



200 S. Biscayne Boulevard
Suite 300, Miami, FL 33131
www.brzoninglaw.com

305.377.6231 office
305.377.6222 fax

mlarkin@brzoninglaw.com
nrodriguez@brzoninglaw.com

VIA ONLINE SUBMITTAL

April 5, 2021

Steven Williams, Chief of Planning Services
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

RE: **ZBA21-0127** – Letter of Intent – Application for Variance from Spacing Requirements, Maximum Square Footage, and Separation Standards Applicable to Pharmacies for the Property located at 6948 6956, 6964, 6972, 6988 Abbott Avenue and 6965, 6957 Byron Avenue, Miami Beach, Florida 33139

Dear Mr. Williams:

This law firm represents Target Corporation (the "Applicant") with regard to the above-referenced property (the "Property") within the City of Miami Beach (the "City"). The Applicant intends to establish a pharmacy within its multi-purpose department store. This letter serves as the Applicant's letter of intent in support of an application to the Board of Adjustment ("BOA") for variances from:

- (1) the minimum 1,200-foot spacing requirement applicable to pharmacy stores under Section 142-1502(d) of the Miami Beach Code of Ordinances (the "Code");
- (2) the requirement that pharmacies be divided by a one-hour fire wall from an adjacent business under Section 142-1503(e) of the Code; and
- (3) the maximum 7,500 square foot size applicable to pharmacies stores under Section 142-1503(f) of the Code.

It should be noted that the Applicant will be a tenant of the mixed-use development approved by the Design Review Board ("DRB") under File No. DRB19-0424 on October 6, 2020, and granted a Conditional Use Permit ("CUP") by the Planning Board ("PB") under File Number PB20-0410, a.k.a. PB19-0303, on January 26, 2021. See Exhibit A, Recorded DRB Order and Exhibit B,

Recorded Modified Conditional Use Permit. As it does in all of its stores, the Applicant intends to operate a pharmacy as part of its larger multi-purpose department store. The purpose of these requested variances is to permit the Applicant to operate a pharmacy inside the approved Target store.

Property Description. The Property is located in the North Beach neighborhood, south of 71 Street between Byron and Abbot Avenues. It consists of seven (7) lots identified by the Miami-Dade County Property Appraiser's Office by Folio Nos. 02-3211-002-1010; 02-3211-002-1020; 02-3211-002-1030; 02-3211-002-1040; 02-3211-002-1050; 02-3211-002-0970; 02-3211-002-0990. The Property is approximately 49,820 square feet (1.14 acres) in size and is currently improved with surface parking lots. With respect to zoning, the Property is within the Town Center – Central Core ("TCC") zoning district, which generally promotes high intensity mixed-use development.

As mentioned, the Property is the site of an approved mixed-use development that will consist of an approximately 30,000 square foot ground floor Target store and approximately 170 residential units above. The intent of the overall development is to activate an area of the City that will serve as the central core of the North Beach neighborhood.

Pharmacy Sub-District. Importantly, the Property is located within one of four (4) "Areas" where pharmacy stores and medical cannabis treatment centers are permitted. Specifically, the Property is within Area 4 identified in Section 142-1502(a)(4) of the Code, which provides:

Area 4 shall include lots zoned TC-1 and TCC south of 71st Street, generally located between Collins Avenue on the east, 71st Street on the north, the west lot line of lots fronting Bonita Avenue on the west, and 69th Street on south, as depicted in the map below" ("Pharmacy Area 4")

Pursuant to the text of Section 142-1502(a)(4), the Property meets all criteria to be located within Pharmacy Area 4. The Property is zoned TCC, located south of 71 Street, west of Collins Avenue, east of Bonita Drive, and north of 69 Street. Accordingly, the requested pharmacy is a permitted use of the Property, subject to the location and permitting requirements applicable to pharmacies and medical cannabis treatment centers under the Code.¹

¹ Pursuant to Section 388.986(11)(b)(2), Florida Statutes, the City may only regulate the location and permitting requirements for medical marijuana dispensaries in a manner that is no more restrictive than the regulations applicable to pharmacies. The City has enacted regulations governing the location and permitting requirements for medical marijuana dispensaries, which apply equally to pharmacies and dispensaries under to state law.

Request. Pursuant to Section 142-1502(b)(5) of the Code, pharmacies must not be located within 1,200 feet from another pharmacy.² Further, pursuant to Section 142-1503(e)-(f) of the Code, pharmacies must provide a minimum of a one-hour fire separation wall between any adjacent business, and are limited to a maximum size of 7,500 square feet.

Spacing Requirement. Despite being within a designated pharmacy sub-district, the Property is within 1,200 feet of an existing legal nonconforming pharmacy. Specifically, the entrance and exit of the proposed Target is 793 feet of the Navarro Discount Pharmacy located at 631 71 Street, which is not located in a designated pharmacy sub-district and is therefore a legal nonconforming use. Notably, there are no pharmacies actually located within Pharmacy Area 4.

Maximum Size and Separation Requirement. The Applicant proposes a pharmacy that is fully integrated into the approved Target. As a result, the pharmacy is not separated by a one-hour fire separation wall from the remaining area in the Target, and the entire area of the Target store is considered part of the pharmacy. However, the entire Target store will not be utilized as a pharmacy, but rather only an approximately 702 square foot section located along the westside of the Target.

Accordingly, the Applicant requests the following variances:

- 1) Variance from required 1,200-foot distance separation between pharmacies under Section 142-1502(b)(5) of the Code to permit the entrance and exit of the proposed pharmacy to be located 793 feet from the entrance and exit of the existing legal nonconforming Navarro Discount Pharmacy at 631 71 Street;
- 2) Variance from the requirement that pharmacies be separated from adjacent businesses by a one-hour fire separation wall under Section 142-1503(e) of the Code to permit the proposed pharmacy to be fully integrated into the approved Target store; and
- 3) Variance from the maximum 7,500 square foot size limitation applicable to pharmacies under section 142-1503(f) of the Code to permit the pharmacy to be fully integrated into the approximately 30,000 square foot Target store.

Satisfaction of Section 118-353 Criteria. The Applicant's requests satisfy all variance criteria provided in Section 118-353 of the Code criteria as follows:

² Pursuant to Section 142-1502(b)(6) of the Code, the minimum distance separation is determined by measuring a straight line from the entrance and exit of each business.

(1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

The special circumstances applicable to the Property is the existing legal nonconforming pharmacy located at 631 71 Street and the unique shape of the Property necessitating a creative design to create the centralized retail center envisioned for the neighborhood. Notably, the requested increase in excess of 7,500 square feet is merely a technical requirement, as the proposed pharmacy is approximately 702 square feet, but the combination of the 30,000 square foot retail store with the pharmacy increases the space to over 7,500 square feet.

(2) The special conditions and circumstances do not result from the action of the applicant;

The special conditions and circumstances of the Property do not result from the action of the Applicant, as the existing legal nonconforming pharmacy at 731 71 Street is not due to any action of the Applicant. Further, the unique configuration of the mixed-use development required to appropriately respond to the irregular shape of the Property and site conditions is not a result of any action of the Applicant.

(3) Granting the variances requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;

Granting the variance requested does not confer on the Applicant any special privilege denied to other properties in the same zoning district, as pharmacies and retail establishments are permitted uses of the Property. Granting the requested variances merely permits the Applicant to operate a pharmacy that is integrated into a thriving and synergistic mixed-use development, which is consistent with the purposes of the TCC District.

(4) Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;

Literal interpretation of the land development regulations deprives the Applicant of the ability to operate a pharmacy within a retail store, which is a common practice within retail establishments such as department stores and grocery stores. The Planning Board and Design Review Board have approved of the overall mixed-use project, of which the proposed pharmacy is a crucial part. Importantly, pharmacies and retail stores are permitted uses within this TCC District and there are no pharmacies located within Pharmacy Subarea 4. The Code specifically provides for pharmacies as a permitted use in this area of the City, as well as encourages centralized mixed-use development over multiple independent retail uses. Consequently, literal interpretation of the 1,200-foot spacing requirement, separation wall requirement, and maximum size limitation in this instance works an unnecessary and undue hardship on the Applicant in direct contravention of the intent and purpose of the zoning district in which the Property is located. The Applicant has made substantial investment towards opening the approved Target that will serve as an anchor establishment in the core of North Beach, and denial of the ability for the Applicant to operate the only pharmacy within Pharmacy Area 4 would be an unnecessary and undue hardship.

(5) The variances granted are the minimum variances that will make possible the reasonable use of the land, building or structure;

The requested variance is the minimum variance that makes possible the reasonable use of the Property, as the pharmacy and retail uses are each independently permitted on the Property. The request is not a substantial request, it is a minor deviation of what is already allowed required to comply with technical requirements that conflict with the overall intent of the TCC District. Locating the proposed pharmacy store inside the approved mixed-use development buffers it significantly from the public realm, which makes it virtually imperceptible. Accordingly, the requested variances are minimal requests to make possible to reasonable use of the Property consistent with the approved mixed-use development.

(6) The granting of the variances will be in harmony with the general intent and purpose of these land development regulations and that such variances will not be injurious to the area involved or otherwise detrimental to the public welfare; and;

The general intent and purpose of the Land Development Regulations applicable to pharmacies is to limit their location to developed commercial areas, prevent an over-concentration in any one area of the City, and mitigate the impacts that pharmacies may have on a neighborhood. In this instance, there are no pharmacies within Pharmacy Area 4, which was specifically created to allow for pharmacy uses. Further, the integration of

the pharmacy within the Target store provides a more effective buffer from neighboring properties, as the proposed pharmacy will only occupy approximately 702 square feet towards the rear of a 30,000 square foot retail establishment. Integrating the pharmacy in this way protects the public interest by reducing visibility of the pharmacy from the public realm and blending it with the context of the overall mixed-use development.

The proposed pharmacy will have no public presence and will not result in a increase in the number of retail pharmacies in Pharmacy Area 4. Moreover, the Applicant has no intention of ever seeking the licensure needed to dispense medical cannabis, and is willing to agree to conditions or proffer a declaration of use that prohibit it from ever operating as a medical cannabis treatment center. In addition, the integration of the pharmacy within Target, which is itself integrated into a larger mixed-use development is consistent with the intent and purpose of the TCC District regulations. Adding a retail store with a grocery component and an accessory pharmacy will improve the health and welfare of the community. Similarly, the mixed-use development reduces traffic and overall trip generation as compared to independent uses, which improves the safety of the area. Thus, granting the variance is consistent with the general intent and purpose of the land development regulations and is beneficial to the public interest.

(7) The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board of adjustment voting on the applicant's request.

The variance request is consistent with the City's Comprehensive Plan and does not reduce the levels of service as set forth in the plan.

8. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

The requested variance does not impact the resilience of the Property.

Practical Difficulty. Pursuant to Article 1, Section 2 of the Related Special Acts, where there are practical difficulties, the Board of Adjustment has the power to vary or modify regulations or provisions relating to the use so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In this instance, the requested variances allow for integration of an accessory

pharmacy within a mixed-use development that is accommodating to modern standards. The requested variances are consistent with the intent of the Code, as the buffering resulting from integrating the pharmacy furthers the intent of the pharmacy regulations and TCC Zoning District. The reduction in the distance separation buffer and increase in size variance are the only feasible methods of accomplishing this integration. The Applicant has exerted substantial effort, time, and resources to obtain development approvals from the DRB and PB, and denial of the pharmacy element of the development would be detrimental to the overall development and the public interest.

Sea Level Rise and Resiliency Criteria. The new home advances the sea level rise and resiliency criteria in Section 133-50(a) of the City Code, as follows:

1. A recycling or salvage plan for partial or total demolition shall be provided.

A recycling and salvage plan will be provided at the time of permitting.

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

The Applicant proposes hurricane proof impact windows as part of the overall mixed-use development.

3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

The Applicant will provide, where feasible, passive cooling systems.

4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

The overall mixed-use development of which the Applicant's proposed pharmacy will be a part has an approved landscaping plan with Florida friendly plantings.

5. Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

During the approval process for the overall mixed-use development, sea level rise projections were considered, as well as the elevation of the development and adjacent development.

6. The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

The overall mixed-use development provides driveways and garage ramping that are adaptable to future raising of public rights of way and adjacent lands.

7. Where feasible and appropriate. All critical mechanical and electrical systems are located above base flood elevation.

All mechanical and electrical systems will be located above base flood elevation.

8. Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

The overall mixed-use development of which the proposed pharmacy will be a part is elevated to base flood elevation plus City freeboard.

9. When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Any areas below base flood elevation plus freeboard will implement appropriate flood mitigation measures to protect the property.

10. Where feasible and appropriate, water retention systems shall be provided.

Where feasible, water retention systems will be provided.

11. Cool pavement materials or porous pavement materials shall be utilized.

Cool pavement materials or porous pavement materials will be utilized where possible.

12. The design of each project shall minimize the potential for heat island effects on-site.

The design of the project will minimize the potential for heat island effects on site.

Conclusion. The Applicant's proposes a common and effective configuration under which an accessory pharmacy is part of a larger retail establishment within a mixed-use development. The Code recognizes the benefits of such centralized and integrated uses within a mixed-use development by encouraging such development in this area of the City. The Applicant's proposal is part of a cohesive and transformative project that will benefit the North Beach community for years to come, and the proposed pharmacy will be the only pharmacy within the approved area for pharmacies in North Beach.

In light of the above, the Applicant respectfully request your favorable review and recommendation of this application. If you have any questions or comments with regard to the application, please contact me at (305) 377-6231.

Sincerely,



Michael W. Larkin

CC: Steven Vandenbossche
Nick Pearce
Aria Mehrabi
Nicholas Rodriguez, Esq.

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: October 06, 2020

PROPERTY/ FOLIO: 6948 Abbott Avenue	02-3211-002-1010
6956 Abbott Avenue	02-3211-002-1020
6957 Byron Avenue	02-3211-002-0990
6964 Abbott Avenue	02-3211-002-1030
6965 Byron Avenue	02-3211-002-0970
6972 Abbott Avenue	02-3211-002-1040
6988 Abbott Avenue	02-3211-002-1050

FILE NO: DRB19-0424

IN RE: An application has been filed requesting Design Review Approval for the construction of a new multistory mixed-use residential and retail development, including one or more waivers, and one or more variances from the street class frontage requirements to replace existing surface parking lots.

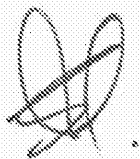
LEGAL: Lots 3, 4, 5, 7, 8, 9, 10 of Block 13, and lots 11 and 12 as less the west 50 feet thereof, of Normandy Beach South, according to the plat thereof, as Recorded in Plat Book 21, Page 54, of the Public Records of Miami-Dade County, Florida.

ORDER

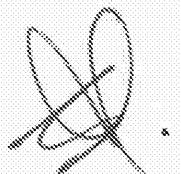
The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

I. Design Review

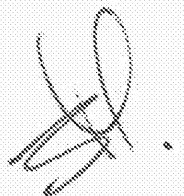
- A. The Board has jurisdiction pursuant to Section 118-252(a) of the Miami Beach Code. The property is not located within a designated local historic district and is not a individually designated historic site.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is inconsistent with Design Review Criteria 2, 3, 5-9, 12, and 14 in Section 118-251 of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-251 if the following conditions are met:
 1. The proposed eyebrow(s) that extend(s) above and encroach(es) within the City sidewalk may require revocable right-of way permit(s) to be obtained from the Public Works Department and approved by the City Commission.



2. The applicant shall be subject to all of the conditions within the Conditional Use Permit (CUP) approved by the Planning Board on February 25, 2020, pursuant to PB19-0303.
3. Revised elevation, site plan and floor plan drawings for the proposed mixed-use development at 6948-6988 Abbott Avenue shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
 - a. The proposed plans shall be revised to fully comport with the FAR requirements of the City Code. FAR diagrams and calculations shall be revised and to be reviewed and approved by staff as part of the building permit plans.
 - b. The separation requirement for driveways for parking and loading shall be waived as proposed. (Sec 142-745(a)(12)(c)).
 - c. The architect shall clarify location and type of required bicycle (long vs short term) parking on a revised site plan.
 - d. The architect shall comply with the street frontage requirements for the Class A frontage (71st Street) and Class B frontage (Abbott Avenue).
 - e. The proposed exterior stair and ramping elements at the northeast corner of the site located within the clear pedestrian path along 71st Street and Abbott shall be eliminated.
 - f. All proposed green walls visible from the right-of-ways shall consist of natural vegetation and landscaping and shall be properly installed with irrigation and maintained, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - g. The applicant shall further refine the design and screening of the proposed north stair along 71st Street, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - h. The applicant shall further refine the design of the northeast corner of the architecture in order to refine and better coordinate the planters within the façades at the upper levels, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - i. The applicant shall further refine the proposed parking garage screening. The final design details and color selection of the "parking garage podium screening" proposed at portions of the parking podium shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.



- j. The architect shall provide additional design details / further refinement of the ground retail tenant build out along the paseo. Additionally, a detailed plan that identifies all the public space elements that include seating, special paving, landscaping, and pedestrian scaled lighting to create usable public spaces shall be provided for staff review.
- k. The architect shall provide elements to block off the dead-end spaces with a well-designed and articulated transparent fence or gate system to limit access during portions of the non- business hours / evening along the paseo.
- l. The final details of all exterior surface finishes and materials, including samples, shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- m. All interior fixtures, including, but not limited to, shelving, partitions, and checkout counters, if parallel to the exterior wall, shall be set back a minimum of ten (10') feet from the exterior walls of the building, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board. This shall not prohibit substantially transparent fixtures for display purposes; however, shelving, partitions, and checkout counters, or similar objects, shall not be permitted to be flush to the exterior walls of the building facing any right-of-way.
- n. The final design and details of all exterior and interior lighting shall be provided, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board. Interior lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding area. No florescent or intensive 'white' lighting (or similar intensive lighting) visible from the adjacent public rights of way or adjacent properties shall be permitted.
- o. Any future kitchen ventilation or mechanical venting shall be chased through the interior of the building to the roof. No exhaust ducts or vents shall be permitted on any building elevations.
- p. All internal garage lighting shall be shielded to buffer views of all direct light sources from outside of the structure, as well as on the roof deck, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- q. The final design details and pattern of the hardscape and exterior walkways shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- r. Any exterior ground floor exterior handrails and support posts shall incorporate a flat profile. The final design details, dimensions, material and color of all exterior handrails shall be made part of the building permit plans

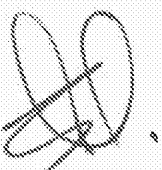


and shall be subject to the review and approval of staff consistent with the Design Review Criteria and/or the directions from the Board.

- s. The interior walls of the two driveways at the first level of the parking garage entrance, ramps and loading areas, shall be fully detailed on revised plans. Such interior areas shall consist of high quality, non-stucco surface materials which have a well finished appearance commensurate with the primary façade of the building, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - t. All building signage shall require a separate permit. A uniform sign plan for the new building shall be required. Such sign plan shall be consistent in materials, method of illumination and sign location, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - u. Final details of all proposed storefront systems and associated details shall be provided for all ground floor elevations on the project site, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
 - v. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
 - w. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
4. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
- a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - c. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed application, or they shall be relocated on site, if determined

feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure survivability, such report shall continue for a period of 18 months unless determined otherwise by staff.

- d. A true "green" roof shall be incorporated that encompasses the majority of the rooftop area(s) of the building's rooftop at the NE corner of 71st Street and Abbott Avenue with natural vegetation, including plant beds of sufficient size to accommodate trees and landscape, and other green infrastructure practices, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- e. All overhead utility lines shall along Abbott Avenue adjacent to the subject property be relocated underground. All utility poles shall be removed.
- f. All exterior walkways and drives shall consist of decorative pavers, set in sand or other semi-pervious material, with the exception of a small portion of slab to accommodate loading in the alley, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- g. Existing trees to be retained on site shall be protected from all types of construction disturbance. Root cutting, storage of soil or construction materials, movement of heavy vehicles, change in drainage patterns, and wash of concrete or other materials shall be prohibited.
- h. The Backflow prevention device shall not be permitted within any area fronting a street or sidewalk, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- i. Street trees shall be required within the sidewalk at the front of the property if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.
- j. Any existing plant material within the public right-of-way may be required to be removed, as the discretion of the Public Works Department.
- k. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
- l. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.



- m. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures. The location of backflow preventors, Siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans, and shall be subject to the review and approval of staff.
- n. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms. The location of any exterior transformers and how they are screened with landscape material from the right of wall shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.
- o. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect or the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.

In accordance with Section 118-262, the applicant, or the city manager on behalf of the city administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for rehearing shall not be reviewed by the Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s):

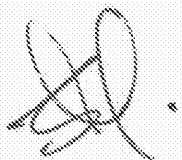
The following variance requests were withdrawn by the Applicant:

- 1. A variance to reduce all required 10'-0" wide "Clear Pedestrian Path" along 71st Street (Class A).
- 2. A variance to reduce the required 10'-0" wide "Clear Pedestrian Path" along Abbott Avenue (Class B).

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

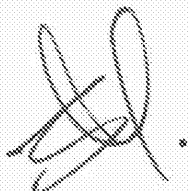
III. General Terms and Conditions applying to both 'I. Design Review Approval' and 'II. Variances' noted above.

- A. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.



- B. Site plan approval is contingent upon meeting Public School Concurrency requirements. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed prior to the issuance of a Building Permit.
- C. The applicant shall submit a Hold Harmless Covenant Running with the Land to the City Attorney's Office in a form acceptable to the City Attorney indemnifying and holding harmless the city against any claim or loss in the event of an accident involving a motor vehicle or other instrumentality due to the proximity of the new building to the public right-of way.
- D. In the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, subject to the review and approval of staff based upon the design review or appropriateness criteria, and/or directions received from the Board.
- E. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- F. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
- G. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- H. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
- I. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
- J. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- K. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the **application** is



GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Finding of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans, entitled "Design Review Board 6988 Abbott Avenue" as prepared by **cube3, LLC** dated signed and sealed August 10, 2020, and as approved by the Design Review Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board approved plans, this approval does not mean that such handicapped access is not required. When requesting Building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code, the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project shall expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this Order shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated this 16th day of October, 2020.

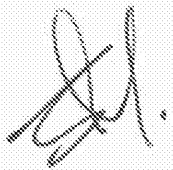
DESIGN REVIEW BOARD
 THE CITY OF MIAMI BEACH, FLORIDA

By: 

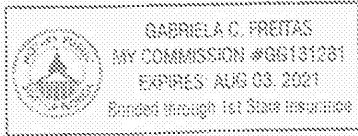
JAMES G. MURPHY
 CHIEF OF URBAN DESIGN
 FOR THE CHAIR

STATE OF FLORIDA)
)SS
 COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 16th day of October, 2020 by James G. Murphy, Chief of Urban Design, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the



Corporation. He is personally known to me.



[Signature]
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: Aug. 3, 2021

Approved As To Form:
City Attorney's Office:

DocuSigned by:

[Signature]

(10/15/2020 | 12:18 PM EDT)

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Filed with the Clerk of the Design Review Board on *[Signature]* (10/19/20)

[Signature]

EXHIBIT "B"

CFN: 20210165629 BOOK 32385 PAGE 4573
DATE:03/08/2021 09:28:01 AM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 6948-6988 Abbott Avenue & 6957-6965 Byron Avenue

FILE NO. PB20-0410, a.k.a. PB 19-0303

IN RE: An application has been filed requesting modifications to a previously issued conditional use permit for a retail establishment over 25,000 SF, which is part of a new proposed 12-story mixed-use development in the TC-C zoning district. Specifically, the applicant is requesting modifications to the previously approved operational plan regarding loading and deliveries hours of operation, pursuant to Chapter 118, Article IV and Chapter 142, Article II of the City Code.

LEGAL DESCRIPTION: Lots 3, 4, 5, 6, 7, 8, 9,10, Block 13, and lots 11 and 12, less the west 50 feet thereof, Block 13 of Normandy Beach South, according to the plat thereof, as recorded in Plat Book 21, page 54, of the public records of Miami-Dade County, Florida.

MEETING DATE: February 25, 2020. January 26, 2021.

MODIFIED CONDITIONAL USE PERMIT

The applicant, North Beach Town Center Development, LLC, filed an application with the Planning Director requesting a Conditional Use approval for a retail establishment over 25,000 SF. Pursuant to Chapter 118, Article IV and Chapter 142, Article II of the City Code. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the TC-C Town Center- Central Core Zoning District;

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and uses associated with the request are consistent with the Land Development Regulations;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

January 26, 2021

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IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, including modification to the hours of operation, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to North Beach Town Center Development, LLC, any changes in ownership or 50% (fifty percent) or more stock ownership, or the equivalent, shall require the new owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. As part of the Building Permit plans for the project, the applicant shall submit revised architectural drawings, which shall be subject to the review and approval of staff; at a minimum, such plans shall satisfy the following:
 - a. The location of the proposed loading bays on the second floor shall be revised by relocating and reconfiguring the adjacent parking spaces; loading spaces shall have enough space for loading and unloading without encroaching into the drive isles, subject to the review and approval of staff.
 - b. Detailed elevations and section drawings of the mechanical equipment area located on the second floor shall be provided. This area shall be screened from view from the adjacent building and from the pedestrian paseo, and an additional wall with sound attenuating material shall be provided, subject to the review and approval of staff.
 - c. Additional details shall be provided for the south and west wall abutting the existing residential building. The garage structure shall be enclosed along these elevations

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to ensure that lighting and vehicular noise is contained within the building, in a manner to be reviewed and approved by staff.

7. A complete business operations plan for the project shall be provided for the review and approval of the Planning Board, prior to the issuance of any building permit including a retail establishment in excess of 25,000 square feet. At a minimum such plan, which shall be subject to the review and approval of staff, shall include the hours of operations, number of employees, mass a master plan for delivery of merchandise, including sizes of all delivery and trash vehicles utilized, frequency and management of vehicles, security for the site and parking.
8. A separate, detailed operations plan shall be provided by the tenant of any retail establishment in excess of 25,000 square feet, which shall be subject to the review and approval of staff, prior to the issuance of any building permit for the build out of the space. At a minimum such plan shall include the hours of operations, number of employees, master plan for delivery of merchandise, including sizes of all delivery and trash vehicles utilized, frequency and management of vehicles, security for the site and parking.
9. The Applicant agrees to the following operational conditions for the entire facility:
 - a. The maximum length of any delivery vehicle shall not exceed 47 feet, and the operational plans shall include provisions to ensure that no more than one vehicle over 20 feet in length is servicing the retail establishment at any given time.
 - b. All deliveries shall be accommodated within the site. No backing in or backing out of the loading area onto the street shall be permitted at any time.
 - c. Delivery and waste collection hours shall be from 6:00 AM to 8:00 AM, 9:30 AM to 4:30 PM, and 6:00 PM to 9:00 PM on weekdays and 9:00 AM to 9:00 PM on weekends. Additionally, a dockmaster shall be present to coordinate the logistics of all deliveries and loading of the facilities at all times during delivery hours, to ensure all of the applicable delivery and operational conditions of this MCUP are met.
 - d. Stacking, idling or loading shall not be permitted on the street at any time.
 - e. Vehicular regulating signage shall be provided in the garage in a manner to be reviewed and approved by staff.
 - f. The garage shall be in operation 24 hours per day, seven days a week, as proposed by the applicant. There shall be security personnel of at least one person on-site monitoring the garage operation 24 hours a day, seven days a week.
 - g. Warning signs prohibiting horn honking, tire-screaching, or car alarm sounding shall be posted prominently by the applicant or valet operator, and valet attendants shall be instructed to observe them strictly.
 - h. A delivery and refuse plan, including all delivery access points and routes, as well as the location of all trash and refuse areas, shall be provided and shall be subject

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to the review and approval of staff

- i. Deliveries and trash collection shall take place only at the designated areas proposed by the applicant as shown in the plans.
 - j. Delivery trucks shall not be allowed to idle in the loading zone.
 - k. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - l. ~~Deliveries and waste collections may occur daily between 7:00 AM to 8:00 PM, 9:00 AM and 3:00 PM and 6:00 PM to 8:00 PM on Monday to Friday, and 9:00 AM to 4:00 PM Saturday and Sunday.~~
 - m. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
 - n. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
 - o. An air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one pick up of garbage per day will be necessary.
 - p. Garbage dumpster covers shall be closed at all times except when in active use.
 - q. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day.
 - r. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
10. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first.
11. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Planning Board concurrent with the submission of the business plan details as required in condition no. 10 above. The following shall also be reviewed as part of the TDM plan:
- a. The applicant shall identify locations, acceptable to the Transportation Department, for bicycle racks to be installed in the public right-of-way and within the proposed

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development. The applicant shall provide the location of short-term and long-term bicycle parking, consistent with the requirements for each type of bicycle parking, as defined in Section 114-1 of the City Code. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.

- b. The applicant may be required to coordinate with the South Florida Commuter Services in participating in the transit subsidy program.
12. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license with entertainment.
13. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
14. The Planning Board shall retain the right to call the owner or operator back before the Board and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
15. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
16. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
17. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
18. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
19. The applicant agrees and shall be required to provide access to areas subject to this CUP (not including private residences) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the terms and conditions of this CUP.

January 26, 2021

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20. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

Dated this 2nd day of March, 2021.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:

Rogelio Madan

BY:

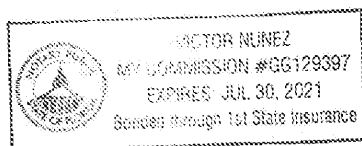
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Rogelio Madan, AICP

Chief of Planning and Sustainability
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 3 day of March, 2021, by Rogelio Madan, Chief of Community Planning and Sustainability of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



Notary:

Print Name

Notary Public, State of Florida

My Commission Expires:

Commission Number:

{NOTARIAL SEAL}

Approved As To Form:
Legal Department

DocuSigned by:

(3/2/2021 | 3:11 PM EST)

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Filed with the Clerk of the Planning Board on

3/3/2021 | 9:13 AM EST

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