

ITEM BEFORE THE BOARD

The action before the Board is that of making a recommendation to the City Commission on a request for Conditional Use approval to permit outdoor dining to operate at night at **27-43 South Swinton Avenue, Swinton Social**, pursuant to Section 2.4.5(E).

BACKGROUND & PROJECT DESCRIPTION	
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The subject properties, which are zoned Old School Square Historic Arts District (OSSHAD), consist of Lots 11, 12, 13, 14, and 15, Block 69, Town of Delray Beach. The 0.74-acre property presently contains four one-story, frame vernacular, single-family residences constructed between 1937 and 1950, which have been vacant for a number of years. One accessory structure (garage) remains on the southernmost property. The properties are located within the Old School Square Historic District, and are all classified as contributing.

On November 16, 2011, the HPB approved a Certificate of Appropriateness and Class V Site Plan Application for the adaptive reuse of the structures from single-family residential to spa and restaurant uses. The development primarily consists of the following:

- 27 South Swinton Avenue: Conversion of single-family residence to spa with the following accessory uses:
 - Raised “Smoothie/Juice Bar”
 - Jacuzzi
 - Swimming Pool: Measures 100’ x 15’, and is 5’ deep, with a stepped entry area at each end, and two centrally located “shallow swimouts”;
- 31 South Swinton Avenue: Conversion of single family residence to restaurant; referred to as “Grille” on the plans;
- 35 South Swinton Avenue: Conversion of single-family residential to restaurant; referred to as “Kitchen” on the plans;
- 43 South Swinton Avenue: Conversion of single-family residence to restaurant; referred to as “Café” on the plans;
- Additions between each of the structures will provide both open-air covered dining and enclosed dining spaces along the rear of the café and kitchen;
- Addition of a connected “poolside bar” at the rear of #43,
- Provision of a one-way drive aisle with 7 parking spaces parallel to South Swinton Avenue with the ingress located in front of 43 South Swinton Avenue, and the egress located in front of 27 South Swinton Avenue;
- Additional site improvements such as smaller accessory structures, fountain, 6’ high stucco-finished, masonry wall and a significant amount of landscaping throughout the site.

The hours of operation for the development are provided in the chart below, as they vary between the different uses and spaces:

	<u>Sunday</u>	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>	<u>Saturday</u>
<u>Spa Grille</u>	Daytime Hours Only (Including accessory uses: Juice Bar, Jacuzzi, Swimming Pool)						
	8am – 1 hour past sunset					8am – 2am	
<u>Café</u>	10am - 3pm					10am- 3pm	
	5pm - 12am					5pm – 2am	
<u>Sidewalk Café</u>	Same as Café (See Above)						
<u>Poolside Bar</u>	Same as Café (See Above), when pool is closed.						

The required amount of parking for the development was calculated at 53 spaces. In addition to the 7 spaces provided on-site, 26 were provided on a property located at 104 SE 1st Avenue to be developed as a valet parking lot and tied to the subject properties via Unity of Title. The remaining spaces (20) will be accommodated through additional off-site valet services permitted through a required agreement with the City.

The property owners intend on applying for a Sidewalk Café permit for the seating located between the southernmost building and the right of way on both South Swinton Avenue and SE 1st Street. The number of tables and seating areas indicated in this area is 12 (equating to 42 seats), which consists of the following configurations:

- Table with four seats: 4 = 16 seats
- Table with two seats: 2 = 4 seats
- Table with six seats: 2 = 12 seats
- Table with two accent “club” style chairs: 3 = 6 seats
- Table with four accent “club” style chairs: 1 = 4 seats

Outdoor dining during daylight hours is permitted in the OSSHAD Zoning District; however, outdoor dining at night is permitted only as a conditional use. Therefore, the request is for the approval to provide dining at night for the sidewalk café area, the open-air covered dining located interior to the property behind the Kitchen (56 seats), below the roof connecting the Café and Poolside Bar (12 seats), and at the Poolside Bar (25 seats). It is noted that the seating interior to the property, which was approved through the Site Plan Approval and accounted for in the parking calculation. Parking is not required for the Sidewalk Café area seating.

The conditional use request for the establishment of outdoor dining at night is now before the Board for consideration.

CONDITIONAL USE ANALYSIS

Pursuant to **LDR Section 4.4.24(D)(1), OSSHAD: Conditional Uses and Structures Allowed**, *outdoor dining which operates at night or which is the principal use or purpose of the associated restaurant is allowed as a conditional use within the OSSHAD.*

The subject request is for outdoor dining at night for the sidewalk café area, the open-air covered dining located interior to the property behind the Kitchen, below the roof connecting the Café and Poolside Bar, and at the Poolside Bar. All other dining at night located within an enclosed space does not require inclusion with this request as it is not outdoor dining.

Pursuant to **LDR Section 2.4.5(E)(5), Conditional Use Findings**, *in addition to provisions of Chapter Three (see below), the City Commission and City Commission must make findings that establishing the conditional use will not: (a) have a significantly detrimental effect upon the stability of the neighborhood within which it will be located; nor (b) hinder development or redevelopment of nearby properties.*

In consideration of criterion (a) above, the following zoning designations and uses are located immediately adjacent to the property:

	<u>Zoning:</u>	<u>Use:</u>
North	OSSHAD	Office
South	OSSHAD	Parking Lot
East	OSSHAD	Parking Lot, Vacant Lot, Adult Living Facility
West	OSSHAD	Single-Family Residential

Overall, the approved development will bring additional activity to a significant area of South Swinton Avenue which has not yet benefited from redevelopment. The project has the potential to revitalize South Swinton Avenue which could encourage the adaptive reuse of the historic structures located on the adjacent properties, many of which are presently vacant and falling into disrepair.

The outdoor dining interior to the property was deemed not to have a detrimental effect upon the stability of the neighborhood, as its impact was previously analyzed and approved with the Class V Site Plan. However, the proposed outdoor dining located at the southwest corner of the property has the potential to create an impact on the surrounding area due to added seating without the requirement of added parking spaces. Given the sites current challenges providing adequate parking (remote off-site valet lots) as well as deficiencies between required and actual restaurant parking demand (employees and patrons), providing additional seating options during peak hours is of concern. While we believe this venue should be allowed to avail itself of this option, it should be with the caveat that if the level of intensity becomes a concern then the capacity should be modified (evening outside seating discontinued). To this end, a condition is proposed that would allow modification and or discontinuation of the conditional use approval should the added intensity become an issue. It is acknowledged that the intent of Sidewalk Cafés, such as this one, is to capture pedestrians strolling through the vicinity of the specific location who have parked elsewhere, while creating additional vibrancy along the streetscape. Further, the outdoor dining, primarily at night when East Atlantic Avenue is at its liveliest, and this request will assist in bringing additional economic development to an area of South Swinton Avenue which has had only limited benefit to date from redevelopment or adaptive reuse.

Pursuant to **LDR Section 3.1.1, Required Findings**, *prior to the approval of development applications, certain findings must be made in a form which is a part of the official record. This may be achieved through information on the application, written materials submitted by the applicant, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application.*

(A) FUTURE LAND USE MAP: *The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Future Land Use Map.*

The subject property has a Future Land Use Map designation of OMU (Other Mixed Use) and a zoning designation of OSSHAD. The OSSHAD zoning district is consistent with the OMU Future Land Use Map designation. Pursuant to LDR Section 4.4.24(D)(1), Outdoor Dining at night is permitted as a conditional use within the OSSHAD zoning district. Based upon the above, it is appropriate to make a positive finding with respect to LDR Section 3.1.1(A), Future Land Use Map Consistency.

(B) CONCURRENCY: *Concurrency must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CI-GOP-1 of the Comprehensive Plan.*

Positive findings with respect to concurrency as it relates to traffic, parks and recreation, solid waste, drainage or schools were made with the Site Plan approval of the subject development. However, further discussion regarding traffic is necessary in that additional impact on traffic and streets is likely to occur on the site as a result of the additional seating (and potential increased demand for parking) provided with this request.

As previously noted, the added exposure of the outdoor dining, particularly at night, will create additional impact on adjacent traffic and streets, particularly given that all parking for the development

is provided via valet services. The valet parking will occur off-site either at 104 SE 1st Avenue, or another site to be utilized at night located at the southwest corner of SE 1st Street and SE 2nd Avenue. Given the likely impact, a Parking Management Plan should be submitted which indicates all travel routes for the valet services to and from the subject location. This has been added as a recommended condition of approval.

(C) CONSISTENCY: *A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.*

A review of the goals, objectives, and policies of the adopted Comprehensive Plan was conducted and the applicable Goals, Policies, and Objectives are noted:

Future Land Use Objective A-1 *Property shall be developed or redeveloped, in a manner so that the future use, intensity and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourage affordable goods and services; are complementary to and compatible with adjacent land uses; and fulfill remaining land use needs.*

The redevelopment of the subject properties from single-family to spa and restaurant and from a vacant parcel to a valet parking lot are proposed to be consistent with the subject Objective. With respect to the adjacent land uses, the South Swinton Avenue properties are surrounded by a mix of office (north), valet parking lot (south), Assisted Living Facility (east), vacant land (east), and residential (west). The uses adjacent to the proposed valet parking lot on SE 1st Avenue include vacant land (east), abandoned residential (north), residential (west), and multi-family (south). The properties are in the downtown area within a mixed-use zone which permits single-family residential and a variety of commercial uses. The valet parking lot abuts the CBD zoning district, which permits more intense uses. Due to the mix of uses (both existing and permitted) in conjunction with the downtown location, the proposal can be deemed compatible. Intensity issues have been raised and appropriate safe guards are proposed as conditions of approval.

Future Land Use Objective A-4 *The redevelopment of land and buildings shall provide for the preservation of historic resources. The objective shall be met through continued adherence to the City's Historic Preservation Ordinance and, where applicable, to architectural design guidelines through the following policies:*

The approved redevelopment provides for the preservation four historically significant structures in the city's downtown which have been vacant and left to demolition by neglect for a number of years. The proposal to provide outdoor dining during night time hours will assist in providing additional activity and exposure to an area which has not yet fully benefitted to the success of the city's downtown.

Future Land Use Objective C-3 *The Central Business District (CBD) and surrounding neighborhoods, including A-1-A, Seacrest and Swinton Avenue represents the essence of what is Delray Beach i.e. a "village by the sea". The continued revitalization of the CBD is essential to achieving the overall theme of the City's Comprehensive Plan by managing growth and preserving the charm. The following policies and activities shall be pursued in the achievement of this objective.*

The approved project will provide a significant opportunity for economic development within the South Swinton Avenue area. The redevelopment and adaptive reuse will positively impact this area, more so than complete new development in this area, which is not as attractive as a project such as this. Further, the potential for continued revitalization of this area will increase and provide additional opportunities for other properties which have sat vacant for a number of years.

(D) Compliance with LDRs: *Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations.*

4.6.9(F)(3), Special Provisions, Valet Parking, *a parking facility with a valet service or operator which allows for attendants to receive, park and deliver the automobiles of occupants, tenants, customers, invitees, and visitors, including tandem parking may be utilized in lieu of the requirements of this Section provided the following requirements are complied with:*

- (a) Any required valet or tandem parking utilized in lieu of the parking requirements set forth in this section shall be governed by an agreement with the City (in such form as may be approved by the City Attorney), and recorded in the public records of Palm Beach County. The agreement shall constitute a covenant running with the land binding upon the owners, heirs, administrators, successors, and assigns. The agreement may be released by the City Commission at such time that site plan approval is obtained for an alternative parking arrangement which satisfies the parking requirements for said use.*

While valet parking services were approved with the Class V Site Plan for the subject development, the subject Section is added for further assurance that the required agreement with the City is completed, particularly due to the potential impact of the additional seating accommodated through the Sidewalk Café area, and subsequent demand on parking. Therefore, acceptance of the Valet Parking Agreement by the City Commission prior to issuance of a Building Permit is added as a recommended condition of approval.

Pursuant to **LDR Section 6.3.3, Sidewalk Café**, *a sidewalk cafe is a group of tables with chairs and associated articles approved by the City situated and maintained outside whether on public or private property (excluding interior courtyard seating which is subject to parking requirements) and used for the consumption of food and beverages sold to the public from an adjoining business. All tables and chairs and associated articles must be located within the sidewalk café permit area. Sidewalk cafes allowed only when in compliance with this Section.*

Pursuant to **LDR Section 6.3.3(A), Sidewalk Café: Permit and Fees**, *it shall be unlawful for any person to establish a sidewalk cafe at any site unless a valid permit to operate a sidewalk cafe has been obtained for that site, from the City pursuant to this Section. The permit shall be issued on a form provided by the City of Delray Beach. No permit shall be issued until all the requirements of this Section have been met. Permits shall not be transferable.*

The aforementioned Sections are provided to clarify that the outdoor dining area at the southwest corner of the property is not permitted per this application, rather, a Sidewalk Café permit is needed, which requires annual renewal. Further, the Sidewalk Café permit shall not indicate additional seating than that which is depicted on the submitted site plan (42 seats) for the subject Conditional Use request. Additional seating will require a modification of the Conditional Use.

REVIEW BY OTHERS

The **Community Redevelopment Agency (CRA)** reviewed the request at its January 12, 2012 meeting, and recommended approval.

The **Historic Preservation Board (HPB)** reviewed the request at its January 18, 2012 meeting, and recommended approval on a vote of 7-0, subject to the following conditions:

1. That the Outdoor Dining seating not be expanded in quantity or floor area from what is indicated on the submitted plan, which includes 56 seats behind the kitchen, 25 seats at the poolside bar, 12 seats between the café and poolside bar, and 42 seats within the Sidewalk Café area;
2. That a Sidewalk Café permit be obtained which indicates no more than the twelve seating areas and 42 seats indicated on the submitted plans;
3. That the Valet Parking Agreement for be accepted by the City Commission prior to issuance of a Building Permit; and,
4. That if complaints are generated, pedestrian and/or vehicular incidents occur to impact the area, the valet fails to function, and/or undue congestion results, the Sidewalk Café permit will be reconsidered and possibly rescinded.

ASSESSMENT AND CONCLUSION

The approved project is a welcome addition to the existing conditions and deterioration on the subject properties. As noted in the report, the subject project will likely assist in the economic redevelopment of the South Swinton Avenue area, and perhaps inspire or provide additional opportunities for other properties to be further improved or reused.

The proposed night time Sidewalk Café dining is likely to impact the area with respect to streets and traffic due to additional intensity on an already potentially impacting development. However, the Sidewalk Café area is limited to the seating configuration noted on the plan and consisting of no more than 42 seats. This amount is likely sufficient to provide the right amount of vibrant atmosphere on the corner, while enticing patrons, both vehicular and pedestrian, from East Atlantic Avenue. Overall, the use is appropriate to the area, neighborhood, and property, and positive findings with respect to the LDRs and Comprehensive Plan have been made. Further, the proposal will not have a detrimental effect upon the stability of the neighborhood as it will not hinder, rather it will encourage, the development or redevelopment of nearby properties.

ALTERNATIVE ACTIONS

- A. Recommend postponement for the request of a Conditional Use associated with outdoor dining at night at **27-43 South Swinton Avenue, Swinton Social**.
- B. Move a recommendation of approval to the City Commission for the request of a Conditional Use associated with outdoor dining at night at **27-43 South Swinton Avenue, Swinton Social**, based upon positive findings with respect to Section 2.4.5(E)(5), Conditional Use Findings, Chapter 3, Performance Standards, and consistency with the Future Land Use Element of the Comprehensive Plan.
- C. Move a recommendation of denial to the City Commission for the request of a Conditional Use associated with outdoor dining at night at **27-43 South Swinton Avenue, Swinton Social**, based upon a failure to make positive findings with respect to Section 2.4.5(E)(5), Conditional Use Findings, Chapter 3, Performance Standards, inconsistency with the Future Land Use Element of the Comprehensive Plan.

RECOMMENDED ACTION

Move a recommendation of approval to the City Commission for the request of a Conditional Use associated with outdoor dining at night at **27-43 South Swinton Avenue, Swinton Social**, based upon positive findings with respect to Section 2.4.5(E)(5), Conditional Use Findings, Chapter 3, Performance Standards, and consistency with the Future Land Use Element of the Comprehensive Plan, subject to the following:

1. That the Outdoor Dining seating not be expanded in quantity or floor area from what is indicated on the submitted plan;
2. That a Sidewalk Café permit be obtained which indicates no more than the twelve seating areas and 42 seats indicated on the submitted plans;
3. That the Valet Parking Agreement for be accepted by the City Commission prior to issuance of a Building Permit;
4. That a Parking Management Plan be submitted which indicates all travel routes for the valet services to and from the subject location;
5. That all outside seating areas subject to this approval shall have hours of operation not exceeding 12am, Sunday through Thursday, and 2am, Friday and Saturday; and,
6. That if the property receives more than three (3) Code Enforcement Violations or Civil Violations in a twelve month period including complaints generated from pedestrian and/or vehicular incidents resulting from the increased impact of this request, the valet fails to function, and/or undue congestion results, the conditional use (outdoor dining at night) including the Sidewalk Café will be reconsidered and possibly rescinded.

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Attachment:

- Site Plan