

I. THE PROPERTY

The Property is generally located at the northeast intersection of Biscayne Boulevard and NE 163rd Street and is surrounded by an existing construction site¹ to the North, the Harbour condominiums to the East, the Florida Power & Light facility to the southeast, commercial uses to the South and Biscayne Boulevard to the West. Please refer to the *Aerial Image* for an aerial photograph of the Property from the Miami-Dade County Appraiser’s website.

¹ The property located at 16395 Biscayne Boulevard, the North Parcel (defined herein), contains the Riverwalk North development, discussed further in Section II of this Letter.



Aerial Image

Please find enclosed a copy of that certain Alta/ACSM Land Title Survey dated February 22, 2022 confirming the Property contains 93,961 +/- square feet or 2.15 +/- acres of land. The Property is currently improved with a single-story commercial structure and on-site surface parking. Pursuant to the Future Land Use Map (the “**FLUM**”) contained within the City’s Comprehensive Plan (the “**Comprehensive Plan**”), the Property’s current land use designation is Southern Mixed Use Waterfront (“**MU/SWF**”). Consistent with the Property’s FLUM designation, the Property’s current zoning designation is MU/SWF, Mixed Use South Waterfront as shown on the City’s Official Zoning Map (the “**Zoning Map**”).

II. DEVELOPMENT APPROVAL HISTORY

On November 3, 2015, pursuant to Resolution No. R2015-90² (the “**2015 Resolution**”), the City Council approved a site plan and conditional use for the Property as well as the abutting parcel to the North located at 16395 Biscayne Boulevard (the “**North Parcel**”). In sum, the 2015 Resolution collectively approved 1,505,544 square feet of floor area including 730 residential units, 177 hotel units and 9,178 square feet of commercial space (the “**2015 Approval**”).

The site plans prepared by the Form Group, Inc. and referenced in Section 3.b of the 2015 Resolution (the “**2015 Site Plan**”) reflect that Building A was designed with a 32-story luxury condominium tower containing 480 residential units proposed at the North Parcel. Building B, located at the Property, was approved with two (2) towers - a 30-story residential tower with 250

² The Resolution remains active and expires on June 22, 2024 pursuant to several state extensions. See enclosed letter from the City’s Planning and Zoning Division dated January 27, 2020.

residential units and an 18-story hotel tower designed with 177 hotel rooms and 9,178 square feet of ground floor commercial space.

On September 25, 2020, the City passed Resolution No. R2020-89, which modified the 2015 Site Plan as applied to the North Parcel (“**North Parcel 2020 Resolution**”). Specifically, the owner of the North Parcel reduced the residential programming from 480 residential units to 367 residential units (113 unit reduction), and added 2,708 square feet of ground floor commercial space (the ground floor programming originally contained no commercial space for Building A). Please note, the Application does not include any requests to further modify the recent approvals to the North Parcel.

At this time, the Owner wishes to modify the 2015 Site Plan with regards to Building B that was previously approved at the Property. The proposed modifications include a modified tower configuration and the elimination of the hotel programming (177 hotel rooms) with the intent to transfer the 113 units from the North Parcel to the Property. The modified project provides increased ground floor commercial uses to create a superior environment that meets the current market demands while continuing to activate the pedestrian realm with ground floor commercial uses and walking paths that provide enhanced connectivity within the Southern Waterfront Mixed Use neighborhood.

III. MODIFICATION REQUEST TO THE SOUTH PARCEL (BUILDING B)

As detailed in the enclosed plans prepared by the Form Group, Inc., Owner seeks to develop the Property with a 28-story³ building containing 363 residential units (rental) and 14,582 square feet of ground floor commercial uses (the “**2022 Site Plan**” or “**2022 Project**”). Please note, the 2022 Site Plan generally includes the following modifications:

- Overall reduction of dual tower configuration (from 30-stories for residential tower), unifying the residential programming all within one (1) tower (28 stories);
- Elimination of hotel programming (177 units) substituted with additional residential programming - total residential density increased from 250 to 363 residential units;
- Substantial increase in residential amenities ranging from recreational, self-care and family dedicated spaces;
- Additional on-site parking (521 spaces to 599 parking spaces⁴) to accommodate the increased residential and commercial programming;
- Expansion of ground floor retail and restaurant uses (from 9,178 square feet to 14,582 square feet) located along Biscayne Boulevard frontage to serve both the existing and future residents of this waterfront community; and
- Enhanced greenbelt and pedestrian-realm access to encourage utilization of outdoor spaces that complement the ground floor uses.

³ The 2015 Resolution approved a 30-story residential tower at the Property.

⁴ Please note that an additional 46 parking spaces are available in tandem. The minimum required parking spaces for the Project is 432 parking spaces, whereby the parking program includes a total of 645 parking spaces.

The increase of restaurant and retail uses is designed to further activate the ground level with a pedestrian friendly streetscape at the Property that provides seamless connectivity with the waterfront walkways and pedestrian sidewalks throughout the neighborhood, including connection with the Harbour condominiums to the East and the future Riverwalk development to the North and Uptown development to the South. Please note, the 2022 Site Plan and corresponding modifications solely apply to the development at the Property. The 2022 Site Plan does not include any modifications to the approved and recently modified development located on the North Parcel.

IV. REQUEST FOR WAIVER AND VARIANCE APPROVAL

A. Waivers

The Applicant requests approval of the following waivers pursuant to Section 24-58(K)(2)(b)(i) of the Zoning Code.

- 1. Lot Width:** A waiver for the maximum lot width of 212'8" feet.
- 2. Active Liner (Side and Rear Frontages):** A waiver to permit architectural, decorative screening for the parking garage along the side and rear frontages.

Lot Width. As platted, the Property has an existing lot width of 212'8" feet at various portions. Pursuant to Table MU-2 provided in Section 24-58(S)(3)(c) of the Zoning Code, a maximum lot width of 250 feet is permitted for a "Tower" building typology. The Property, as it currently exists, maintains the same lot width (212'8") and configuration as it did when the Property was replatted and approved by the City in 1999 and when the Mixed Use District was created in 2015. As a result, the requested waiver does not result from the actions of the Applicant and is directly tied to the Property's legal non-conforming⁵ status and is therefore required by necessity.

Active Liner. The Owner is requesting a waiver pursuant to Section 24-58.5(K)(2)(b)(i) of the Zoning Code for the current design of the parking facilities for the 2022 Project. Specifically, this section of the Zoning Code permits the waiver of "[t]he requirement for a Liner building along the side and rear frontage" by the Director of the Community Development Department or his/her designee. In compliance with the required waiver standards and as reflected in the 2022 Site Plan, the proposed development provides for various screening mechanisms along all frontages of the parking garage, including the North, East and South (side and rear) frontages. Specifically, the parking garage is designed with shifting architectural elements and screening that highlight both the horizontal and vertical design elements of the tower facades, further ensuring that no vehicles parked within the garage are visible from the street.

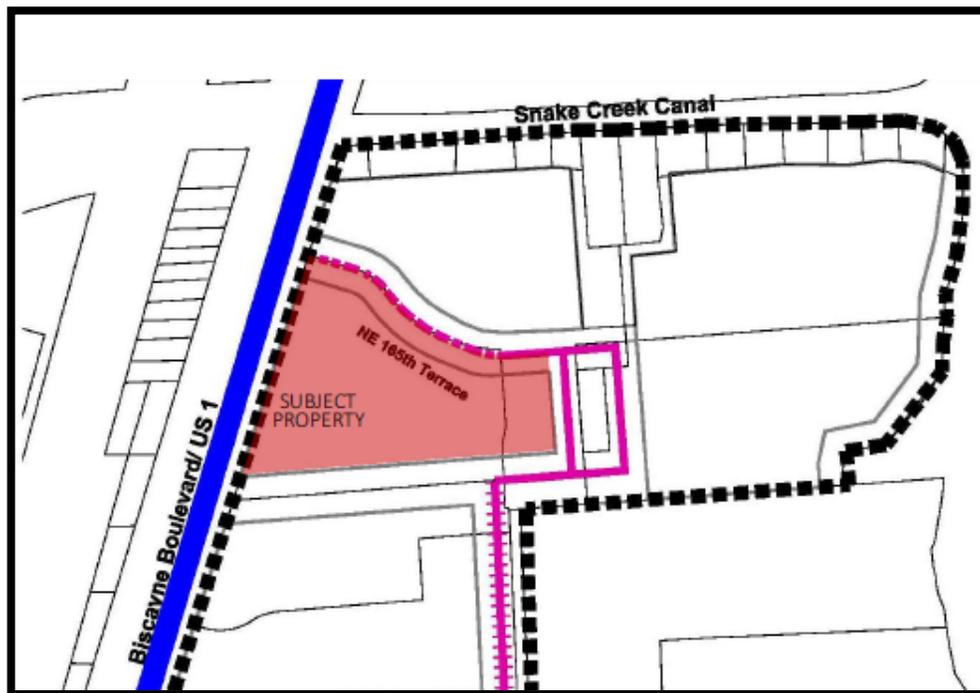
B. Variance Approval

⁵ Per Section 24-34(A)(1) of the Zoning Code, "For purposes of this Code, a nonconforming lot, structure, use or characteristic of use is defined as a lot, structure, use, or combination thereof that does not comply with the use or site development standards of the zoning district in which the lot, structure, use or characteristic of use or combination thereof is located, but which was legally established and in existence before the effective date of this Code."

The Applicant is requesting the following non-use variances for the development of the Project (the “**Variances**”):

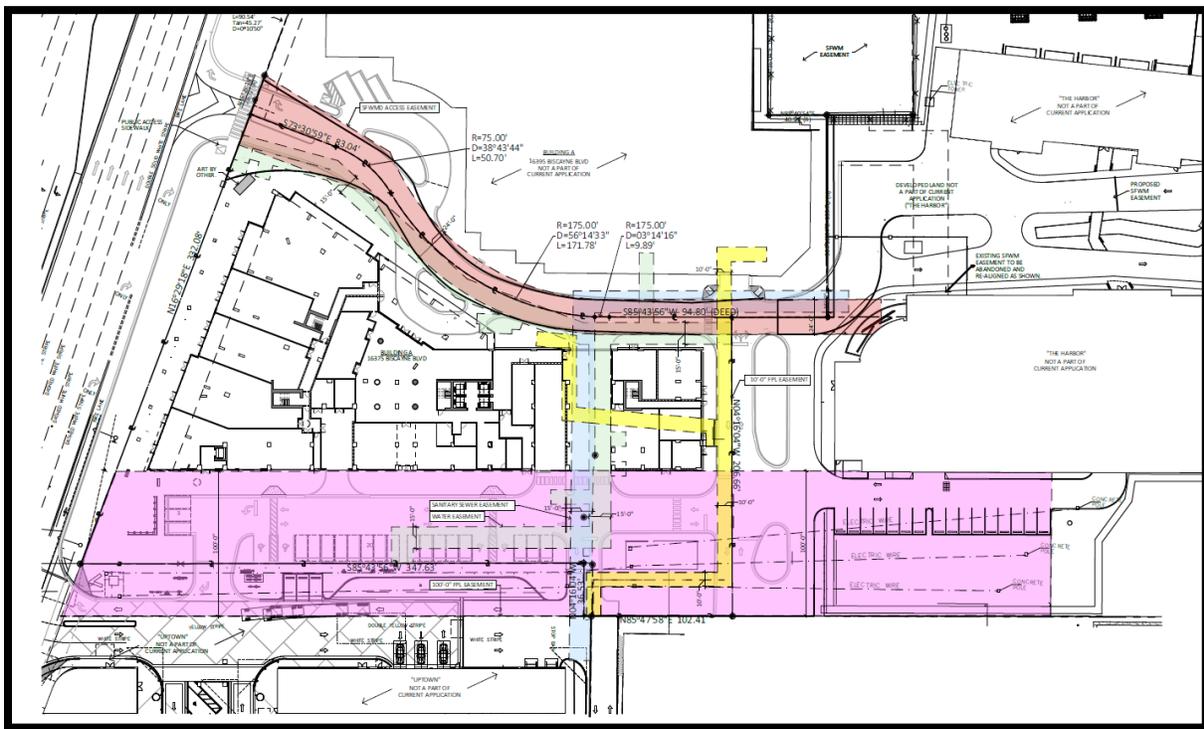
1. **Tower Setback:** A non-use variance to permit a tower setback of 0” from the podium along southern property line.
2. **Building Length:** A non-use variance to permit a building length of 383’6”, where 300’ is required.
3. **Building Frontages:** A non-use variance to permit reduced frontages for the front (Biscayne Boulevard) and rear frontages.
4. **Active Liner:** A non-use variance to allow architectural, decorative screening of the parking garage (Levels 2-7) in lieu of an active liner along Biscayne Boulevard.
5. **Ground Floor Level Height:** A non-use variance to permit 22 feet height at the ground floor level.
6. **Ground Floor Fenestration:** A non-use variance to provide 0% fenestration along the northeastern, eastern and southeastern frontages.

The Property has a unique configuration with curved lot lines that create widely varied dimensions throughout the Property. The widest point of Property starts along Biscayne Boulevard and gets substantially narrower due to the curved pattern of NE 165th Terrace along the northern Property line, which is reflected in the *Street Network Connectivity Regulating Plan Image* for the Property, as provided in the image below.



Street Network Connectivity Regulating Plan Image

Additionally, as reflected in the 2022 Site Plans and more specifically in the *Easement Diagram Image*, there are several easements that currently encumber the Property further restricting the developable limits and footprint. For example, a 100-foot wide easement is located along the southern Property boundary for required access and maintenance by Florida Power & Light (“**FPL Easement**”). Additionally, there are 15-foot water and sewer easements that are located within the ground floor development footprint of the Property (collectively, the “**Water and Sewer Easement**”). These inherent physical and easement-related constraints severely limit the development as a whole, but especially limit the design and configuration concerning the podium/tower setback, frontage and building length requirements for the Property, as further described below. Please refer to the *Easement Diagram Image* provided below which details the FPL Easement in purple, the Water and Sewer Easement in green and blue and reflects the physical constraints and limits that currently exist at the Property through no fault of the Owner.



Section 24-176(B) of the City’s Zoning Code delineates the standards of review for a variance application. Specifically, the Variances shall be approved upon demonstration of the following:

- a. *A non-use variance to the terms of this Code that will not be contrary to the public interest may be recommended by the Planning and Zoning Board, and except as provided in Section 24-176.1, granted by the City Commission in compliance with the requirements of the City Charter in this Code, upon a showing by the applicant that the nonuse variance maintains*

the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required. For the purpose of this subsection, the term "non-use variances" involves matters such as setback lines, frontage requirements, subdivision regulations, height limitations, lot size restrictions, yard requirements and other variances which have no relation to change of use of the property in question.

i. Tower Setback

The tower along the southern frontage is designed coplanar with the podium. Due to the location of the existing FPL Easement, the podium is setback approximately 64 feet (where a 0' is required) from the southern Property line. Since the tower is coplanar with the podium along the southern frontage, the tower is also setback approximately 64 feet from the southern Property line. Requiring a 15-foot tower setback (from the podium) would further shift the tower 79 feet from the southern Property line, severely limiting the functionality of the residential tower programming. The Property's unique configuration coupled with the FPL easement renders this portion of the Property extremely narrow given the relative size of the Property, with little to no room to accommodate an additional 15-foot setback from the podium along the southern Property line, without compromising the size and quality of the residential units proposed for the 2022 Project (the tower is approximately 62' wide whereas the Property is 206' wide at its narrowest point on the East). It is important to note that the tower facades along the other frontages (i.e. Biscayne Boulevard, North and East) are in compliance with or exceed the 15-foot tower setback requirement. In sum, a traditional tower built in accordance with the Zoning Code is 15 feet from the Property line. In this case, although the tower is 0 feet from the podium edge, it is 64 feet from the southern Property line.

ii. Building Length

As reflected in the *Easement Diagram Image*, the easements at the Property not only consists of the 100-foot wide FPL Easement that runs along the southern Property line, but also includes the Water and Sewer Easement that bisects the Property (creating a break in the ground floor frontage near the center of the Property). Note, the FPL Easement is approximately 64 feet into the Property's southern boundary, which pushes the building North and further cannibalizes the buildable footprint at the Property. Accordingly, the proposed building length is a direct result of the placement of the FPL Easement in addition to the limiting configuration of the Property. Without this variance, the Property is critically restricted by the existing lot configuration and physical constraints created by the surrounding easements. Note, the 2022 Project features an enhanced design that provides distinct horizontal and vertical articulation that provides visual depth and reduces the perceived massing of the building. In sum, the podium and tower massing is pushed North and East, replacing the massing that would otherwise be located as of right within the FPL Easement area.

iii. Building Frontage

Owner is requesting a non-use variance to allow the building to be developed with a frontage of 65% (where 70% is required) along Biscayne Boulevard and a frontage of 40% (where 90% is required) on the eastern edge. These variances are again, a direct result of the irregular shaped lot and the FPL Easement that provides significant development constraints along these frontages. As mentioned above, the building is setback approximately 64 feet from the southern Property line (due to the FPL easement) and another 20 feet from the northern Property line (due to the Code required street/sidewalk width requirement). This effectively shrinks the developable area at the Property to a very compact and precise design. Additionally, the Water and Sewer Easement that bisects the Property (due East) further restricts any permanent structures within the ground floor development of this area (20' clear vertical clearance). As a result, the parking garage facilities and entrance were purposefully designed in this location to allow the required access for those water and sewer facilities.

Despite these frontage variances, the ground floor along Biscayne Boulevard is completely activated with restaurant and retail space that complements the enlarged walkways (8') and extensive public realm improvements (i.e. landscaping, decorative pavers, benches and trash receptacles) for an activated and vibrant streetscape.

iv. Active Use Liner (Biscayne Boulevard)

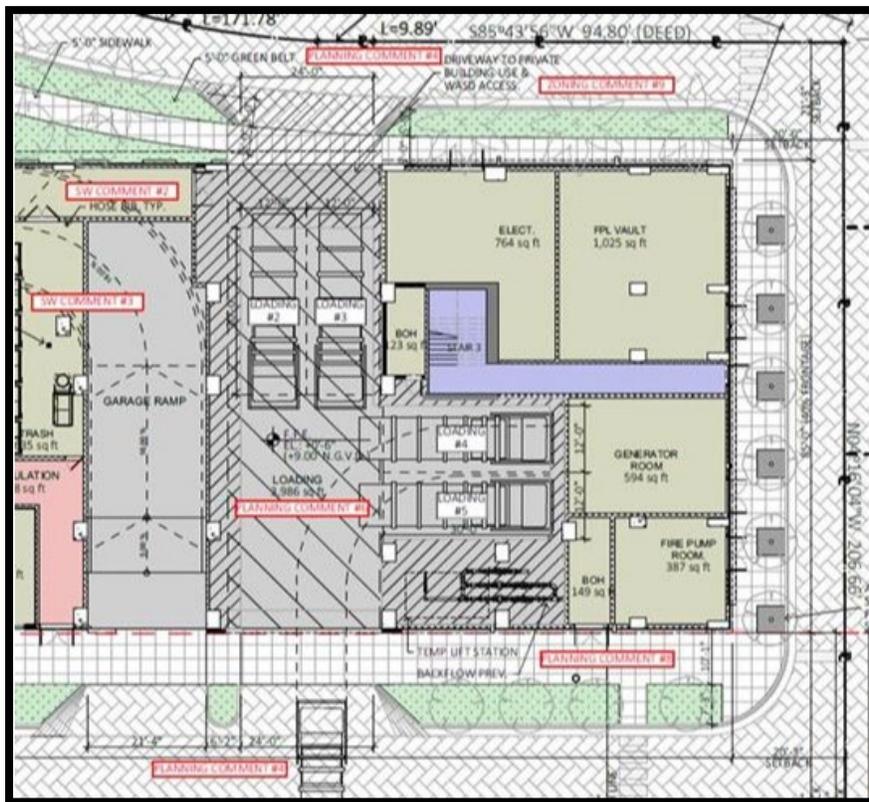
Owner is requesting a non-use variance to continue the architectural and screened design of the parking garage along Biscayne Boulevard (consistent with the prior 2015 Approval). Given the location and substantial scope of the easements (reflected in the *Easement Diagram Image*) coupled with the restrictive site geometry, the addition of an active liner along this frontage would create an unfeasible design that would compromise the functionality and scope of the parking program. In other words, strict compliance with this section of the Zoning Code would substantially restrict the amount of parking spaces provided for the 2022 Project. Approval of this variance would allow for the construction of the parking garage with 599 parking spaces, ensuring there is more than adequate parking for the residential (and guest) and commercial components of the 2022 Project. Additionally, the parking garage's design mitigates any potentially adverse effects from the proposed variance by providing cohesive architectural elements and screening along all frontages, including Biscayne Boulevard, to ensure that no vehicles will be visible from the public realm. The design is harmonious with the overall 2022 Project as well as the recently approved (and modified) mixed use developments in the Mixed Use Southern Waterfront neighborhood.

v. Ground Floor Level Height

Owner is requesting a ground level height of 22 feet, where a maximum of 20 feet is permitted according to Section 24-58(R)(2) of the Code. An additional two (2) feet of height for the ground level (22' in total) is necessary to allow for adequate clearance for Miami Dade County Water and Sewer to service their infrastructure located within this easement site. Due to the Water and Sewer Easement, not only are permanent structures of any type prohibited on the ground floor within the realms of the easement, but a 20-foot vertical clearance is also required to ensure safe and unobstructed access to these facilities. The additional 2-feet of ground floor height, measured from slab to slab, accounts for the additional space needed to accommodate the typical building infrastructure located below the slab (e.g., water, electrical and other ductwork). Please note, to achieve the adequate clearance needed for the Water and Sewer Easement, the ground floor slab will be stepped down to 20' in most areas. As a result, the ground floor is purposefully designed to limit this variance to the greatest extent possible and only within the scope of the Water and Sewer Easement areas.

vi. Ground Floor Fenestration

Owner is requesting a non-use variance to provide 0% fenestration along the northeastern, eastern and southeastern frontages, where 30% minimum is required. As mentioned above, the Property contains a unique configuration and is encumbered by several easements (covering a substantial area) that dictate and severely limit the Project design and programming. Specifically, the Property substantially decreases in depth and gets narrower towards the eastern portions of the Property. The narrow configuration of the Property directly control and affect the design and scope of the back of house and ancillary service areas for the Project, shifting them along the entire eastern frontage with spill over to the northeastern and southeastern frontages. As a result, the required fenestration (30%) cannot be provided along these frontages as it would interfere with the functionality of these essential back of house services (e.g. loading, utility, emergency fire access) and pose a safety hazard to pedestrians walking along these frontages. Please refer to the *Ground Floor Site Plan: Eastern Portion Image* that depicts all of said back of house services located along these eastern frontages.



Ground Floor Site Plan: Eastern Portion Image

- b. Appropriate conditions and safeguards, in conformity with the Code, may be prescribed as a condition of the granting of the variance, and violation of such conditions shall be deemed a violation of this Code.*

The Owner understands and accepts that appropriate conditions and safeguards may be prescribed as a condition of granting the Variances.

- c. The nonconforming use of adjacent lands, structures, or buildings shall not be considered grounds for the authorization of a variance.*

The potential nonconforming use of adjacent lands, structures, or buildings is not the basis for the above-mentioned Variances. Notwithstanding the irregular shape and configuration of the Property, required utility easements and setbacks, and the requested Variances, the Project is in harmony with the general intent and purpose of the Zoning Code, and complements the existing developments and projects recently approved (and modified) by the City Commission in furtherance of the general intent and purpose of the Southern Mixed Use Waterfront District zoning regulations.

V. CONCURRENCY REQUEST

The Applicant formally requests that the City prepare and submit the required documentation to Miami-Dade County Public Schools for school concurrency review and determination in connection with the Project. In the event any additional concurrency review is required for Site Plan review and approval, please submit on the Applicant's behalf.

Based on the foregoing, we respectfully request your favorable consideration of this Application. Should you have any questions or require any additional information regarding this request, please do not hesitate to contact me at 305-579-0784.

Best Regards,



Ethan B. Wasserman, Esq.

BEW:dv

Enclosures