

PB25-0792, 1 Ocean Drive
2/3/2026 meeting "Exhibit A"

Objections and Protests to Application PB25-0792

Stearns Weaver Miller for Penrod Bros. Inc.

Role: Ensure Conformance with All LDRs

- Planning Board must ensure “conform[ance with] all development regulations.”
- Planning Board must consider land use matters referred by Commission.

THIS APPLICATION DOES NOT COMPLY WITH THE LDRS

1. BAIT & SWITCH. Resolution No. 2023-3282, approved Contract, requires that development of the Property “substantially conform” with authorized conceptual design. Application requests use and development **radically different** from conceptual design.
 2. COMP PLAN. Application requests largely commercial uses **prohibited** in ROS.
-

Rules: LDRs & Comp Plan

- 1) LDR requires “substantial conformance” of Application with Boucher RFP submission.
 - Not about “procurement”
 - Bait & switch also procurement law violation, but not before you.
 - Resolution/Contract is the LDR
 - Applicant admits Resolution/Contract requirements governs:

Design Board Meeting
January 08, 2026

- 1 requires with the minimum, maximum setback, and the concession
- 2 agreement that governs the development of this property. And
- 3 that concession agreement requires that the public parking

Rules: LDRs & Comp Plan

- 1) LDR requires “substantial conformance” of Application with Boucher RFP submission.

7.1.1. Concessionaire shall retain the services of such architecture, engineering and design firms for the Work as approved by the City Manager or his/her designee pursuant to this Agreement. On or before April 1, 2024, Concessionaire shall submit to the City (acting in its proprietary capacity as owner of the Concession Area) all of the preliminary plans and specifications for the renovations and improvements to be made to the Property, which shall substantially conform to the conceptual designs presented by Concessionaire with its RFP submission (the “RFP Conceptual Designs”) and shall include a site plan and all items constituting architectural plans and exhibits and landscape plans and exhibits that are required by the City Land Development Boards to be included in the application for Project Approvals (the “Preliminary Plans and Specifications”). The City Manager shall

- Resolution/Contract requires that Application “**substantially conform**” with conceptual design in Boucher RFP proposal.

Evidence: Applicant Ignores Issue 1, Admits Issue 2

- 1) LDR requires “substantial conformance” of Application with Boucher RFP submission.
 - *Evidence from applicant?*
 - Ignore LDR
 - No evidence of substantial conformance
 - No evidence about Boucher RFP submission—cannot even examine conformance
 - *Evidence from us?*
 - Show you Boucher RFP submission
 - Prove with architectural expert report → NO SUBSTANTIAL CONFORMANCE
-

Rules: LDRs & Comp Plan

- 2) Application must conform with Comprehensive Plan.
 - *Cannot approve use violating comprehensive plan without amendment to comprehensive plan.*

Evidence: Applicant Ignores Issue 1, Admits Issue 2

- 2) Application must conform with Comprehensive Plan.
 - *City staff and Applicant admit application violates comprehensive plan*
 - Comp plan limits ROS to recreation and open space facilities.
 - Application proposes largely commercial uses

Request: Defer or Deny

- Penrod is an interested party.
 - Operator of Nikki Beach
 - Operating within 375-foot radius of planned development
 - On notice list
 - Providing world-renowned luxury operations from this flagship location for nearly 40 years
- Enforce LDRs
- Deny or Defer Application





Bait & Switch = No Substantial Conformance

City land regulations require “substantial conformity” of development with promised and City-authorized proposal

Instead, applicant requests radical deviation from the proposal it promised and the City authorized

Approved and required project...



...but Application pulls a bait and switch



Application requests project radically different from required and authorized plans



Non-Conformity with Required Project: Complete Demo & Larger New Construction

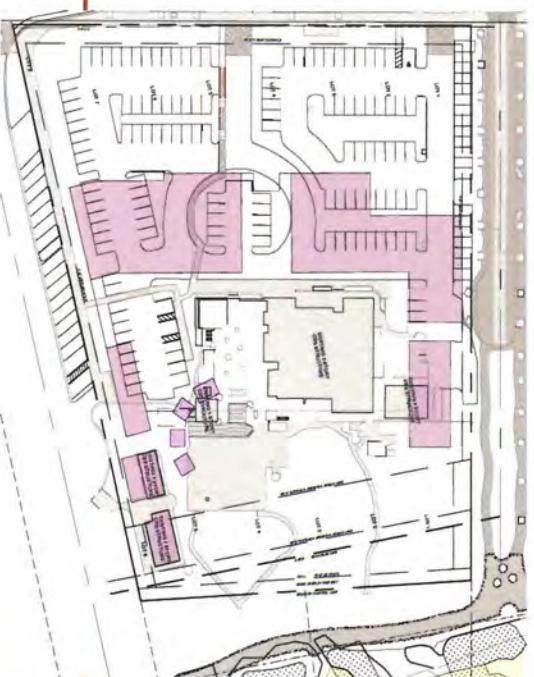
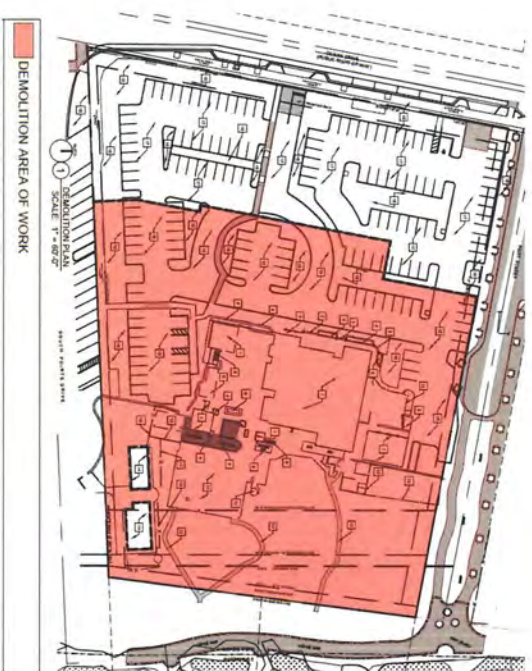
Required Development

- Maintain existing structure
- Maintain parking format & location
- Maintain main building footprint
- Total operational SF of 73,600
- Lot coverage of 13%
- Reduce construction waste

New Non-Conforming Application

- Total demolition, new construction
- Construction of parking understorey
- Increase in footprint by 7,745 SF
- Increase operational SF by 10,700 SF
- Lot coverage of 41%
- Increase to 141,000 SF of demolition

Required: Maintain Existing Structure Request: Complete Demolition & New Construction



Required: Maintain Existing Structure

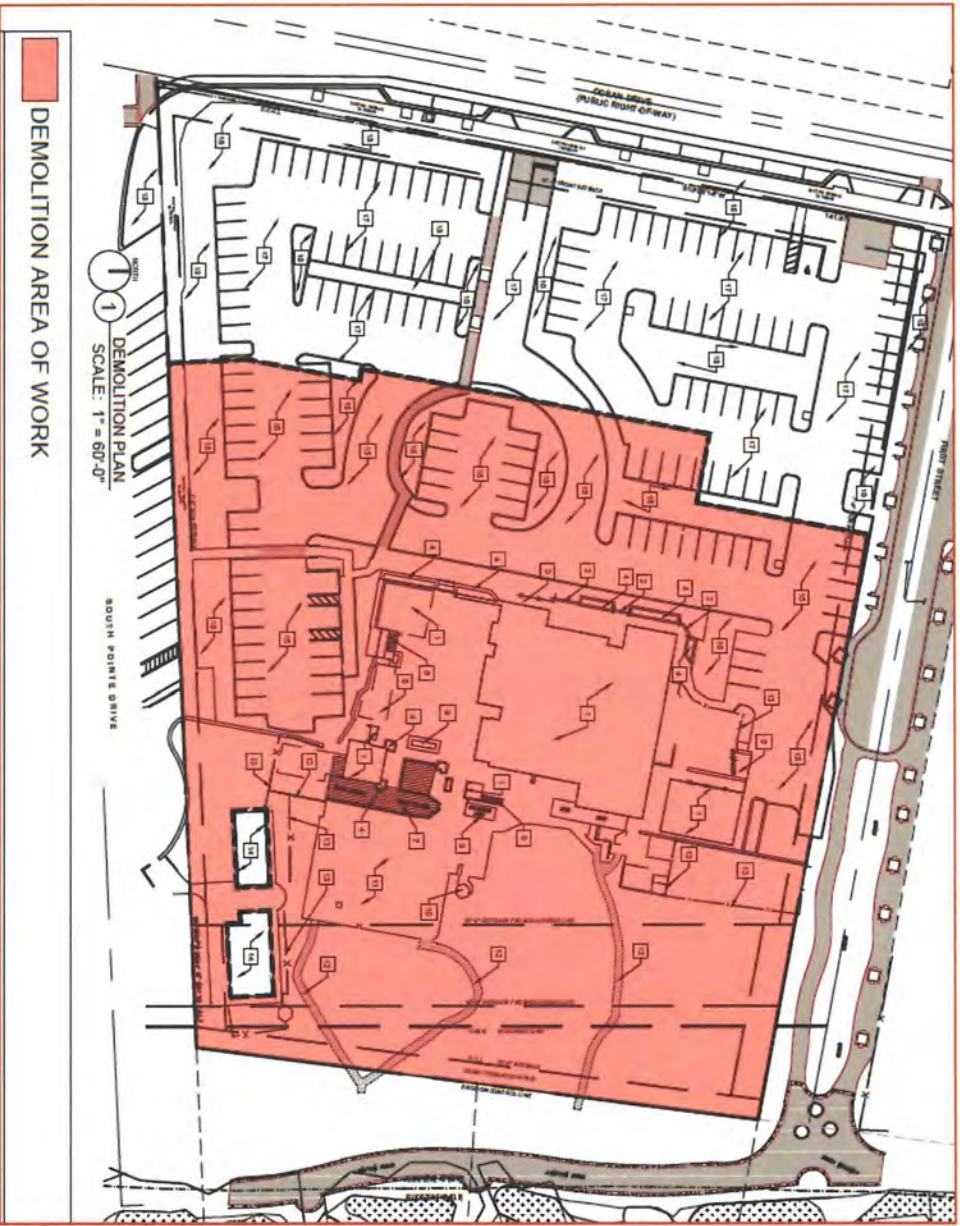


goal of having a minimum 85% waste diversion rate. Along with maintaining existing structures, we will aim to reuse and reintegrate a significant portion of the existing site materials in the project

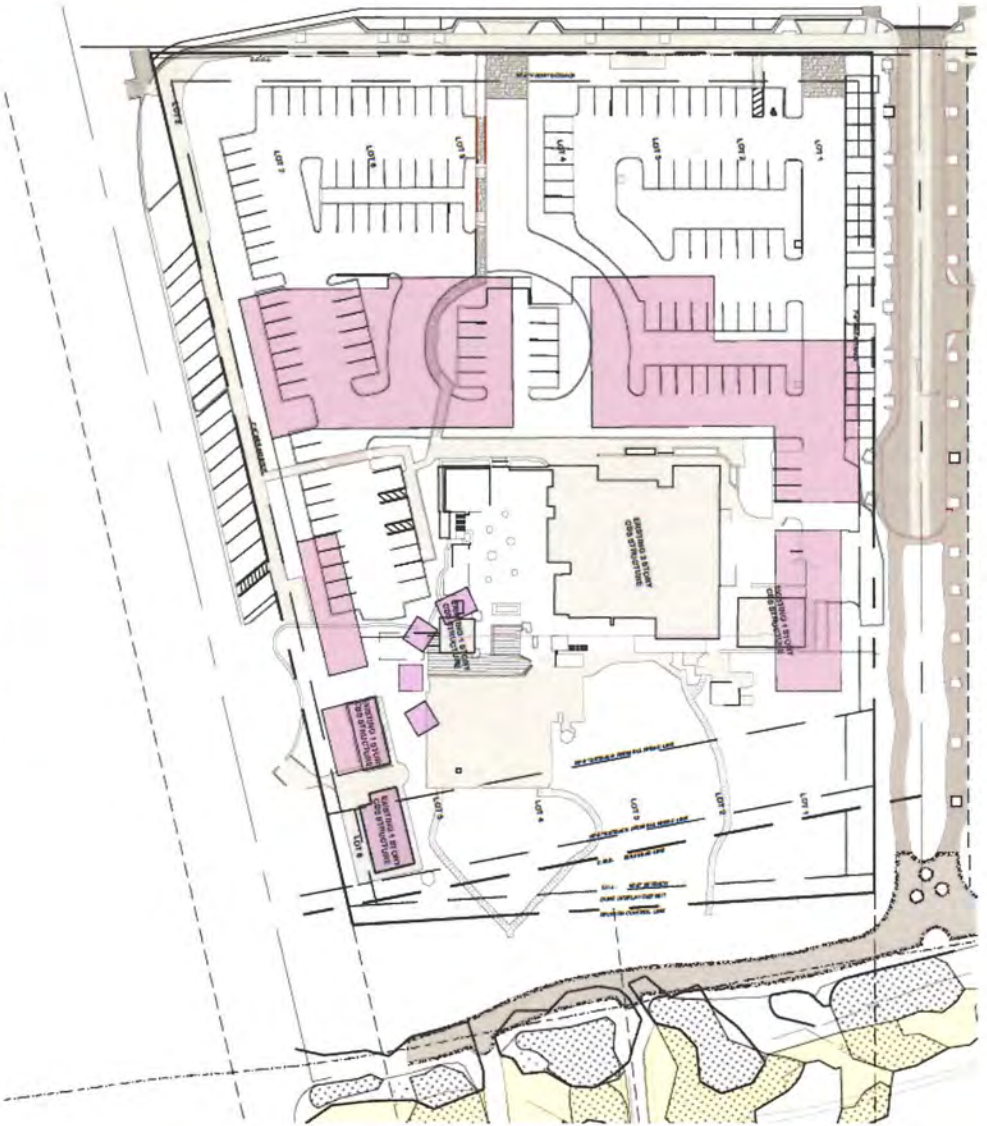
into the design of our critical systems, landscape, and stormwater design. Our plan includes the permanence of the existing structure; however, we will be protecting the building envelope against water intrusion and damage. Additionally,

CITY EVALUATOR: So you're not proposing [] any tear-down and rebuild from scratch?
APPLICANT: Correct.
ARCHITECT: Correct. That is correct. . . what we're looking to do is we're looking to take the existing building, and, basically, we're going to rehab it.

Non-Conforming Request: Complete Demolition



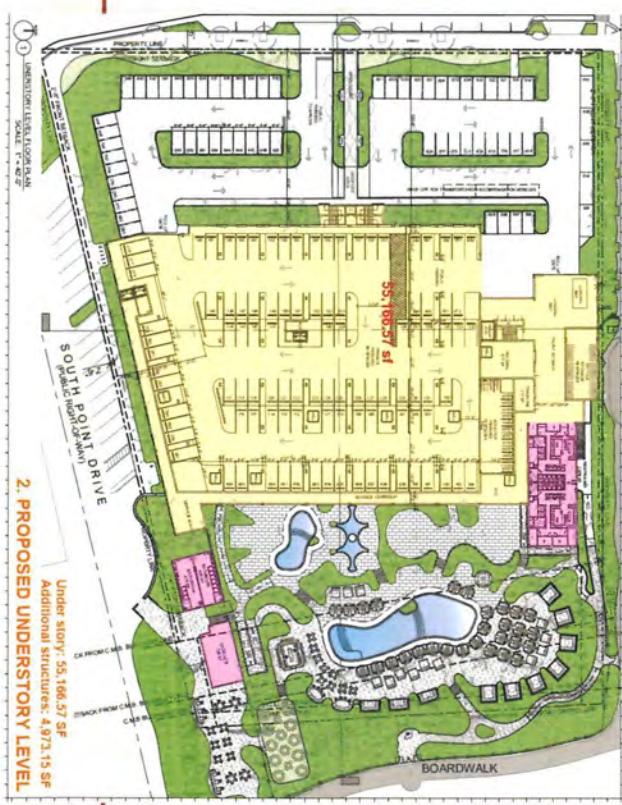
Non-Conforming Request: New Construction



ERLAY
= 64'-0"

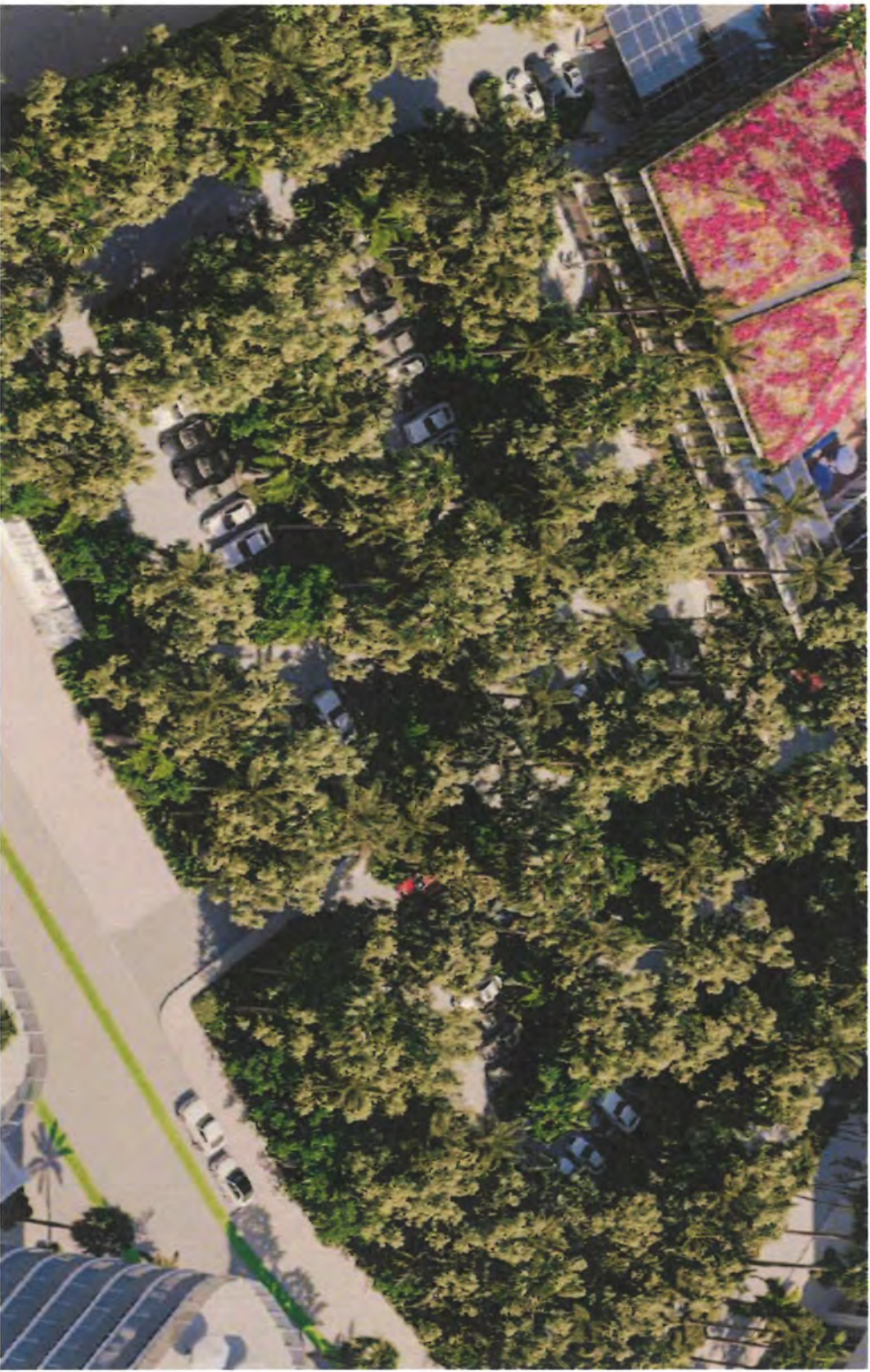
PROPOSED PROJECT

Required: Maintain Parking Format Request: New Parking Under-Story



Under story: 55,168.57 SF
Additional structures: 4,973.15 SF
2. PROPOSED UNDERSTORY LEVEL

Required: Maintain Parking Format



Non-Conforming Request: New Parking Under- Story



Required: Maintain Footprint Request: Relocation & Increase Footprint



Nikki Beach Club
1 OCEAN DR.
MAMI BEACH, FL.

Bowman

OCEAN DRIVE
(PUBLIC RIGHT-OF-WAY)

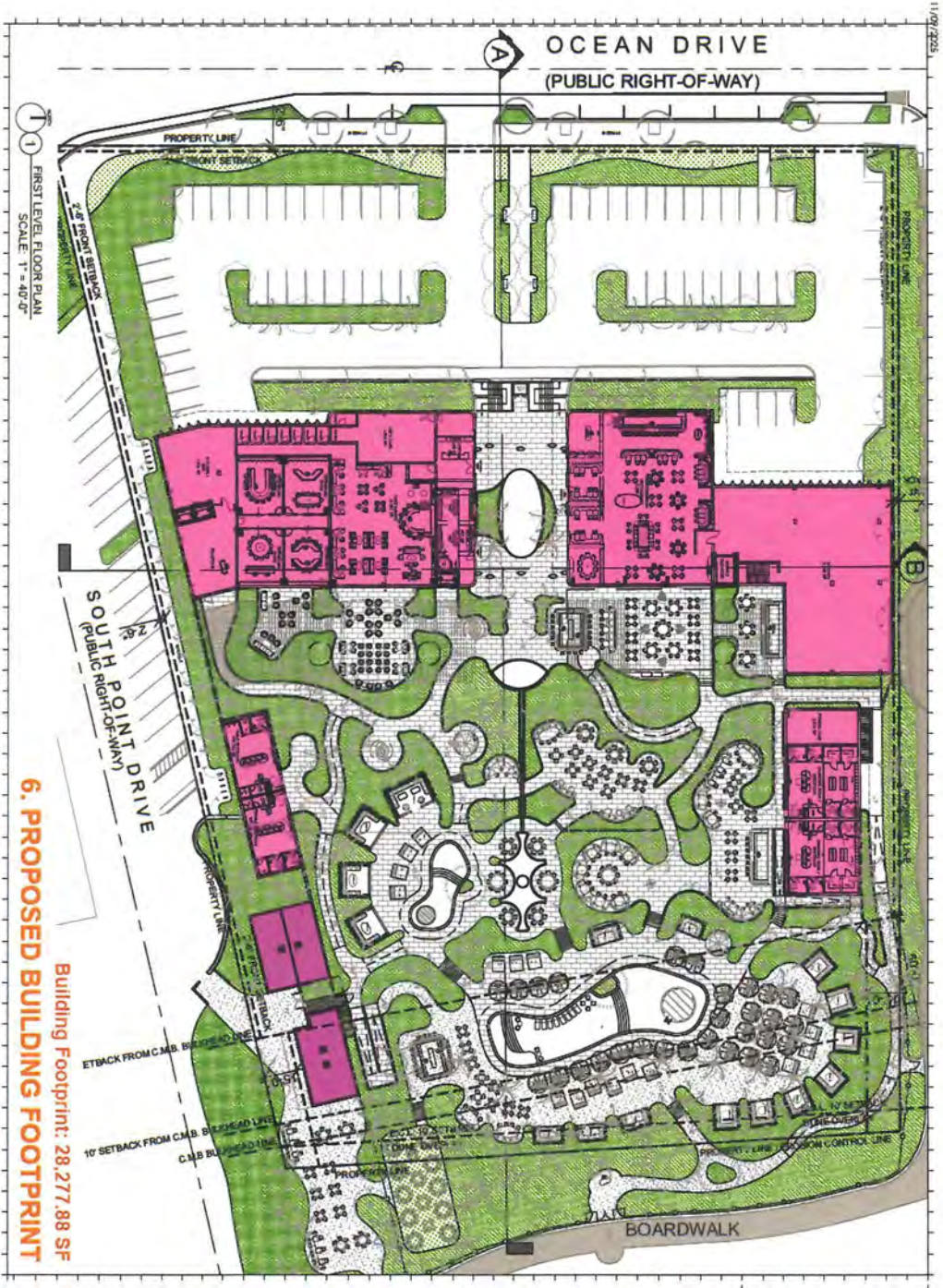
BOARDWALK

SOUTH POINT DRIVE

6. PROPOSED BUILDING FOOTPRINT
Building Footprint: 28,277.88 SF

<p>PROJECT: NIKKI BEACH CLUB</p> <p>DATE: 08/14/2018</p> <p>SCALE: 1" = 40'-0"</p>	<p>PROJECT NO: 18102</p> <p>DATE: 08/14/2018</p> <p>SCALE: 1" = 40'-0"</p>	<p>PROJECT NO: 18102</p> <p>DATE: 08/14/2018</p> <p>SCALE: 1" = 40'-0"</p>	<p>PROJECT NO: 18102</p> <p>DATE: 08/14/2018</p> <p>SCALE: 1" = 40'-0"</p>
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Non-Conforming Request: Relocation & Increase Footprint



11/07/2025
 T1 FIRST LEVEL FLOOR PLAN
 SCALE: 1" = 40'-0"

6. PROPOSED BUILDING FOOTPRINT
 Building Footprint: 28,277.88 SF

			
FIRST LEVEL OVERALL FLOOR PLAN			
13/08/2025 24/08/2025 28/08/2025	28/08/2025 28/08/2025 28/08/2025	28/08/2025 28/08/2025 28/08/2025	28/08/2025 28/08/2025 28/08/2025
318-OP REGION 318-OP REGION 318-OP REGION			
FINAL SUBMITTAL PIER PARK ONE OCEAN DRIVE OCEAN SPRING, CALIFORNIA 91708			
PROJECT NUMBER: 13825-0792/ DR825-1146			
PROJECT NAME: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT LOCATION: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT CONTACT: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT PHONE: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT FAX: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT EMAIL: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT WEBSITE: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT ADDRESS: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT CITY: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT STATE: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT ZIP: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT COUNTY: 318-OP REGION 318-OP REGION 318-OP REGION			
PROJECT COUNTRY: 318-OP REGION 318-OP REGION 318-OP REGION			

Required: FAR 23,343 SF (73,600 Max. operational) Request: Increase Operational SF to 84,297



portion is reserved exclusively for club use. The redevelopment will maintain the existing surface level parking lot available for public use and will redevelop the site with a new 84,297 square feet beach club establishment with an expected completion date of 2028. We analyzed the three

Required: Lot Coverage of 13% Request: Increased Lot Coverage of 41%



4. EXISTING LOT COVERAGE 20,831 AS SF



4. PROPOSED LOT COVERAGE

SEE SHEET 3

NIKKI BEACH CLUB
1 OCEAN DR.
MIAMI BEACH, FL.

Bowman

DATE: 11/15/11
DRAWN BY: [Name]
CHECKED BY: [Name]
APPROVED BY: [Name]

PROPOSED LOT COVERAGE

Legend:
 - Total Lot Area: 42,531 SF
 - Lot Coverage: 17,520 SF (41%)

Scale: 1" = 40'-0"

North Arrow

Professional Engineer Seal: [Seal]

Non-Conforming Request: Increase of Lot Coverage of 42,195 SF to 41%



Non-Conformity with Required Project: Elimination of Sustainability Features

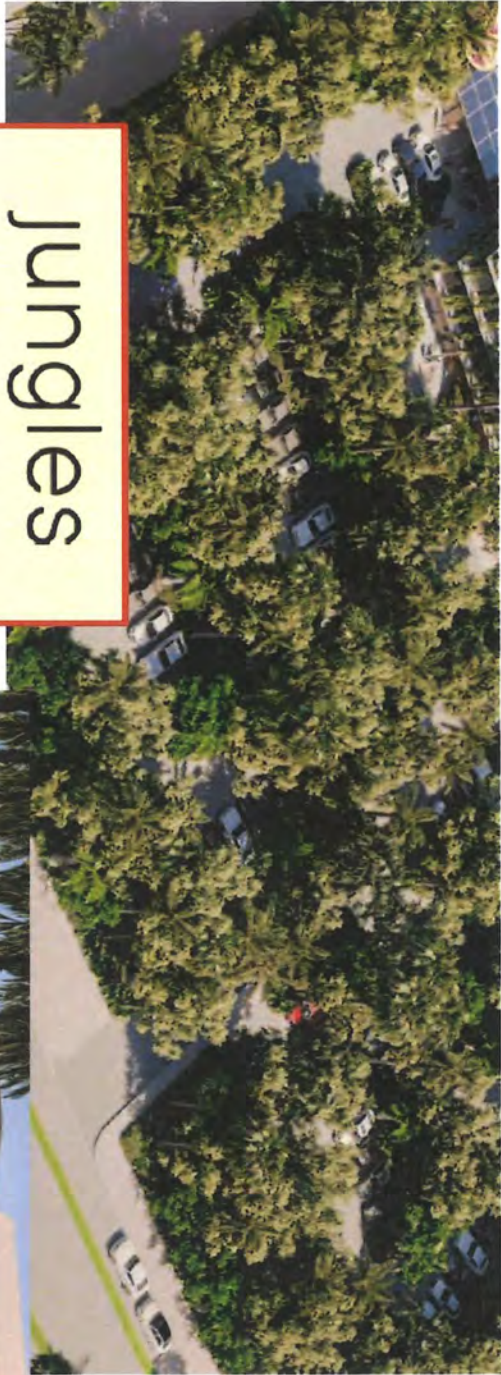
Required Development

- Increased “jungle” tree canopy
- Sustainable surfacing
- Resiliency feature of solar panels
- Location of pools & amenities alongside restaurants

New Non-Conforming Application

- Reduced tree canopy
- Increase impervious surface by 18%
- Elimination of solar panels
- Relocation of pools and addition of multiple water features, increasing maintenance and safety risks

Required: Increased “Jungle” Tree Canopy
Request: Reduced Tree Canopy



Jungles
RAYMOND JUNGLES
LANDSCAPE ARCHITECT



Required: Sustainable; Impervious Surfacing: 62.5%; Pervious/Impervious Ratio: 0.60



Required: Adjacent Pool & Amenities



Non-Conforming Request: Relocated Pool & Amenities



Non-Conformity with Required Project: Increased Intensity

Required Development

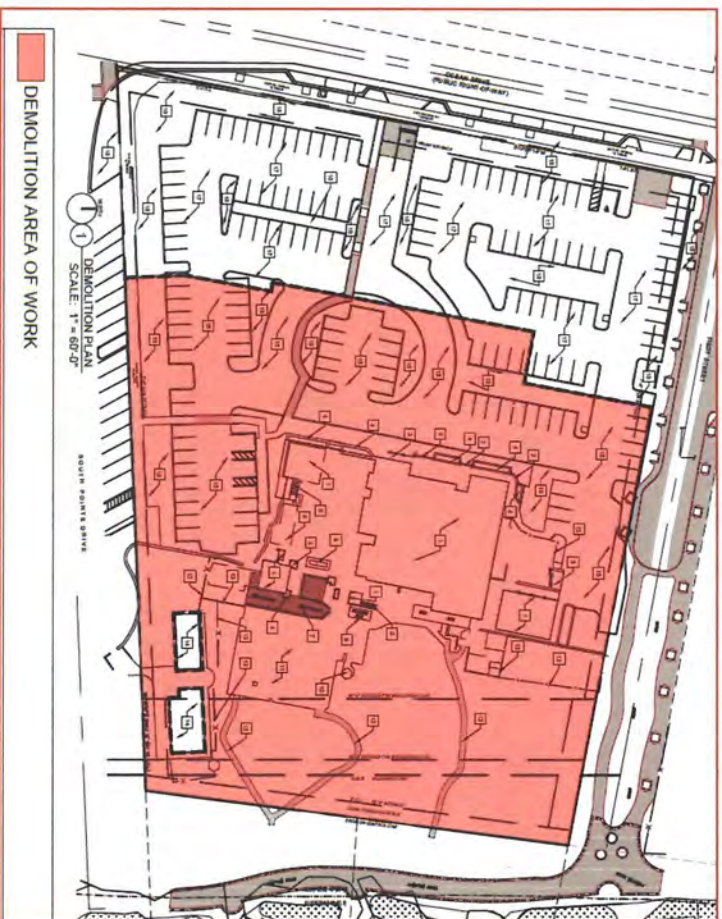
- No reduction in parking during construction
- Traffic flow consistent with existing structure
- 13 month construction timeline
- FAR (GFA) of 23,343 SF

New Non-Conforming Application

- Demolition and closure of parking site for construction
- 4x increase in traffic
- Revised scope estimated to increase construction to 24-30 months
- FAR (GFA) increase of 650 SF

Required: No Disruption in Parking Request: Demolition and Closure of Parking

divided into two phases. At no point during the construction process will the city have less than the required 72 available parking spaces available for use.



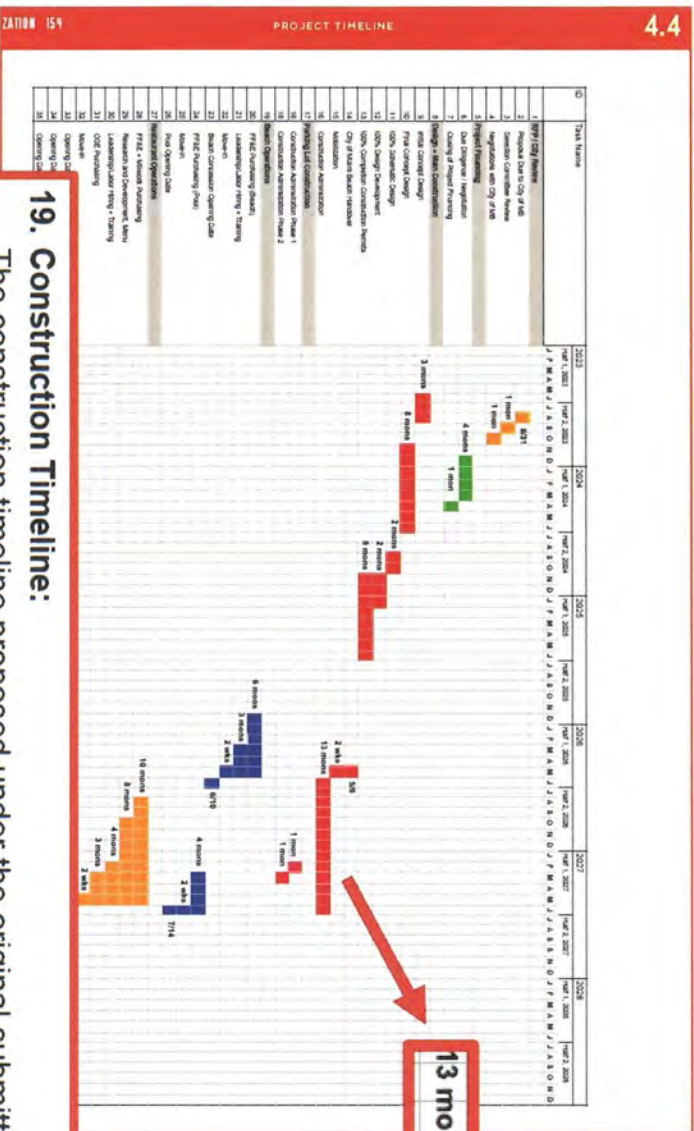
Required: Traffic flow consistent with existing structure
Request: 4x increase in traffic

Table 3 - Trip Generation Estimates*

Use	Size	Friday Morning Peak Hour			Friday Afternoon Peak Hour			Saturday Afternoon Peak Hour		
		In	Out	Total	In	Out	Total	In	Out	Total
<u>Existing Uses</u>										
Beach Club	23,243 SF	3	1	4	14	38	51	21	41	61
<u>Proposed Uses</u>										
Beach Club	84,297 SF	12	3	15	50	136	187	76	147	223
Net New Trips		9	2	11	36	98	135	55	106	161

Required: 13 Month Construction Timeline

Request: 24-30 Month Construction Estimate



13 mons

19. Construction Timeline:

The construction timeline proposed under the original submittal was 13 months, excluding design and permitting. Given the expanded scope of work in the revised proposal, the construction duration would be substantially increased.

The proposed demolition and construction of the understory will require additional time, as will soil preparation for foundations and coordination of civil infrastructure improvements. These elements represent a significant schedule impact when compared to the previous proposal, which was more limited in scope and involved less vertical construction volume.

Based on the revised scope, a conservative estimate for the construction duration would be approximately 24 to 30 months.

property is zoned GU, the uses must be authorized by the City Commission. However, Section 7.2.16.3 of the LDRs specifies that no GU property may be used in a manner inconsistent with the Comprehensive Plan. Under policy RLU 1.1.19 of the 2040 Comprehensive Plan, the uses permitted in the ROS future land use classification are limited to recreation and open space facilities.

As the proposed uses are largely commercial in nature, an amendment to policy RLU 1.1.19 of the 2040 Comprehensive Plan will be required, prior to final action by the City Commission approving any of the proposed uses.

Comprehensive Plan Violation

Resiliency Code Sec. 7.2.16.3 specifies that no GU property may be used in a manner inconsistent with the City's Comprehensive Plan.

Staff Report *admits* that proposed uses violate Comprehensive Plan policy RLU 1.1.19.

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

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Direct: (305) 789-3504
Email: astearns@stearnsweaver.com

Via E-Mail and Hand Delivery

February 3, 2026

Deborah Tackett, Planning & Design Officer
Planning Department
Planning Board
City of Miami Beach
1700 Convention Center Drive, 2d Floor
Miami Beach, Florida 33139

**RE: PB25-0792, Objections and Protests to Application for Proposed Private Use
in GU Zoning District for One Ocean Drive Property**

Ms. Tackett and the Planning Board:

Please let this letter, with its attachments and enclosures, state and serve as objections and protests to the application at file number PB25-0792 (“Application”) submitted by the City of Miami Beach (“City”) as property owner and by Boucher Brothers Pier Park, LLC (“Boucher”) as applicant and developer/operator for review and recommendation by the Planning Board (“Board”) of a proposed private or joint government/private use in the GU Zoning District for the City’s One Ocean Drive Property (“Property”).

Summary. The Board should deny recommendation of the Application’s proposed use and development because it violates the City’s land development regulations mandating “substantial conformity” between “Conceptual Designs,” proposed by Boucher and awarded by the City, and the plans requested in this Application. Rather than substantial conformity, the Application requests use and development radically different from the Conceptual Designs. Those include the Application’s proposals for: complete demolition of the existing structures and construction of entirely new improvements at a different location, increased footprint, and dramatically larger operational square footage, while the Conceptual Designs promised strict maintenance, with only interior renovation, of the historic structure; and complete demolition of the parking areas, removal of parking availability during construction, and emplacement of under-grade parking, while the Conceptual Designs promised to maintain all parking during construction and to maintain the existing parking format. Independently, the Application proposes uses that violate the City’s Comprehensive Plan. Because there is no competent evidence of the Application’s conformance with all of those requirements, the Board should deny (or defer consideration of) this classic bait-and-switch.

Lobbyist Registration. Our firm represents Penrod Brothers Inc. (“Penrod”), with an address at 1 Ocean Drive, Miami Beach, Florida 33139. We have completed registration pursuant to City of Miami Beach Code (“Code”) Sec. 2-482.

Interested Party. Penrod is located within the 375 feet radius of the external boundaries of the proposed redevelopment and use in the subject Application, as confirmed by the applicant’s ownership list, map, and mailing labels, certified by Diana Rio of RDR Miami, submitted as part of the Application. Penrod presently is and has been providing world-renowned luxury operations from this flagship location for nearly 40 years. Penrod is thus a party in interest and proper intervenor/objector with respect to the Application. *See Save Calusa, Inc. v. Miami-Dade Cnty.*, 355 So. 3d 534, 540 & n.5 (Fla. 3d DCA 2023) (proximity to proposed activity creates legally recognized interest for intervenor/objector standing; may be evidenced by entitlement to receive notice); *Citizens Growth Management Coal. of W. Palm Beach, Inc. v. City of W. Palm Beach*, 450 So. 2d 204, 206 (Fla. 1984). Furthermore, because the Application constitutes a qualifying impact to residents’ quality of life under Code Sec. 2-17 (which the City acknowledges, designing the Application as a “Residents Right to Know” matter), Penrod is afforded heightened notice and standing to object. In addition, Penrod at all relevant times: stood and stands ready, willing and able to participate in a lawful competitive solicitation for operation, management and/or development of the Property; participated, including by submitting a proposal, in the City’s 2023 request for proposals (Request for Proposals 2023-479-KB, “RFP”) for the Property; and is a City resident injured by the subject conduct. Penrod thus has standing to protest and assert claims for the subject violations of the Code, RFP, and Florida law. *See Code Sec. 2-371* (providing right to protest and sue on procurement law decisions); *Broward Cnty. v. Fla. Carry, Inc.*, 313 So. 3d 635, 641 (Fla. 4th DCA 2021) (standing conferred by ordinance creating private right of action); *Matheson v. Miami-Dade Cnty.*, 258 So. 3d 516, 520 (Fla. 3d DCA 2018) (standing for party ready, willing and able to determine and advance right to competitively bid); *Advoc. Ctr. for Persons With Disabilities, Inc. v. State, D.C.F.*, 721 So. 2d 753, 755-56 (Fla. 1st DCA 1998) (standing for potential bidder to challenge procurement activity); *Wester v. Belote*, 138 So. 721, 726-27 (Fla. 1931) (taxpayer standing to challenge unlawful procurement contract); *Glatstein v. City of Miami*, 399 So. 2d 1005, 1008 (Fla. 3d DCA 1981) (same).

Jurisdiction. We request denial or deferral of the Application to the extent of the Board’s jurisdiction pursuant to Code Sec. 118-51(5), (6) and Resiliency Code Sec. 7.2.16.2(e), 7.2.16.3(f). City Commission Resolution No. 2023-32825 and its incorporated attachments, adopted October 20, 2023 (“Resolution”), control the development of land within the City, and as such, are among the City’s “land development regulations.” *See Resiliency Code Sec. 1.2.1* (defining “land development regulations” to include “any other regulations controlling the development of land”). More specifically, the Resolution controls the development of land by mandating that renovations to the building, outdoor areas, and parking at the Property “substantially conform” with defined Conceptual Designs, and further refers approval of such planned renovations to this Board. *See Resolution p. 4 ¶ 6, Exh. A (“Contract”) § 7.1.1, 7.1.2.* This Board is charged by Sec. 118-51(5), (6) and Resiliency Code Sec. 7.2.16.2(e), 7.2.16.3(f) with consideration of matters pertaining to land use referred by the Commission and with review of any use of GU property (including the subject Property) to ensure “conform[ance with] all development regulations,” placing denial of the Application within the Board’s remit.

However, the Board properly lacks jurisdiction to even consider much less approve the Application, for several reasons. Most salient, the Circuit Court of the Eleventh Judicial Circuit in and for Miami Dade County, Florida, in Case No. 2023-016657-CA-01, is seized of jurisdiction to adjudicate, *inter alia*, the City's non-compliance with procurement laws in connection with the Application's planned use and development of the Property. Further, Code Sec. 2-371 provides a right to protest and a direct cause of action to parties aggrieved in connection with the RFP, as a City formal bid or solicitation, which encompasses the Application's material deviations from the RFP requirements, Boucher's RFP proposal ("Proposal"), the Contract, and the Conceptual Designs. *See State, Dept. of Lottery v. Gtech Corp.*, 816 So. 2d 648, 653 (Fla. 1st DCA 2001) (material alteration of project from bidder submission prohibited); *Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Cnty. Comm'rs*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007) (same); *Glatstein v. City of Miami*, 399 So. 2d 1005, 1008 (Fla. 3d DCA 1981) (same). Those considerations are prior to and trump the Board's purview over the Application and the issues addressed here. Penrod expressly reserves all related rights, interests and claims and appears here only to the extent the Board asserts jurisdiction.

Failure to Demonstrate Substantial Conformity with Conceptual Designs. The plans and specifications for use and development of the Property requested in the Application do not substantially confirm with the Conceptual Designs proposed by Boucher and awarded by the City. This requires denial of the Application.

As recited in the Application, Boucher was awarded the opportunity to develop and operate the Property, pursuant to the City's RFP and ensuing Resolution and Contract. The City issued the RFP in June 2023 to solicit proposals to manage and operate the Property. The RFP directed responding parties to provide project design information, including "conceptual architectural diagrams of floor plans, elevations, and renderings of the proposed project," and identification of "how the disruption and diminution of parking during construction/development will be mitigated." RFP Sec. 0300, subsection 4, Tab 4. Boucher submitted a proposal ("Proposal") which included detailed conceptual design depictions and statements and a project construction timeline. Proposal Tab 4 at 4.1, 4.3 and 4.4. The Proposal's conceptual design presented a "plan [to] include the permanence of the existing structure," promising that Boucher would "reutilize[e] the existing site and architectural building components" and "maintain[] the existing site structure," and depicted a completed project that maintained the entirety of the existing 23,000 square foot operational structure at its current location, renovating only its interior, and adding small ancillary structures for pool, wellness, and beach concession operations. *Id.* During the City's evaluation of the Proposal, Boucher reaffirmed that it was "not proposing [] any tear down and rebuild from scratch" but instead would "take the existing building and rehab and rebuild it." Boucher Presentation at 34, 28. The Proposal further promised to maintain the existing parking format and placement, modifying only the paving material and adding landscaping, and stated explicitly that "[a]t no point during the construction process will the city have less than the required 72 available parking spaces available for use." Proposal Tab 4 at 4.4.

In September and October 2023, the City evaluated Boucher's Proposal, awarded the RFP to Boucher, and awarded Boucher the Contract to implement the Proposal. The October 2023 Resolution, which attached and incorporated the Contract, explicitly obligated Boucher to submit all required plans and specifications (including site, architectural, and landscape plans and exhibits) for proposed renovations and improvements "which shall substantially conform to the conceptual designs presented by

[Boucher] with its RFP submission” (“Conceptual Designs”). Resolution p. 4 ¶ 6, Contract § 7.1.1. The Resolution and Contract obligated the City Manager to ensure this substantial conformity before submission of Boucher’s plans and specifications for development to the City’s Planning and Design Boards. Contract § 7.1.2. There is no evidence with the Application demonstrating such a review and determination by the City Manager.

The plans and specifications requested in the application do not substantially conform to, but rather, radically deviate from, Boucher’s Conceptual Design promised in its Proposal, including:

Proposal	Application
Maintain entire existing, historic structure.	Demolition of entire existing, historic structure. Construction of entirely new main building.
Maintain current parking format and location.	Relocation of most parking to understory beneath new structure; complete redesign of parking format and location. Estimated increase in gross construction area of over 55,000 square feet.
Maintain main building footprint.	Construction of new building increasing building footprint by over 7,745 square feet.
Maintain main building location within site.	Relocation of main building, decreasing parking area and increasing outdoor operations.
Total beach club operational square footage of 73,600.	Construction of new building with increased beach club operational square footage of 84,297, resulting in a net increase of 10,697 square feet of beach club operational use.
Maintain current lot coverage of 13%.	Significant increase in lot coverage to 62,726 square feet and 40.8%, with a net increase of 42,195 square feet or 27.3%
Modest impact on impervious surfacing.	Balance of pervious (permeable) and impervious (non-permeable) areas has shifted markedly—increasing impervious areas by 18.8%—with substantial sustainability and environmental impacts.
Reduce construction waste by maintaining existing structures.	Demolition of existing structures significantly increasing construction waste, with environmental and logistical implications, and over 141,000 square feet of demolition.
No alteration to building height.	Revised development increases proposed building height to 65 feet.
No alteration to setbacks.	Increase to overall impact by increasing construction along south setback.
Floorplan for first level with a single restaurant opening to a pool.	Complete redesign of first level with multiple restaurants and club, detached from pool. Increase in seating capacity.

Proposal	Application
Location of pool and other amenities alongside restaurant activation.	Relocation of pools and addition of multiple water features, which modifies site circulation, visual design, and potentially increases water consumption, maintenance, safety needs.
Resiliency features including solar panels.	Elimination of solar panel electric generation.
No reduction in parking availability during construction.	Complete demolition and closure of parking site during construction.
Substantial tree canopy with "jungle" landscaping for parking area.	Change in landscape architect, and reduced tree canopy at outdoor parking area.
Projected traffic flow consistent with permanence of existing structure.	Four-fold increase in traffic.

Increase in Construction Timeline. In addition, the Application's request for a complete demolition and reconstruction, versus the Proposal's promised renovation, will likely increase the promised construction timeline by one to two years. The Applicant's Proposal and Contract promise a 13-month construction timeline. Given the expanded scope of work in the revised proposal, the construction duration would be substantially increased. Based on the revised scope, a conservative estimate for the construction duration would be approximately 24 to 30 months.

Non-Conformance with Comprehensive Plan. Independently, the Application requests uses and development inconsistent with the City's Comprehensive Plan. The Board should deny the Application for this additional reason.

Compliant with relevant Florida statute, the City adopted its 2040 Miami Beach Comprehensive Plan, a state-mandated blueprint for the City's land use. Policy RLU 1.1 of the Comprehensive Plan adopts future land use categories. The Comprehensive Plan designated the Property's future land use category as Recreation and Open Space (ROS). Policy RLU 1.1.19 of the Comprehensive Plan limits permitted uses in ROS-classified areas to recreation and open space facilities, and prohibits the intensity of development and use a floor area ratio of 0.5. Florida statute (at Chapter 163) prohibits development inconsistent with a comprehensive plan without amendment to same. The Board is the local planning agency pursuant to Florida law responsible for, e.g., consistency with and amendment to the Comprehensive Plan. Section 7.2.16.3 of the City's Resiliency Code specifies that no GU property may be used in a manner inconsistent with the City's Comprehensive Plan.

As affirmed by the City's own Staff Report & Recommendation to the Board, the Application violates, and would require amendment to, the Comprehensive Plan. The Application requests uses that are largely commercial in nature, and the Application proposes a greater intensity of development and use. Those violations independently require the Board's denial of the Application.

City Attorney Conflict of Interest. Because the City appears here as the property owner, lockstep with the Applicant, the City Attorney and City Manager are conflicted from providing independent and neutral advice to the Board concerning the Application's conformance with land development regulations.

Evidence. In support of its positions and in opposition to the Application, we respectfully submit (enclosing and attaching here including where appropriate in electronic format) the following additional evidence (in addition to the Application and its supporting documents, the January 2, 2026 Staff Report, and all statements and items presented before the Board):

- City of Miami Beach Request for Proposals 2023-479-KB for Management and Operation of a High-End Beach Establishment, June 14, 2023 (with all later addenda).
- Boucher Brothers Miami Beach, LLC Option 1 Proposal for RFP, August 31, 2023.
- Boucher Brothers Management Inc. Presentation to RFP Evaluation Committee, September 11, 2023 (video and transcript).
- City of Miami Beach Resolution No. 2023-32783, September 27, 2023.
- Comparison Report of Arturo Griego, AIA, FGBC, CGC, Principal Architect and General Contractor at G3AEC Design/Build.

Incorporation. Penrod expressly incorporates and adopts any and all argument and evidence consistent with its position presented by any person objecting to the Application.

Conclusion. The Board should deny the Application because it violates the Resolution's requirement for substantial conformity with the authorized Proposal, and because it is inconsistent with the City's Comprehensive Plan.

Respectfully submitted,

/s/ Andrew E. Stearns

Key Compliance Questions for the Planning Board's Consideration

DATE: February 3, 2026

TO: Planning Board

SUBJECT: PB25-0792, 1 Ocean Drive; Pier Park

Question 1: The RFP was awarded in October 2023. The first public presentation of a demolition and new construction concept was in November 2025. This new construction proposal was not included in the RFP submission, correct?

Follow-up:

How could this new construction have been included in the RFP submission if it did not appear publicly until more than two years after the award?

Can the Planning Board lawfully approve a fundamentally different project when the governing zoning authorization—Resolution No. 2023-32825 and the RFP—authorize only renovation of existing buildings?

Question 2: Resolution 2023-32825 requires that all plans “substantially conform” to the conceptual designs submitted with the RFP.

Where, specifically, in the approved RFP submission designs are demolition of the existing building and construction of a substantially larger new structure shown or authorized?

Follow-up:

If the complete demolition and new construction does not appear in the approved designs, on what basis could the Planning Board legally find “substantial conformity” rather than a complete redesign?

Question 3: The approved RFP proposal expressly states: “At no point during construction will the City have less than the required 72 available parking spaces.” The new proposal requires demolition of existing parking and construction of underground parking. This plan does not meet that requirement at all, correct? How can this be substantial conformity with what was approved?

Follow-up:

If parking is being demolished and rebuilt underground, how could 72 spaces remain continuously available during construction?

Key Compliance Questions for the Planning Board's Consideration

February 3, 2026

Planning Board

PB25-0792, 1 Ocean Drive; Pier Park

Page 2 of 2

Question 4: City staff has acknowledged that the proposal exceeds the Recreation and Open Space intensity limits and would require a Comprehensive Plan amendment.

Can the Board legally approve a development that is inconsistent with the Comprehensive Plan before the Plan is amended?

Follow-up:

If not, isn't approval legally precluded at this time?

Question 5: The RFP submission is the required document for determining conformity.

Has the Planning Board been provided the complete Boucher RFP submission so it can compare the approved design to the new plans?

Follow-up:

If not, how could the Board make a lawful finding of conformity without this required evidence in its record?



Comparison Report: Key Differences Between Original and Recently Submitted Development Plans

Date: January 5, 2026
Prepared by: Arturo G. Griego, G3 AEC
Subject: Analysis of Modifications and Non-Conformance in Recently Submitted Project Plans Compared to the Authorized Proposal
To: Maria A. Fehretdinov, Esq. Stearns Weaver Miller, for Penrod Bros. Inc.

Dear Ms. Fehretdinov,

This report provides a detailed comparison of the development plans recently submitted in application PB25-0792 ("Application") by Boucher Brothers Pier Park, LLC as applicant and developer/operator for review and recommendation of a proposed private or joint government/private use in the GU Zoning District for the City of Miami Beach's One Ocean Drive Property ("Property"), against the project proposal approved by City Commission Resolution No. 2023-32825 and its incorporated contracts and requirements, based on a thorough review of available and supporting documentation. The Application introduces substantial changes that significantly expand the project's scope, site impact, and construction intensity. The development and uses for the Property requested by the Application are not in substantial conformity with the conceptual designs promised by the applicant and approved by the City for the applicant's development and use of the site.

Key among the substantial changes and non-conformance are the complete demolition of the existing main structure and construction of an entirely new structure; and the addition of a new understory level, which adds considerable gross construction area (not counted in FAR) and drives many of the other differences noted below.

Measurements have been derived as accurately as possible from the PDFs in the absence of CAD files. Where precise calculations are pending final verification, placeholders are included for completion.

Summary of Key Differences

The following outlines the primary modifications identified in the recently submitted plans:

1. Demolition of Existing and Historic Structures:

The originally proposed project was designed to retain and integrate the existing structure, preserving its historical significance while introducing design elements around it. In contrast, the current proposal calls for the complete elimination and demolition of the entire existing building, replacing it with an entirely new main structure. This approach represents a fundamental shift away from conservation and adaptive reuse, resulting in the loss of the building's historic character.

2. Introduction of an Understory Level for Parking and Storage:

The recently submitted plan introduces a new understory level, absent in the original proposal, dedicated to parking, storage, and other usable spaces. This addition substantially increases the gross construction area beyond the reported FAR figures.

Impact: Represents a major expansion in built volume and site utilization (highlighted in yellow on the referenced site plans, comprising the majority of the project footprint)

Quantified Difference: Estimated increase in gross construction area: **55,166.57SF**



3. Floor Area Ratio Change

The original building has a FAR of **23,343 square feet**. In contrast, the updated project proposes an increase of **657 square feet**, resulting in a total FAR of **24,000 square feet**. This change reflects an expansion of the building's total area and indicates a shift toward a slightly more intensive utilization of the site.

4. Increased Lot Coverage

Lot coverage is significantly higher in the new plan, primarily due to the understory and its associated footprint. Impact: Reduces open space, potentially affecting site aesthetics, drainage, and compliance with zoning requirements.

Quantified Difference: Original: **20,531 SF = 13.5%**; Recently Submitted: **62,726 SF = 40.8%**; Net Increase: **42,195 SF = 27.3%**.

5. Alterations to Pervious and Impervious Surfaces:

The balance of pervious (permeable) and impervious (non-permeable) areas has shifted markedly, again driven by the understory addition.

Impact: Likely increases impervious coverage, heightening risks of stormwater runoff and environmental impacts; to offset this, additional wells will be required

Quantified Difference: Original pervious/impervious: pervious **57,100.8 SF = 37.5%**, impervious **95,231.2 = 62.5%**
Recently Submitted: pervious **28,468.4 SF = 18.7%**, impervious **123,863.6 = 81.3%**; Key Shift: **18.8%** of additional impervious area.

6. Change in Building Footprint:

The original proposal maintained the existing building footprint by retaining the current structure. In contrast, the revised project substantially alters the overall scheme, resulting in an increase in the building footprint by approximately **7,746.05 SF**. This change represents a significant departure from the previously approved approach.

7. Building Relocation:

The revised project relocates the building, resulting in a reduction in the number of open parking spaces and an increase in the outdoor service area. This outcome contrasts with the original proposal, which maintained the existing site conditions, including parking capacity and service area configuration.

8. Beach Club Operational Square Footage:

The original proposal maintains the existing beach club operational square footage of **73,600 square feet**. In contrast, the proposed project increases the beach club operational area to **84,297 square feet**, resulting in a net increase of **10,697 square feet** of beach club operational use.

9. Construction Waste:

The original proposal generated minimal construction waste, as it reused the majority of the existing structures. In contrast, the revised design requires the complete demolition of all existing structures, resulting in approximately **141,000 SF** of demolition within the site. This change significantly increases construction waste and has notable environmental and logistical implications.

10. First Level Redesigned:

The proposed floor plan for the first level originally featured a single restaurant with direct access and visual connectivity to the pool area. In contrast, the revised proposal introduces a complete redesign of the first level,



incorporating multiple restaurants and a club, all of which are detached from and no longer directly connected to the pool.

11. Relocation of Pool and Addition of Multiple Water Features

The pool has been relocated from its original position, and multiple new water features have been incorporated throughout the site.

Impact: Modifies site circulation, visual design, and potentially increases water consumption and maintenance needs.

12. Change in Landscape Architect

Raymond Jungles is no longer designated as the landscape architect. The original proposal promised a substantial tree canopy with "jungle" landscaping for parking area.

Impact: Application shows a reduced, rather than increased, tree canopy at the outdoor parking area. Change in landscape architect signals a potential shift in landscape design approach, materials, and integration with architectural elements.

13. Revised Parking Layout and Incomplete Demolition Notation

The parking configuration has been entirely redesigned. Additionally, the designated demolition area excludes the western parking lot, despite the need for its full reconstruction and re-landscaping to accommodate the new layout.

Impact: Understates the actual scope of demolition and site disturbance required, potentially increasing construction duration, costs, and impacts.

14. Parking Availability During Construction:

The original proposal maintained the existing parking availability throughout the construction period. In contrast, the revised project requires the demolition and reconstruction of the parking layout and associated structures, necessitating the provision of off-site parking to accommodate project-related parking demand during construction.

15. Resilience:

Section 4.3 (Resiliency) mentions the potential for on-site electrical generation through the use of solar panels. However, the proposed project does not appear to incorporate any on-site electrical generation.

16. Setbacks:

The proposed project modifies the setbacks on the north and west sides of the property, reducing them from existing conditions. The minimum setbacks on the east and south sides are not technically altered due to the retention of the existing buildings. However, the proposed building extends along the south setback for a significantly greater length than in previous proposals. While the minimum setback distance remains unchanged, the revised proposal increases the overall impact on the south side due to the increased building length along that property line.

17. Increased Proposed Building Height:

The zoning legend in the revised submission indicates a proposed building height of 65 feet, which exceeds the height of the existing structure.

Impact: The increased height results in greater building massing, potential shadowing impacts on adjacent properties, and increased visual prominence.

Quantified Difference: Existing/Original Height: Two-story

Proposed Height: 65 feet



18. Restaurant Seating Capacity:

The total number of seats used in the parking calculation is 1,011. The revised proposal provides 168 on-site parking spaces. Based on the submitted parking requirements, 228 parking spaces are required for the proposed use, including 72 replacement spaces.

Under existing conditions, 156 parking spaces are provided on site. However, the proposed calculation indicates that, in addition to the 168 on-site spaces, an additional 101 spaces would be satisfied through payment in lieu of parking.

Based on the parking and seating calculations before and after the proposal, it is reasonable to conclude that the proposed conditions would allow for increased seating capacity. What cannot be determined from the information provided is how many seats, if any, are currently accommodated through payment in lieu of parking. This information would be necessary to accurately assess and compare the existing and proposed seating capacities.

19. Construction Timeline:

The construction timeline proposed under the original submittal was 13 months, excluding design and permitting. Given the expanded scope of work in the revised proposal, the construction duration would be substantially increased.

The proposed demolition and construction of the understory will require additional time, as will soil preparation for foundations and coordination of civil infrastructure improvements. These elements represent a significant schedule impact when compared to the previous proposal, which was more limited in scope and involved less vertical construction volume.

Based on the revised scope, a conservative estimate for the construction duration would be approximately 24 to 30 months.



Comparative Table (For clarity, the key metrics are summarized below):

#	Difference	Original Plan	Recently Submitted Plan	Key Impact/Quantified Difference
1	Demolition of the existing structure	Maintain the entire existing, historic structure.	Construction of an entirely new main building.	Demolition of the entire existing historic structure.
2	Understory Level	None	Added for parking/storage/service	Significant increase in gross construction area and program
3	Floor Area Ratio change	23,343 SF	24,000 SF	Increase of a 657 SF
4	Lot Coverage	20,531 SF / 13,5%	62,726 SF / 40,8%	27.3% increased; reduced open space
5	Pervious/Impervious Areas	Pervious/Impervious Ratio: 0.60	Pervious/Impervious Ratio: 0.23	Increased runoff risk (18,8% additional impervious area)
6	Building footprint	Maintain main building footprint of 20,531.83 SF	Construction of new building with larger footprint of 28,277.88 SF	Increase in building footprint of 7,746.05 SF.
7	Building relocation	Maintain main building location within site.	Relocation of main building.	Decrease the parking area and increase outdoor service area.
8	Beach club operational square footage	Total beach club operational square footage of 73,600.	Construction of new building with beach club operational square footage of 84,297.	Increase of 10,697 SF of beach club operation.
9	Construction waste	Reduce construction waste by maintaining existing structures.	Demolition of all existing structures.	Demolition of approximately 141,856 SF
10	First level redesigned	Floorplan for first level with a single restaurant opening to a pool.	Complete redesign of first level with multiple restaurants and club, detached from pool.	
11	Pool and Water Features	Pool in original location; limited features	Pool relocated; multiple new features	Altered layout and resource use
12	Landscape Architect	Raymond Jungles	Enea	Potential design philosophy shift
13	Parking Layout & Demolition	Existing layout; comprehensive demo	New layout; western parking excluded	Understates required demolition scope
14	Parking availability during construction	No reduction in parking availability during construction.	Complete demolition and closure of parking site during construction.	Additional parking spaces are required off-site to accommodate parking demand during the construction period.
15	Resilience	Potential on-site solar panels.	Not incorporate any on-site electrical generation.	
16	Setbacks	Maintain original setbacks.	Modifies setbacks around the site.	Increased impact to south, north, and east frontages.



17	Increased Proposed Building Height	Two-story building.	65 feet proposed.	Greater building massing.
19	Construction timeline	Proposed to finish mid-2027.	Proposed to finish in 2028 according to traffic analysis.	Given the scope of work, the construction timeline was extended.

Conclusions and Recommendations

Although the countable FAR shows only minimal change, the cumulative effect of these revisions—particularly the understory addition—results in a substantially larger, more intensive project with greater site coverage, impervious surfaces, and construction demands. The uses and development requested by the Application are not in substantial conformance with the uses and development promised by the applicant in its procurement process and authorized by the City. These differences may have implications for zoning compliance, environmental review, community impact, and project approvals.

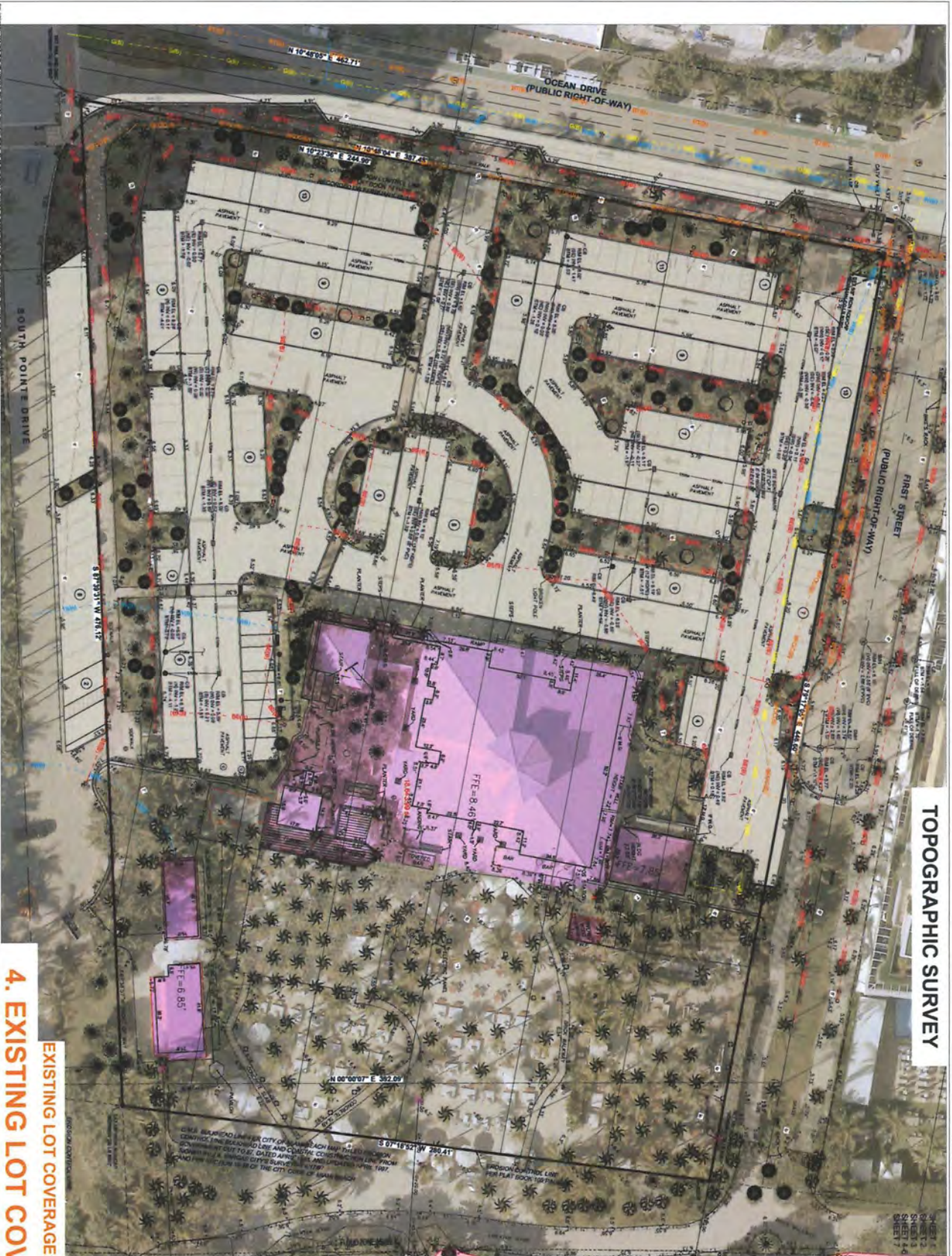
We recommend using the gross construction area and lot coverage metrics highlighted herein to counter any narrative that frames the projects as substantially similar. Additional detailed measurements or visualizations can be provided upon request.

Respectfully Submitted,
Arturo G. Griego, AIA, CGC, FGBC.



email | nino@g3aec.com
direct | 305 803 7902
AR94011





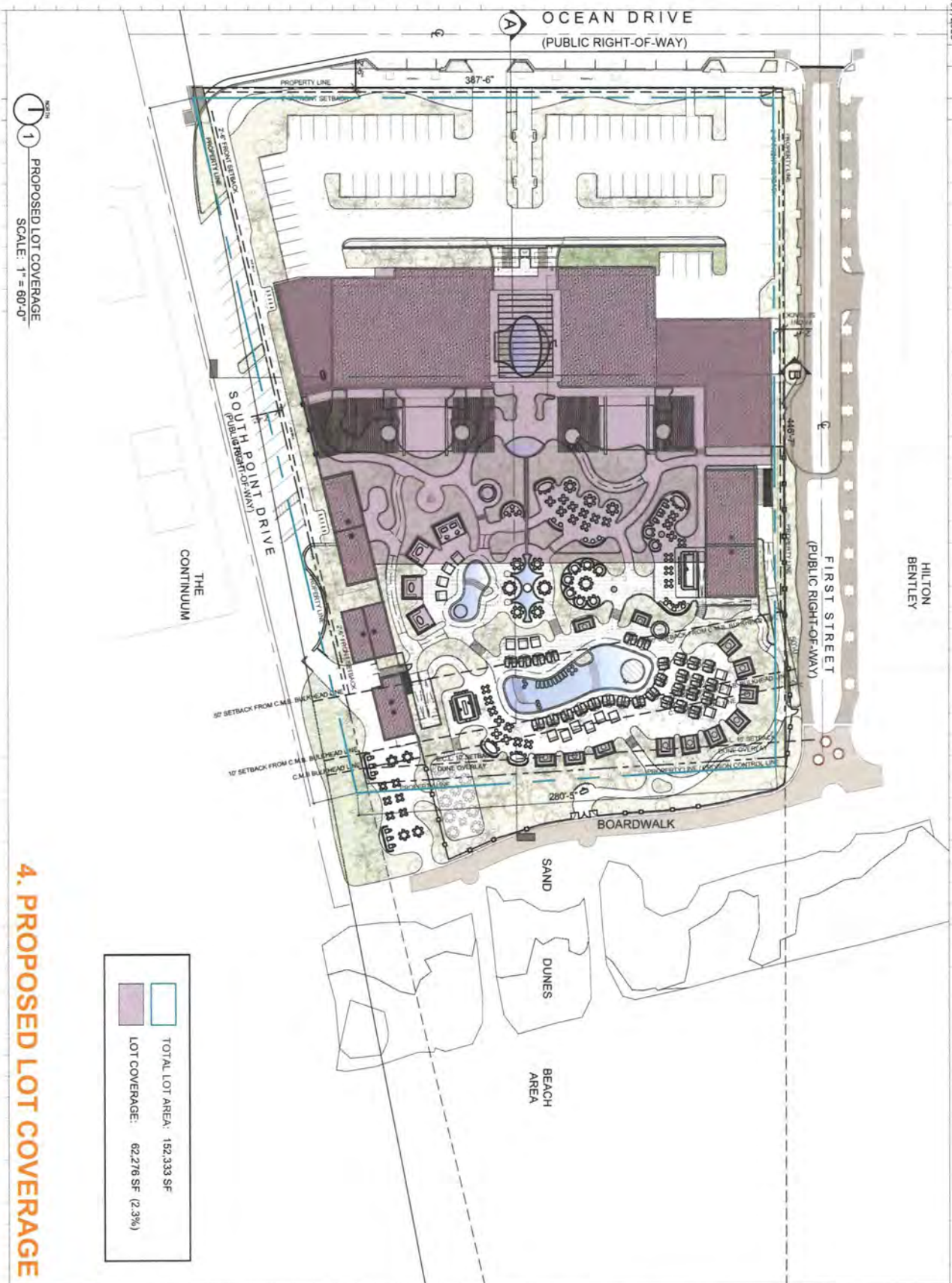
TOPOGRAPHIC SURVEY

SHEET 1
SHEET 2
SHEET 3
SHEET 4
SHEET 5
SHEET 6
SHEET 7

EXISTING LOT COVERAGE: 20,531.83 SF
4. EXISTING LOT COVERAGE

SEE SHEET 3

<p>NIKKI BEACH CLUB 1 OCEAN DR, MIAMI BEACH, FL.</p>		<p>Bowman Consulting Group, L.M., Inc. 1432 N. Washington Blvd., Suite 111 Tampa, FL 33607 Phone: (813) 474-7424 www.bowmanconsulting.com ©Bowman Consulting Group, L.M.</p>		<p>Bowman</p> <p>PROFESSIONAL SURVEYORS AND MAPPERS, CERTIFICATE NO. 12,896 BOARD OF PROFESSIONAL ENGINEERS, CERTIFICATE OF ACHIEVEMENT NO. 9462</p>
<p>MIAMI-DADE COUNTY</p>		<p>FLORIDA</p>		



1 PROPOSED LOT COVERAGE
SCALE: 1" = 80'-0"

TOTAL LOT AREA: 152,333 SF
LOT COVERAGE: 62,276 SF (2.3%)

4. PROPOSED LOT COVERAGE

PROPOSED LOT COVERAGE

PIER PARK
ONE OCEAN DRIVE
MIAMI BEACH, FLORIDA 33139

DRB25-0792/
DRB25-1146

FINAL SUBMITTAL

PIER PARK
ONE OCEAN DRIVE
MIAMI BEACH, FLORIDA 33139

OWNER: PIER PARK LLC
1000 BAYVIEW BLVD, SUITE 1000
MIAMI BEACH, FL 33139
TEL: 305.371.1111
WWW.PIERPARK.COM

DESIGNER: BISHOP DESIGN
1000 BAYVIEW BLVD, SUITE 1000
MIAMI BEACH, FL 33139
TEL: 305.371.1111
WWW.BISHOPDESIGN.COM

DATE: 11/09/2025

SCALE: AS NOTED

PROJECT NO.: A2.01

PROJECT NAME: K O B I
K A R P

TOPOGRAPHIC SURVEY

5. EXISTING PERVIOUS AND IMPERVIOUS

Pervious 57,100.8 SF = 37.57%
 Impervious 95,231.2 = 62.5%
 Pervious/Impervious Ratio: 0.60



SEE SHEET 3

COVER BOUNDARY
 TO ADD TOPO
 TREE SURVEY
 CROSS SECTIONS

DATE	DESCRIPTION
FIELD BOOK	PAID
FIELD SHEET	B.C.
SCALE	N.A.
DATE	07/19/2025
FILE NO.	2025-01-001

PROJECT NO.	2025-01-001
CLIENT	NIKKI BEACH CLUB
LOCATION	1 OCEAN DR, MIAMI BEACH, FL.

NIKKI BEACH CLUB
1 OCEAN DR,
MIAMI BEACH, FL.

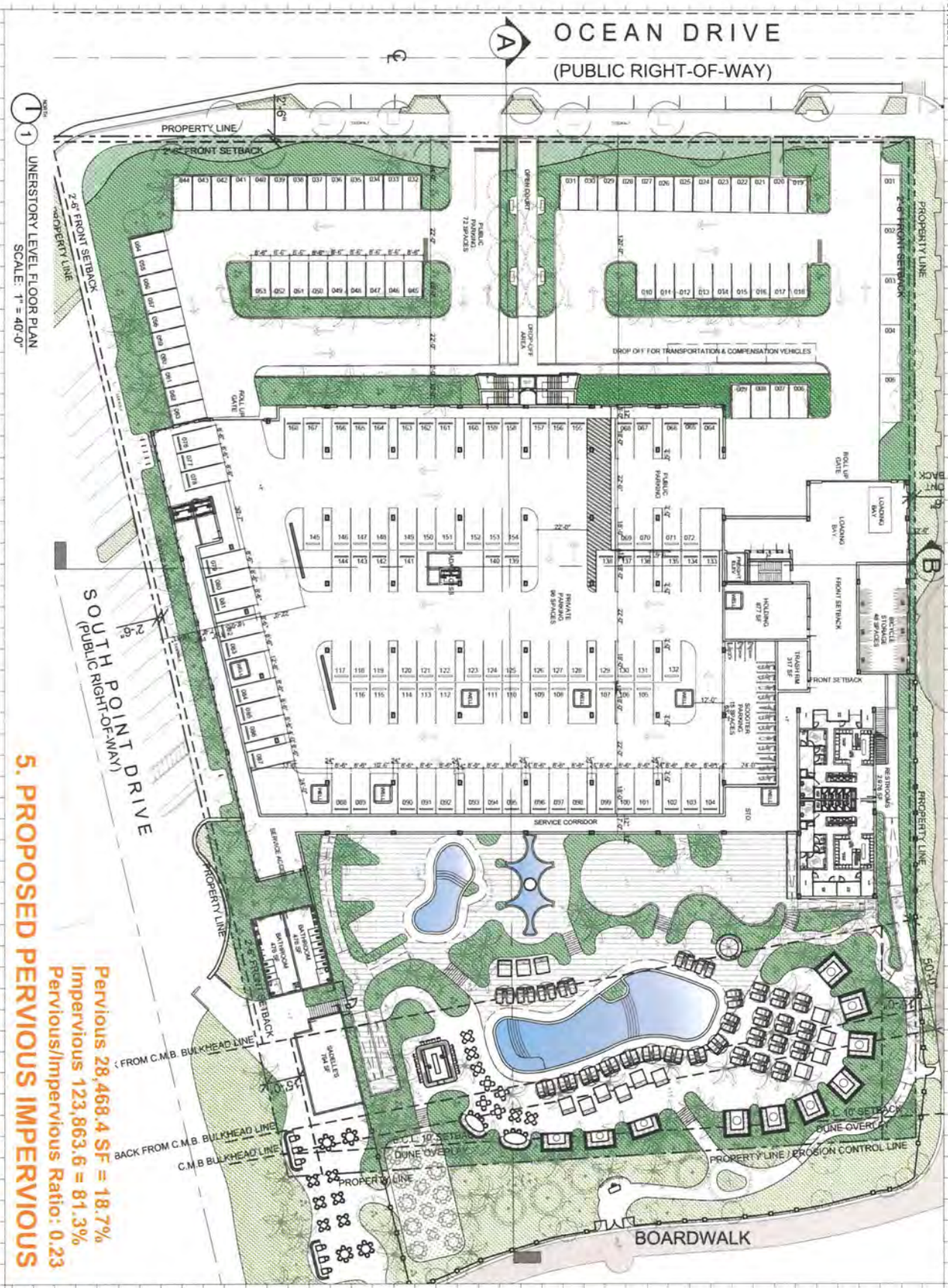
MIAMI-DADE COUNTY FLORIDA

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Bowman

PROFESSIONAL SURVEYORS AND MAPPING CERTIFICATE NO. 18,852
 BOARD OF PROFESSIONAL ENGINEERS, CERTIFICATE OF AUTHORIZATION NO. 3482

THIS PLAN, SPECIFICATIONS, AND CONTRACT DOCUMENTS SHALL BE CONSIDERED TO BE THE ENTIRE AGREEMENT BETWEEN THE CLIENT AND THE SURVEYOR. ANY CHANGES TO THIS PLAN SHALL BE MADE BY A SUPPLEMENTAL PLAN OR A CORRECTIVE PLAN. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY DATA AND THE INTERPRETATION OF THE DATA. THE SURVEYOR SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF THE DATA PROVIDED BY THE CLIENT OR FOR THE ACCURACY OF THE DATA PROVIDED BY ANY OTHER PARTY. THE SURVEYOR SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF THE DATA PROVIDED BY ANY OTHER PARTY.



1 UNERSTORY LEVEL FLOOR PLAN
SCALE: 1" = 40'-0"

5. PROPOSED PERVIOUS IMPERVIOUS

Pervious 28,468.4 SF = 18.7%
 Impervious 123,863.6 = 81.3%
 Pervious/Impervious Ratio: 0.23

DATE	10/15/2025	REVISION
BY	AS NOTED	A3.00
PROJECT	2523	



K. A. F. P.

UNDERSUBSTORY LEVEL OVERALL FLOOR PLAN

PROJECT: 2523

DATE: 10/15/2025

BY: AS NOTED

REVISION: A3.00

BISHOP DESIGN

ARCHITECTS

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DRB25-0792
DRB25-1146

FINAL SUBMITTAL

PIER PARK

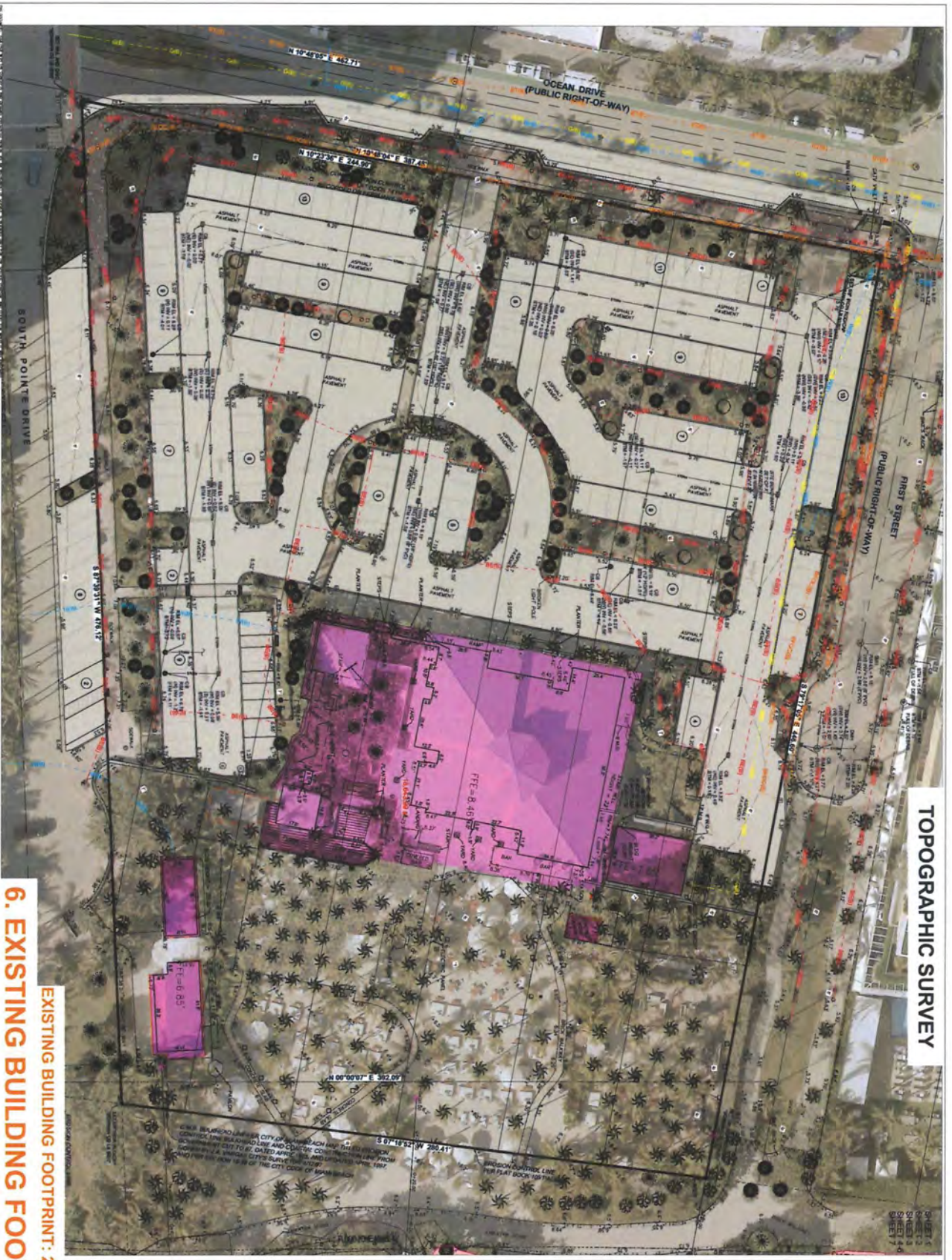
1100 N. W. 10th St., Suite 1000
 Ft. Lauderdale, FL 33304
 Tel: 754.366.1111
 Fax: 754.366.1112
 Email: info@pierpark.com

DATE: 10/15/2025

SCALE: 1" = 40'-0"

PROJECT: 2523

REVISION: A3.00



TOPOGRAPHIC SURVEY

EXISTING BUILDING FOOTPRINT: 20,531.83 SF

SEE SHEET 3

COVER BOUNDARY
 TOP SURVEY
 ADD TOPO
 CROSS SECTIONS

<p>PROJECT NO. 2009-01-001</p> <p>DATE RECORDED FL-01-03-14</p> <p>FIELD OFFICER R. G. ULLICH</p> <p>SCALE 1" = 20'</p> <p>JOB NO. 2009-01-001 DATE 07/18/2009</p> <p>F.I.E. No. 2009-01-001</p> <p>SHEET 2 OF 7</p>	<p>PLANNING STATUS 2009-01-001 2009-01-001 2009-01-001</p>	<p>NIKKI BEACH CLUB 1 OCEAN DR, MIAMI BEACH, FL.</p> <p>MIAMI-DADE COUNTY</p>	<p>FLORIDA</p>	<p>Bowman Consulting Group, L.L.C. 1410 N. Westshore Blvd. Suite 111 Tampa, FL 33607 Phone: (813) 474-7424 www.bowmanconsulting.com © Bowman Consulting Group, L.L.C.</p>	<p>Bowman</p> <p>PROFESSIONAL SURVEYORS AND MAPPERS, CERTIFICATE NO. 16,882 BOARD OF PROFESSIONAL ENGINEERS, CERTIFICATE OF AUTHORIZATION NO. 8842</p>
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