

PESTANA HOTEL AND RESORTS

Issue: Vertical accessibility to all floors of a hotel composed of three separate buildings.

Analysis: The applicant previously requested a six month extension of the Final Order previously issued on January 14, 2010 and the request was granted. The current application requests a further six month extension for that Order. The applicant does not anticipate that construction will have commenced prior to that date, rendering the existing Final Order null and void. The applicant agrees to all conditions previously attached to the current Final Order.

The applicant is requesting a waiver from providing vertical accessibility to all levels in three separate buildings being renovated to result in a single hotel project. According to the applicant, it is not only structurally impracticable to make each floor accessible, but it would also negatively impact the historic significance of the structures. In the South Building, the request is for a waiver from access to the elevated first floor rooms and to permit the existing elevator to remain without increasing the cab size. The middle building's request is for a waiver from vertical accessibility to the second floor. In the north building, the request is for a waiver from vertical accessibility to the raised first floor and to the second and third floors. There is a total of 99 rooms in the project, four of which will be accessible and one will have a roll in shower. The total cost of the project is estimated at \$3,000,000

Project Progress:

The project is under design.

Items to be Waived:

Vertical accessibility to all levels, as required by Section 553.509, Florida Statutes.

553.509 Vertical accessibility. Nothing in Sections 553.501-553.513 or the guidelines shall be construed to relieve the owner of any building, structure or facility governed by those sections from the duty to provide vertical accessibility to all levels above and below the occupiable grade level regardless of whether the guidelines require an elevator to be installed in such building, structure or facility, except for:

- (1) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks and automobile lubrication and maintenance pits and platforms;
- (2) Unoccupiable spaces, such as rooms, enclosed spaces and storage spaces that are not designed for human occupancy, for public accommodations or for work areas; and
- (3) Occupiable spaces and rooms that are not open to the public and that house no more than five persons, including, but not limited to equipment control rooms and projection booths.

Waiver Criteria: There is no specific guidance for a waiver of this requirement in the code. The Commission's current rule, authorized in Section 553.512, Florida Statutes, provides criteria for granting waivers and allows consideration of unnecessary or extreme hardship to the applicant if the specific requirements were imposed.

**REQUEST FOR WAIVER FROM ACCESSIBILITY REQUIREMENTS
OF CHAPTER 553, PART V, FLORIDA STATUTES**

Your application will be reviewed by the Accessibility Advisory Council and its recommendations will be presented to the Florida Building Commission. You will have the opportunity to answer questions and/or make a short presentation, not to exceed 15 minutes, at each meeting. The Commission will consider all information presented and the Council's recommendation before voting on the waiver request.

1. Name and address of project for which the waiver is requested.

Name: Pestana Hotel and Resorts

Address: 1817 – 1831 – 1835 – 1837 – 1839 James Avenue, Miami Beach, Florida 33139

2. Name of Applicant. If other than the owner, please indicate relationship of applicant to owner and written authorization by owner in space provided:

Applicant's Name: Larry M. Schneider, AIA

Applicant's Address: 4905 Midtown Lane - Suite 2313, Palm Beach Gardens, Florida 33418

Applicant's Telephone: 561-7996942 **FAX:** 561-7996943

Applicant's E-mail Address: Larry@LMSArch.net


Relationship to Owner: Accessibility Consultant

Owner's Name: Pestana Miami LLC

Owner's Address: c/o Holland and Knight; Mr. Mark Aronson – 701 Brickell Ave # 3000
Miami, FL 33131

Owner's Telephone: 305- 789- 7657 **FAX** _____

Owner's E-mail Address: jose.roquette@pestana.com

Signature of Owner:  attorney in fact
MARK ARONSON

Contact Person: Larry M. Schneider AIA

Contact Person's Telephone: 561-7996942 **E-mail Address:** Larry@LMSArch.net

This application is available in alternate formats upon request.

Form No. 2001-01

3. Please check one of the following:

☐ New construction.

☐ Addition to a building or facility.

☒ Alteration to an existing building or facility.

☐ Historical preservation (addition).

☒ Historical preservation (alteration).

4. Type of facility. Please describe the building (square footage, number of floors). Define the use of the building (i.e., restaurant, office, retail, recreation, hotel/motel, etc.)

The project is an existing hotel property in Miami Beach, Florida and is being altered to bring together three buildings on three sites together to become one hotel facility.

5. Project Construction Cost (Provide cost for new construction, the addition or the alteration): \$ Estimated Project Budget is \$ 2,549,384.00

6. Project Status: Please check the phase of construction that best describes your project at the time of this application. Describe status.

☒ Under Design ☐ Under Construction*

☐ In Plan Review ☐ Completed*

* Briefly explain why the request has now been referred to the Commission.

NA

7. Requirements requested to be waived. Please reference the applicable section of Florida law. Only Florida-specific accessibility requirements may be waived.

Issue: Compliance with Section 553.509 Florida State Statutes

1:553.509 Vertical accessibility.--Nothing in sections 553.501-553.513 or the guidelines shall be **construed to relieve the owner** of any building, structure, or facility governed by those sections **from the duty to provide vertical accessibility to all levels** above and below the occupiable grade level, regardless of whether the guidelines require an elevator to be installed in such building, structure, or facility,

8. Reason(s) for Waiver Request: The Florida Building Commission may grant waivers of Florida-specific accessibility requirements upon a determination of unnecessary, unreasonable or extreme hardship. Please describe how this project meets the following hardship criteria. Explain all that would apply for consideration of granting the waiver.

[X] The hardship is caused by a condition or set of conditions affecting the owner which does not affect owners in general.

ORIGINAL WAIVER REQUEST INFORMATION - The issue of the requirement for vertical accessibility to all levels, as mandated by the Florida State Statutes, section 553.509 VERTICAL ACCESSIBILITY. This section states that - *Nothing in sections 553.501 - 553.513 or the guidelines shall be construed to relieve the owner of any building, structure, or facility governed by those sections from the duty to provide vertical accessibility to all levels above and below the habitable grade level, regardless of whether the guidelines require an elevator to be installed in such building, structure, or facility.* Furthermore Florida State Statutes, section 553.512 states that the Florida Building Commission shall provide by regulation criteria for **granting individual modifications of, or exceptions from, the literal requirements of this part upon a determination of unnecessary, unreasonable, or extreme hardship**, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by the Accessibility Advisory Council. Notwithstanding any other provision of this subsection, if an applicant for a waiver demonstrates economic hardship in accordance with 28 C.F.R. s. 36.403(f)(1), a waiver shall be granted. There are three buildings within this project that were and are separate buildings but they now are being modified to become one project – the Pestana Hotel and Resort. The north building is mainly a two story structure with one portion being three stories. This is the 1835 building and incorporates 54 guest rooms of which 15 rooms will be accessible by a lift. There will be four rooms that will be accessible in this building. Providing a lift/elevator to the second and third floor area [third floor has four rooms] is an extreme hardship do to the issue of historical preservation of the exterior of the building and the additional concern of considering providing it within the building would not be readily achievable and would also require three rooms to be eliminated from the project thereby reducing the room count. The ADA permits a public accommodation to consider the effect of a modification on the operation of its business in doing barrier removal. The center buildings are two stories each with the east building providing eight units of which four would be accessible. The west building provides three units on the second floor and they would be accessible. The first floor of this building is a common area element. The south building is three stories and the rooms that are located on the first floor are a set of steps up to access them. A chair lift cannot be provided because of the reduction of the exit with on the existing stairs. There is an elevator in this building which does provide access to the second and third floors however the elevator cab size would allow access by a chair user but does not meet the clear cab size area as identified within the FACBC. The current cab size is 41" X 52" with a side entry which would allow for wheelchair use. Enlarging the elevator shaft is not readily achievable and is cost prohibitive. This building accommodates 54 rooms of which 40 would be accessible. There are a total of 99 rooms within this project and therefore four rooms would be required to be accessible; with one of them being a room with a roll-in shower and that requirement will be met. Therefore the waiver request is for vertical accessibility to the following – 1817 Building [South Building] access to the first floor rooms and modifying the elevator cab size. The 1831 Building [Middle Building] access to the second floor of the east building. The 1835 Building [North Building] access to the raised first floor rooms at the east end and access to the second and third floors. **THE REQUEST FOR THESE ITEMS WAS GRANTED.** The project was granted an Accessibility Waiver-No.DCA09-HC-416 (see attached) The project is currently under permit review with the City of Miami Beach. However this waiver will expire on December 9th, 2010 and while we are responding to pertinent comments and hope to gain building permit within the next 90 days we may not attain the permit by the December 9th, 2010 deadline. We would like to request a 6 month extension

from this board. Project as presented is in our original application dated December 7th 2009 (see attached). **THE REQUEST FOR AN EXTENSION OF THE WAIVER WAS GRANTED AT THE DECEMBER 7, 2010 FLORIDA BUILDING COMMISSION WITH SUPPORT FROM THE ACCESSIBILITY ADVISORY COUNCIL.**

MODIFICATION OF ORIGINAL WAIVER REQUEST INFORMATION – The intent is to modify the project by the elimination of the proposed bridge connection that was proposed between Building 1 and Building 2 West at the second floor. This modification has become apparent due to the cost implications and impact on the project feasibility and structural impact on the existing two buildings. By the adjustment of not providing this bridge this would impact only three guest rooms of which none were proposed as being accessible guest rooms within the project.

☒ Substantial financial costs will be incurred by the owner if the waiver is denied.

The issue of providing vertical accessibility to all levels of these buildings is an extreme hardship and is unreasonable.

10. **Licensed Design Professional:** Where a licensed design professional has designed the project, his or her comments **MUST** be included and certified by signature and affixing of his or her professional seal. The comments must include the reason(s) why the waiver is necessary.

Under Florida State Statutes a waiver can be granted for one of the following reasons - a determination of unnecessary, unreasonable, or extreme hardship and such a waiver was granted. However a modification has become apparent due to the cost implications and impact on the project feasibility and structural impact on the existing two buildings. By the adjustment of not providing this bridge this would impact only three guest rooms of which none were proposed as being accessible guest rooms within the project. We concur with the reasoning as so stated under item 8.

Signature

Peter T. Stromberg
Printed Name

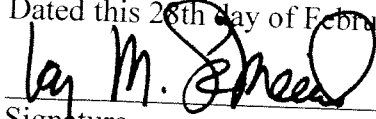
Phone number: 561-995-5012

(SEAL)

CERTIFICATION OF APPLICANT:

I hereby swear or affirm that the applicable documents in support of this Request for Waiver are attached for review by the Florida Building Commission and that all statements made in this application are to the best of my knowledge true and correct.

Dated this 28th day of February, 2011

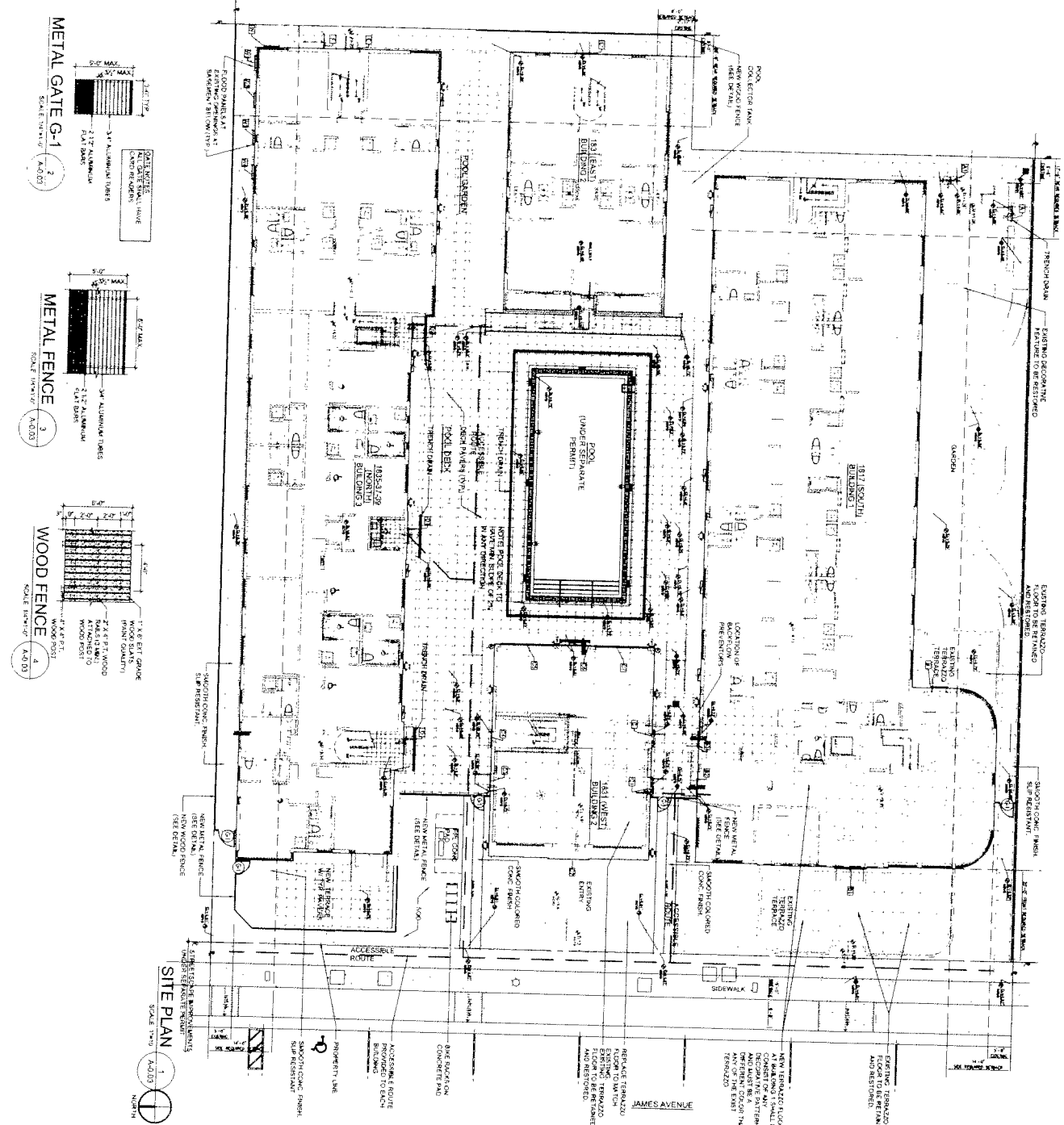


Signature

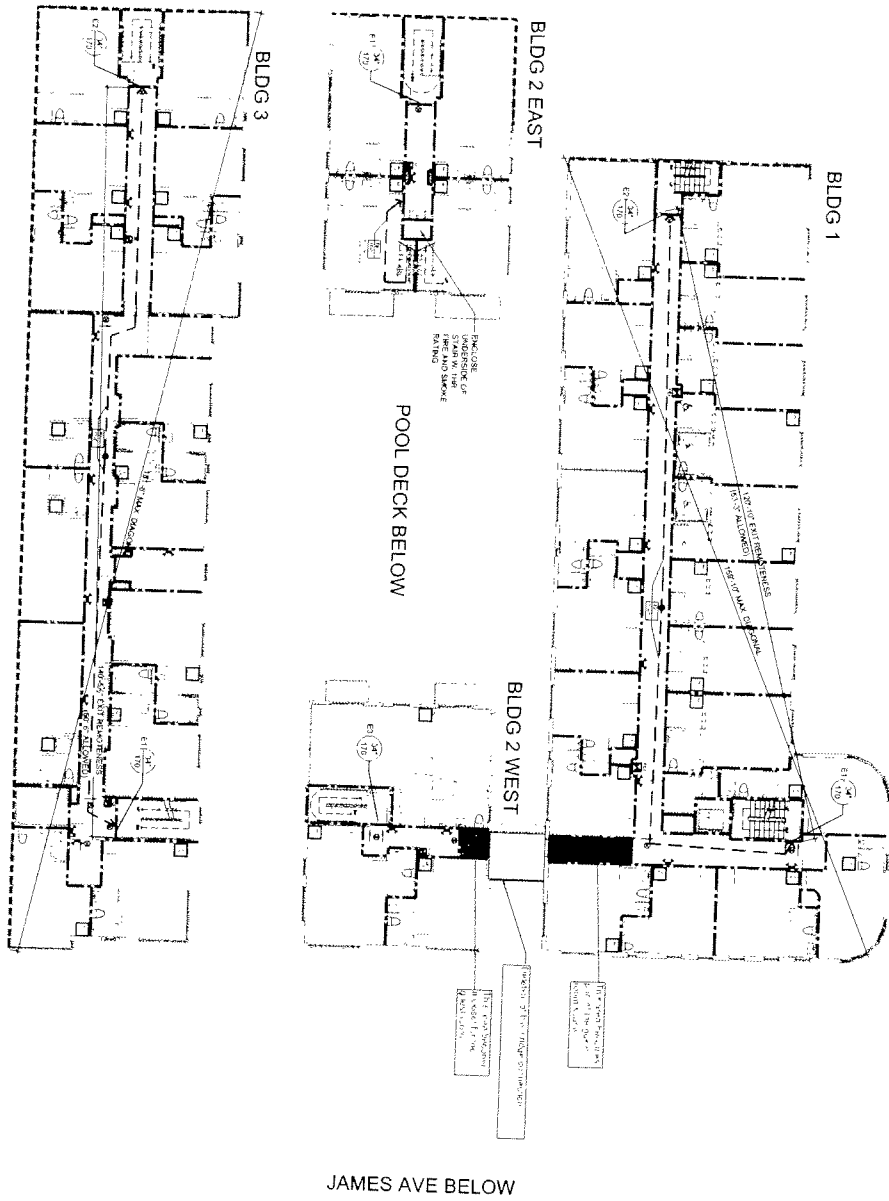
Larry M. Schneider AIA

Printed Name

By signing this application, the applicant represents that the information in it is true, accurate and complete. If the applicant misrepresents or omits any material information, the Commission may revoke any order and will notify the building official of the permitting jurisdiction. Providing false information to the Commission is punishable as a misdemeanor under Section 775.083, Florida Statutes.



FLOOD BARRIER SCHEDULE				
PANEL TAG #	LOCATION	HEIGHT	WIDTH	REMARKS
1	ENCLOSING ROOM	4'-8"	4'-0"	RE-ENTRY EXISTING
2	POOL EQUIPMENT ROOM	4'-8"	4'-0"	RE-ENTRY EXISTING
3	POOL ROOM	2'-8"	4'-0"	
4	POOL ROOM	2'-8"	4'-0"	
5	POOL ROOM	2'-8"	4'-0"	
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NOTE:
SEE STATION PLANS SHEETS 1-10A SERIES SHEETS FOR PARTITION, DOOR,
AND ELEVATOR DATA FOR THE SAFETY ZONING.

SECOND FLOOR LIFE SAFETY PLAN



PROJECT # 1008
SHEET #
LS-1.02
DATE: 07/11/2017

PESTANA HOTELS & RESORTS
SECOND FLOOR
LIFE SAFETY PLAN

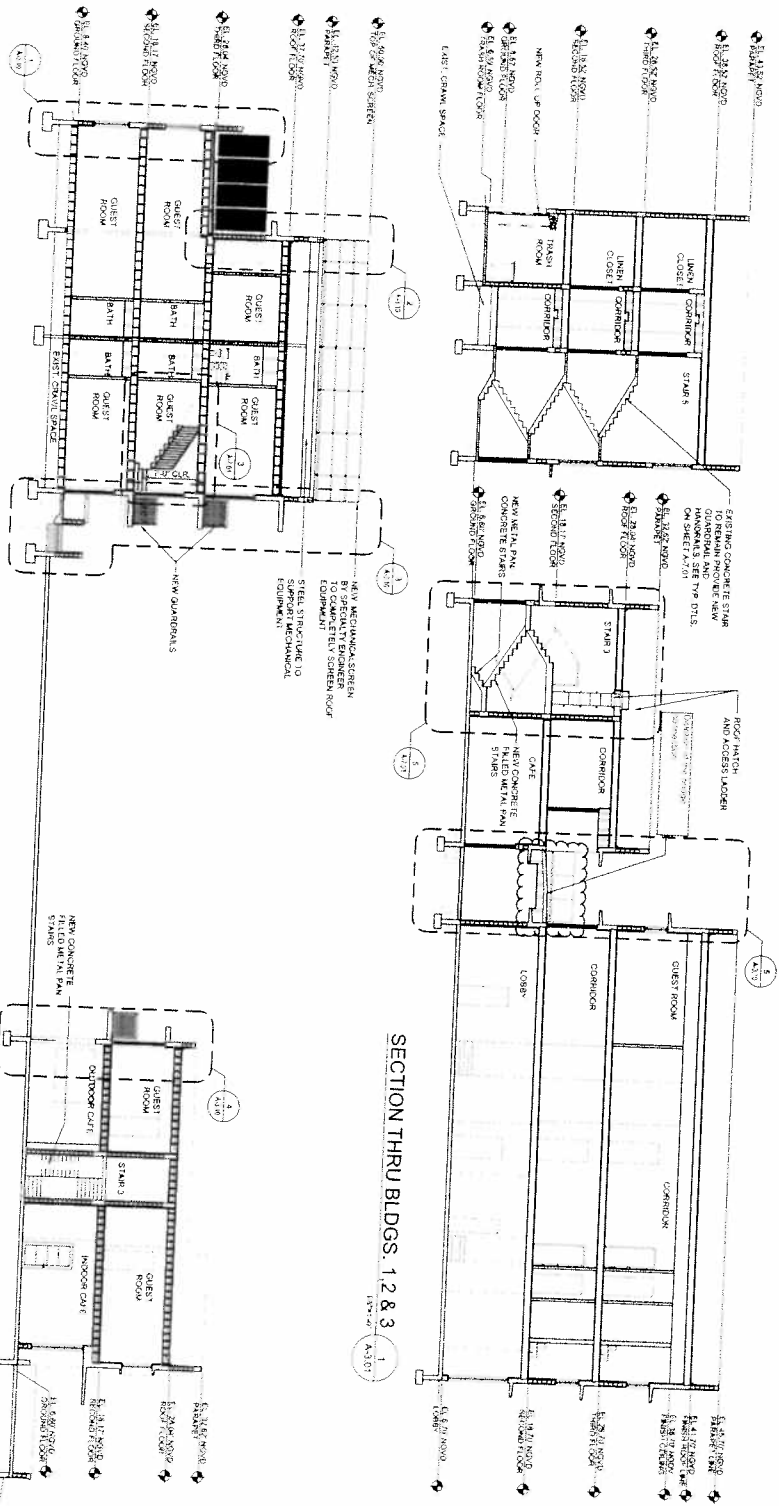
PROJECT:
**PESTANA HOTELS & RESORTS
BUILDING RENOVATION**
1817, 1831, 1835, 1837, 1839 JAMES AVE
MIAMI BEACH, FL 33139

CLIENT:
Pestana Hotels &
Resorts

GARCIA STROMBERG
ARCHITECTS
1817 JAMES AVE, SUITE 100
MIAMI BEACH, FL 33139
TEL: 305.674.1111
WWW.GSARCHITECTS.COM

DATE: 07/11/2017
BY: [Signature]
CHECKED: [Signature]
APPROVED: [Signature]

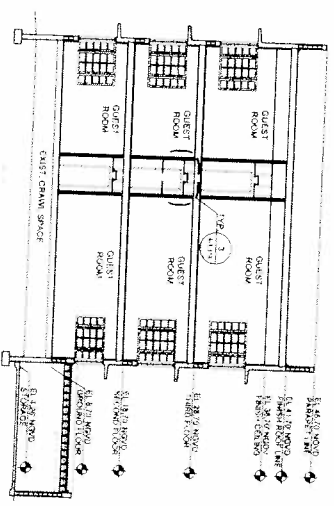
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SECTION THRU BLDG. 2 EAST AND WEST

SECTION THRU BLDGS. 1, 2 & 3

SECTION THRU BLDG. 1



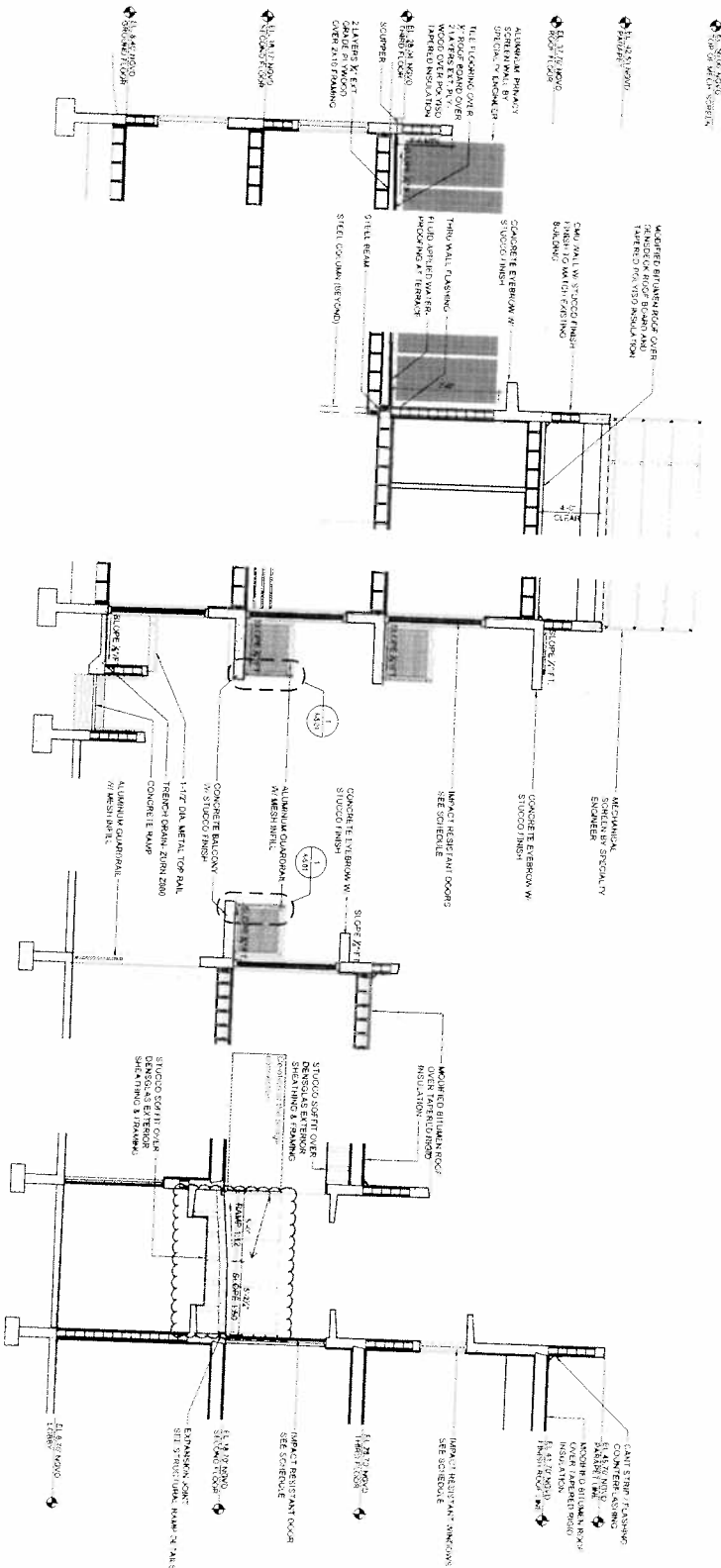
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WALL SECTION 2
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WALL SECTION 3
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A-3.10

WALL SECTION 4
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A-3.10

WALL SECTION 5
1/4" = 1' - 0"
A-3.10



PROJECT: A-3.10
SHEET: A-3.10
DATE: 10/1/00

WALL SECTIONS

PESTANA HOTELS & RESORTS
BUILDING RENOVATION
1817 - 1831 - 1805 - 1837 - 1839 JAMES AVE.
MIAMI BEACH, FL 33139

PESTANA Hotels & Resorts

GARCIA STROMBERG

ARCHITECT
1817 - 1831 - 1805 - 1837 - 1839 JAMES AVE.
MIAMI BEACH, FL 33139
TEL: 305.371.1111
FAX: 305.371.1112
WWW.GARCIASTROMBERG.COM

DATE: 10/1/00
BY: [Signature]
CHECKED: [Signature]
APPROVED: [Signature]

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	10/1/00
2	ISSUED FOR CONSTRUCTION	10/1/00
3	ISSUED FOR AS-BUILT	10/1/00
4	ISSUED FOR ARCHIVE	10/1/00



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139. www.miamibeachfl.gov

PLANNING DEPARTMENT
Tel: 305-673-7550, Fax: 305-673-7559

October 4, 2010

Members of the Florida Building Commission & Accessibility Advisory Council
c/o Mary-Kathryn Smith
Office of Codes and Standards
Florida Department of Community Affairs
2555 Shumard Oaks Boulevard
Tallahassee, Florida 32399-2100

Re: 1817, 1831 & 1835 James Avenue, Miami Beach
Application for an Extension of an Accessibility Waiver

Dear Mary-Kathryn and Members of the Commission and Council:

I am writing to you in support of the request for an extension of the accessibility waiver for 1817, 1831 & 1835 James Avenue. This particular application consists of three (3) separate structures, all of which are classified as 'Contributing' in the Miami Beach Historic Properties Database, and are located within the Museum Local Historic District and the National Register Architectural District.

The subject structures are all qualified historic buildings under the federal ADA regulations, the ADA Accessibility Guidelines (ADAAG) and Chapter 11 of the Florida Building Code.

If you should have any additional questions regarding the historic characteristics and attributes of the property, please do not hesitate to contact me.

Sincerely

Thomas R. Mooney, AICP
Design & Preservation Manager

TRM:tm
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We are committed to providing excellent public service to all who live, work and play in our vibrant, tropical, historic community.

**STATE OF FLORIDA
BUILDING COMMISSION**

In the Matter of
Pestana Hotel and Resorts
Miami beach, FL 33139

No. DCA09-HC-416

Pestana Miami LLC
Petitioner.

FINAL ORDER

The Application for Waiver by Petitioner, Pestana Miami LLC, came for consideration before the State of Florida Building Commission (Commission) in accordance with Section 553.512(1), Florida Statutes, and Chapter 9B-7, Florida Administrative Code,¹ at the meeting of the Commission on December 9, 2009, upon a recommendation by the Accessibility Advisory Council (Council). At that meeting, the Commission made the following findings of fact:

1. The Owner is Pestana Miami LLC, c/o Mark Aronson, Holland & Knight. 701 Brickell Ave., # 3000, Miami, FL 33131.
2. The Applicant is Larry M. Schneider, AIA, 4905 Midtown Lane, Suite 2313, Palm Beach Gardens, FL 33418 (Applicant).
3. The Applicant appeared before the Council on December 7, 2009.
4. The Applicant seeks a waiver for renovation of 3 buildings being renovated to comprise a hotel. The buildings are located at 1835 (north building), 1831 (east building) and

¹ Unless otherwise indicated, all citations to Florida statutes refer to the 2009 codification of *Florida Statutes*, and all citations to Florida administrative rules refer to the latest version of the final adopted rule presented in *Florida Administrative Code*.

1817 (south building) James Avenue, Miami Beach FL, 33139. The buildings are of historic architectural significance.

5. The requirements from which the Applicant seeks a waiver are those in the Florida Americans with Disabilities Accessibility Implementation Act ("the Act"), Section 553.509, Florida Statutes, which require the Petitioner to provide vertical accessibility to all levels above and below the occupiable grade level of a building, structure, or facility. Specifically, the Applicant requests a waiver from providing vertical access to each floor of the three buildings being renovated. For the south building, the waiver is sought for providing access to the first-floor rooms and for enlarging the elevator cab size. For the east building the waiver is sought for providing access to second floor. For the north building the waiver is sought for providing access to the raised first-floor rooms at the east end and access to the second and third floors. The renovation will create a total of 99 rooms, requiring four to be accessible and one of the four to have roll-in shower. These requirements will be met. The Applicant provided information showing that the construction required to provide vertical access to each floor of each building would be detrimental to their historic exteriors and an extreme hardship.

6. Section 553.512(1), Florida Statutes provides for a waiver of the accessibility requirements set forth in Section 553.509, Florida Statutes, upon a determination of "unnecessary, unreasonable, or extreme hardship".

9. Based upon the Council's consideration of the foregoing information, the Applicant's representations regarding project design and construction, and all applicable legal requirements, the Council members present recommended approval of a waiver for vertical accessibility based on extreme hardship.

Having considered the foregoing information, together with the recommendation of the Council, the Commission hereby agrees with the Council's recommendations, and concludes that action on the Application for Waiver be, and hereby is, GRANTED, upon the condition(s) stated above.

This Final Order is intended for the enforcement of the Florida Americans With Disabilities Accessibility Implementation Act, as amended, Section 553.501 et seq., Florida Statutes, and, other than as modified by this Final Order, any construction or post-construction activities which deviate from the requirements of that Act will be deemed to be a violation of this Final Order.

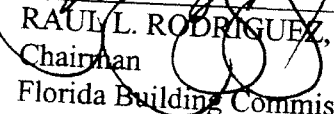
Responsibility for the enforcement of this Final Order and for enforcement of the Americans with Disabilities Accessibility Implementation Act shall rest with the Building Official of the local government with permitted authority for the project. §553.513, Fla. Stat. Nothing in this final Order shall be construed to relieve the Owner of any duties it may have under the Americans With Disabilities Act of 1990, Pub. L. No. 101-336, § 42 U.S.C. 12101 et seq., or other applicable regulations. Any waiver granted in this Final Order shall expire one (1) year from the date of the Order unless the construction has commenced within that time.

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee

specified by Section 35.22(3), Florida Statutes.

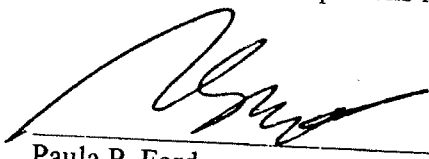
No. DCA09-HC-416

DONE AND ORDERED this 9th day of December, 2009, in Orlando, Florida.


RAUL L. RODRIGUEZ, AIA
Chairman
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned Commission Clerk and furnished by U.S. Mail to the persons listed below this 14th day of January, 2010.


Paula P. Ford
Commission Clerk

Jack Humburg, M.A., C.R.C.
Chairman, Accessibility Advisory Council
Boley Centers, Inc.
839 13th Avenue North
Saint Petersburg, Florida 33701

Pestana Miami LLC
c/o Mark Aronson
Holland & Knight
701 Brickell Ave., # 3000
Miami, FL 33131.

Larry M. Schneider, AIA
4905 Midtown Lane, Suite 2313
Palm Beach Gardens, FL 33418