

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: January 25, 2022

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB21-0469. 411, 419 Michigan Avenue and 944 5 Street.**

An application has been filed requesting conditional use approval for a new 5-story development exceeding 50,000 square feet, including the use of a mechanical parking, pursuant to Chapter 118, Article IV, and Chapter 130, Article II of the City Code.

#### **RECOMMENDATION**

Approval with conditions.

#### **ZONING / SITE DATA**

**Legal Description:** *Parcel 1:* Lot 8, Block 83, OCEAN BEACH, FLA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, page 81, of the Public Records of Miami-Dade County, Florida.

*Parcel 2:* Lot 9, Block 83, OCEAN BEACH, FLA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, page 81, of the Public Records of Miami-Dade County, Florida.

*Parcel 3:* The South 50 feet of Lots 1, 2, 3, 4 and 5, of WHITHAM'S RESUBDIVISION OF LOTS 10, 11 AND 12, IN BLOCK 83 OF OCEAN BEACH FLA. ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 9, page 10, of the Public Records of Miami-Dade County, Florida.

**Future Land Use:** General Mixed Use Commercial Performance Standard (C-PS2)

**Zoning:** C-PS2, General Mixed-Use Commercial Performance Standard District

**Historic District:** Ocean Beach Historic District

**Lot Size:** 21,000 Square Feet

**Proposed FAR:** 41,377 S.F. / (Max FAR = 2.0 = 42,000 S.F.), as represented by the applicant

**Proposed Height:** 5-stories / 75 feet

**Prior Use:** Vacant lot

**Proposed Use:** Office: 38,252 SF  
Retail: 3,125 SF

**Surrounding Uses:** See Zoning Site Map (Last Page of this Report)  
North: Gas Station  
West: Office Building

South: Residential Building  
East: Commercial Building

## **HISTORY**

On September 11, 2012, the Historic Preservation Board (HPB) granted a Certificate of Appropriateness (COA) to a previous owner to demolish the Garage Structure, restore the Historic Building, and construct new three-story and four-story buildings on each side of the Historic Building, as part of an office complex (HPB File No. 7323).

On September 9, 2014, the HPB granted a COA to a previous owner to construct a 27,000 square foot boutique hotel with underground parking utilizing mechanical lifts and a car elevator on the two northern parcels located at 419 Michigan Avenue and 944 5th Street (HPB File No. 7450). Only the foundation, which accommodates underground parking and a car elevator, was completed before the project stalled.

On July 28, 2021, at the request of former Commissioner Michael Gongora, the City Commission referred a discussion item to the Land Use and Sustainability Committee (LUSC) pertaining to Class A Office incentives in the CPS-2 district (item C4S), including an increase in allowable building height. On September 14, 2021, the LUSC discussed the item and recommended that the City Commission refer the Ordinance to the Planning Board. On October 13, 2021, the City Commission referred the proposed Ordinance to the Planning Board (item R9 AB).

On November 30, 2021, the Planning Board transmitted the Ordinance to the City Commission with a favorable recommendation (PB File No. PB21-0474). On December 8, 2021, the City Commission approved the Ordinance on First Reading. Second reading is scheduled for February 9, 2021.

## **THE PROJECT**

The applicant, "411 Michigan SOFI Owner, LLC", has submitted plans entitled "MICHIGAN & 5<sup>TH</sup>", as prepared by CUBE 3, LLC, dated November 29, 2021. The applicant is requesting Conditional Use approval for a new 5-story commercial building exceeding 50,000 SF, including mechanical parking. The proposal also involves moving and elevating an existing 2-story contributing structure within the site and the demolition of a small 1-story building.

The proposed development also takes advantage of the proposed height incentives included in the aforementioned Ordinance. The applicant has submitted a hold-harmless agreement, acknowledging that the any approval herein is contingent upon the adoption of the incentive Ordinance by the City Commission.

The proposal is expected to be considered by the Historic Preservation Board (HPB) on March 8, 2022 (HPB21-0486).

## **COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:**

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

- 1. The use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

**Consistent** – The request is consistent with the Comprehensive Plan, as the C-PS2 future land use category allows for the commercial uses requested in this proposal.

- 2. 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**

**Consistent** – The proposed development is not expected to result in an impact that will exceed the thresholds for the level of service as set forth in the Comprehensive Plan. However, a concurrency analysis will be performed prior to the development obtaining a building permit.

**3. Structures and uses associated with the request are consistent with this Ordinance.**

**Consistent** – As proposed, it appears that the project would generally comply with the Land Development Regulations; however, some variances will be requested for approval by the Historic Preservation Board. These comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification prior to the issuance of a building permit.

**4. Public health, safety, morals and general welfare will not be adversely affected.**

**Consistent** – The proposed project should not adversely affect the general welfare of nearby residents and businesses as the proposed uses are compatible with the surrounding area.

**5. Adequate off-street parking facilities will be provided.**

**Consistent** – 85 Parking spaces are required for the project. The project satisfies the parking requirements of chapter 130 of the LDR's. All parking will be provided through a valet service. 58 spaces will be provided in an underground garage with double-height lifts, accessed by two car elevators, and 27 spaces in the above ground garage with triple-height lifts. Additionally, the applicant is taking advantage of the alternative parking incentives by providing bicycle parking, showers, scooter parking, and carpool spaces.

**6. Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.**

**Consistent** – Given the nature of office uses, the proposed project is not expected to adversely affect surrounding property values; however, staff is recommending conditions to provide further safeguards.

**7. The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.**

**Consistent** – The proposed development contains office and commercial uses which are permitted as of right within the CPS-2 zoning district. These uses are consistent with the character of the 5<sup>th</sup> Street corridor on which the project is located. No negative impacts are expected from a concentration of office and commercial uses along the corridor.

**COMPLIANCE WITH REVIEW GUIDELINES CRITERIA FOR NEW STRUCTURES 50,000 SQUARE FEET AND OVER**

Pursuant to Section 118-192(b), in reviewing an application for conditional use for new structures 50,000 square feet and over, the Planning Board shall apply the following supplemental review guidelines criteria in addition to the standard review guidelines:

**1. Whether the proposed business operations plan has been provided, including hours of operation, number of employees, goals of business, and other operational**

**characteristics pertinent to the application, and that such plan is compatible with the neighborhood in which it is located.**

**Partially Consistent** – The applicant's operations plan provides characteristics of the proposed project. However, the applicant has not yet selected tenants and therefore an exact business operations plan has not been provided. Due to the limited quality of life impacts from office development, the project is generally compatible with the surrounding neighborhood, which consist primarily of commercial and residential uses.

2. **Whether a plan for the mass delivery of merchandise has been provided, including the hours of operation for delivery trucks to come into and exit from the neighborhood and how such plan shall mitigate any adverse impacts to adjoining and nearby properties, and neighborhood.**

**Consistent** – Due to the small scale of the retail component and limited impacts of office uses within the proposed the development, mass delivery of merchandise is not expected. The project does have one 30-foot-long loading space adjacent to the alley. However, this does not comply with the minimum loading requirements for a development of this scale, so the development will need to seek a waiver of loading requirements in section 130-101 from the HPB.

3. **Whether the scale of the proposed use is compatible with the urban character of the surrounding area and creates adverse impacts on the surrounding area, and how the adverse impacts are proposed to be addressed.**

**Consistent** – The scale of the proposed project is compatible with nearby buildings. The project takes advantage of proposed incentives that increase the height limit from 50 feet to 75 feet for office uses in the CPS-2 district located south of 5<sup>th</sup> Street and west of Jefferson Avenue. This height is consistent with the height limit of 75 feet that is permitted in the CPS-2 district west of Lenox Avenue. The height of the proposed project provides for an appropriate transition between the taller buildings in the western part of the City, the 5<sup>th</sup> Street commercial corridor, and the lower-scale multifamily area to the South. However, the scale, massing, architecture and compatibility issues will be further discussed at the Historic Preservation Board meeting.

4. **Whether the proposed parking plan has been provided, including where and how the parking is located, utilized, and managed, that meets the required parking and operational needs of the structure and proposed uses.**

**Partially Consistent** – The proposed development requires 85 off-street parking which are being provided. Parking will be exclusively valet operated. Access to the parking is proposed via car elevators and driveway adjacent to the alley. The Transportation Department has concerns that the parking access could create queues on adjacent streets. Staff has recommended conditions to ensure that the potential for queues is mitigated.

5. **Whether an indoor and outdoor customer circulation plan has been provided that facilitates ingress and egress to the site and structure.**

**Consistent** – Pedestrians will be able to access the site directly from 5<sup>th</sup> Street or Michigan Avenue. Employees or customers driving the site will be able to access the building's uses from the valet drop-off areas. Pedestrian queuing on public rights of way are not anticipated from the proposed uses.

6. **Whether a security plan for the establishment and supporting parking facility has been provided that addresses the safety of the business and its users and minimizes impacts on the neighborhood.**

**Consistent** – The applicant's operating plan provides security details. The applicant has indicated that cameras will be provided throughout the building, building staff and security personnel will always be available, and that the office uses will have security control cards or similar devices. Staff has recommendations to improve the security of the property. See the analysis.

7. **Whether a traffic circulation analysis and plan has been provided that details means of ingress and egress into and out of the neighborhood, addresses the impact of projected traffic on the immediate neighborhood, traffic circulation pattern for the neighborhood, traffic flow through immediate intersections and arterials, and how these impacts are to be mitigated.**

**Partially Consistent** – The applicant has provided details on the trip generation and traffic circulation of the project. See the attached Traffic Impact Analysis prepared by Langan Engineering & Environmental Services, Inc. The Transportation Department has concerns with the potential from queuing on adjacent streets and has made recommendations for conditions to minimize this impact.

8. **Whether a noise attenuation plan has been provided that addresses how noise shall be controlled in the loading zone, parking structures and delivery and sanitation areas, to minimize adverse impacts to adjoining and nearby properties.**

**Consistent** – The applicant is not proposing entertainment uses or any uses that would create significant noise impacts. The limited number of deliveries is not expected to generate significant noise concerns and parking will be in enclosed structures. Staff has recommendations to further minimize potential sound impacts from the development.

9. **Whether a sanitation plan has been provided that addresses on-site facilities as well as off-premises issues resulting from the operation of the structure.**

**Partially Consistent** – The project will have an enclosed trash room at the ground level for the adjacent to the loading area. The applicant proposes that garbage disposal and sanitation needs would take place consistent with City Code and during daytime hours. The applicant indicates that cleaning and maintenance staff will monitor the property and adjoining rights-of-way to ensure that they are clean. Staff has additional recommendations regarding sanitation operations, including a limit on hours for pickups.

10. **Whether the proximity of the proposed structure to similar size structures and to residential uses create adverse impacts and how such impacts are mitigated.**

**Consistent** – There are other large structures along the 5<sup>th</sup> Street corridor, however, proximity to these structures is not expected to create any adverse impacts, as this corridor is an appropriate location for such structures. The proposed project consists primarily of office uses which generally do not adversely impact residential uses.

11. **Whether a cumulative effect from the proposed structure with adjacent and nearby structures arises, and how such cumulative effect shall be addressed.**

**Consistent** – While there are other buildings over 50,000 gross square feet in the area, adverse impacts are not expected from the geographic concentration of such uses if the impacts are properly controlled. Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

#### **SECTION 130-38–MECHANICAL AND ROBOTIC PARKING SYSTEMS**

Projects proposing to use mechanical parking devices, robotic parking systems and/or vehicle elevators to satisfy accessory off-street parking requirements shall prepare schematic floor plans prior to site plan review by the applicable land use board. Two sets of schematic floor plans shall be required:

1. **One set of schematic plans sufficient to show the proposed development project with accessory off-street parking requirements satisfied by traditional, non-mechanical means, meeting all aspects of the design standards for parking spaces required in Article III of Chapter 130, and other provisions of these land development regulations, and requiring no variances from these provisions.**

**Consistent** – Schematic drawings showing the parking in a traditional, non-mechanical means were submitted showing 91 parking spaces for the project on-site.

2. **A second set of schematic plans, sufficient to show the same proposed development project, utilizing mechanical parking devices, robotic parking systems and/or vehicle elevators to satisfy accessory off-street parking requirements.**

**Consistent** – 85 parking spaces are required, a schematic drawing showing the parking for the project by mechanical means were submitted showing 85 spaces.

#### **PLANNING BOARD MECHANICAL PARKING REVIEW CRITERIA**

The Planning Board shall also consider the following review criteria when considering each application for the use of mechanical parking systems:

- (a) **Whether the scale of the proposed structure is compatible with the existing urban character of the surrounding neighborhood.**

**Consistent** – The scale of the project is compatible with the surrounding area. However, the project is expected to be considered by the HPB on March 8, 2022 and the HPB will consider the compatibility of the structure with the existing character of the surrounding neighborhood.

- (b) **Whether the proposed use of mechanical parking results in an improvement of design characteristics and compatibility with the surrounding neighborhood.**

**Consistent** – The reduced scale of the proposed underground parking, which is possible via the proposed mechanical parking system, results in reduction in the scale and depth of the underground parking preventing the need for a parking pedestal. This results in an improved design and a good relationship with the surrounding area.

- (c) **Whether the proposed use of mechanical parking does not result in an increase in density or intensity over what could be constructed with conventional parking.**

**Consistent** – The proposed garage does not result in an increase in density or intensity over that which is currently permitted with conventional parking as shown by the two submitted schematics.

- (d) **Whether parking lifts or mechanisms are located inside, within a fully enclosed building, and not visible from exterior view.**

**Consistent** – The proposed parking lifts are within enclosed structures.

- (e) **In cases where mechanical parking lifts are used for self-parking in multifamily residential buildings; whether approval is conditioned upon the proper restrictive covenant being provided limiting the use of each lift to the same unit applicant.**

**Consistent** – The proposal is not for a multifamily residential building.

- (f) **In cases where mechanical parking lifts are used for valet parking; whether approval is conditioned upon the proper restrictive covenant being provided stipulating that a valet service or operator must be provided for such parking for so long as the use continues.**

**Consistent** – The proper restrictive covenant shall be provided prior to the issuance of a certificate of use.

- (g) **Whether a traffic study has been provided that details the ingress, egress and circulation within the mechanical parking facility, and the technical and staffing requirements necessary to ensure that the proposed mechanical parking system does not cause excessive stacking, waiting, or backups onto the public right-of-way.**

**Partially Consistent** – The applicant has provided a Traffic Impact Analysis prepared by Langan Engineering & Environmental Services, Inc. The Transportation Department has concerns with the potential from queuing on adjacent streets and has made recommendations to minimize this potential.

- (h) **Whether a proposed operations plan, including hours of operation, number of employees, maintenance requirements, noise specifications, and emergency procedures, has been provided.**

**Partially Consistent** – Per the Operating Plan, the parking will be available 24 hours per day and operated at all times by valet service. The plan does not indicate emergency procedures and maintenance requirements. Staff has recommendations for conditions to address these issues.

- (i) **In cases where the proposed facility includes accessory uses in addition to the parking garage, whether the accessory uses are in proportion to the facility as a whole, and delivery of merchandise and removal of refuse, and any additional impacts upon the surrounding neighborhood created by the scale and intensity of the proposed accessory uses, are adequately addressed.**

**Consistent** – The proposed development consists primarily of office uses and a small retail component. The scale and uses are appropriate for this type of development. The impacts of the other uses are addressed in previously mentioned criteria.

- (j) **Whether the proximity of the proposed facility to similar size structures and to residential uses creates adverse impacts and how such impacts are mitigated.**

**Consistent** – The proposed project appears to be compatible with the surrounding neighborhood and it appears that it would not create any significant adverse impacts to the

surrounding uses.

- (k) **Whether a cumulative effect from the proposed facility with adjacent and nearby structures arises, and how such cumulative effect shall be addressed.**

**Consistent** – No negative impact is anticipated from the cumulative effect from the proposed facility and nearby structures.

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development Regulations establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

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

**Satisfied** – The northern portion of the Property contains the foundation of the stalled project, which will be utilized so no demolition will be needed. For the demolition associated with the Garage Structure, the Applicant will provide a recycling or salvage plan during the permitting phase of the project.

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

**Satisfied**

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

**Satisfied** – The balconies of the offices will be operable to allow for passive cooling. The central atrium opening to the rooftop also provides for passive cooling.

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

**Satisfied** – Landscaping will consist of Florida friendly plants.

- (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.

**Satisfied** – The project has been designed to accommodate rising sea levels and the future raising of roads.

- (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.

**Satisfied** – The ground floor will be located at 9 feet NGVD and the first floor will have sufficient elevation to be able to accommodate future increases. Additionally, underground parking will have to comply with the requirements of section 130-60 of the Land Development Regulation (LDRs) regarding below grade off-street parking.

- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

**Satisfied** – All critical mechanical and electrical systems will be located above BFE.

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

**Satisfied.** The existing contributing building will be elevated to so that its ground floor is at the future crown of the road.

- (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.

**Satisfied** – No habitable space will be located below BFE.

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

**Partially Consistent** – Per letter of Intent, the applicant shall explore the incorporating water retention systems through the permitting process.

- (11) Cool pavement materials or porous pavement materials shall be utilized.

**Satisfied** – Cool paving materials will be utilized.

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

**Satisfied.**

## **ANALYSIS**

The applicant is requesting a Conditional Use Permit for a new building exceeding 50,000 square feet, including the use of a mechanical parking. The proposal consists of a new five (5) story office building. The building will be built over an existing underground parking garage foundation that was dug as part of a previous development proposal that was not completed.

The site also contains a small two-story contributing building and a small one-story building. The proposal involves moving the contributing building from the center of the property to the southwest corner, so that it is more visible, as well as raising the building so that it is more resilient to sea level rise. The two-story building is proposed to become an accessory café, and the one-story building is proposed to be demolished.

The new building will contain 38,252 SF of office space and 3,125 SF of retail space. Given the scale of the development, the proposed uses are not expected to have any significant quality of life impacts on nearby residential properties.

The retail bays will have direct access from the adjacent sidewalks on 5<sup>th</sup> Street and Michigan Avenue. The ground floor will be raised and have open plaza spaces. However, staff has concerns with the design of the ground floor and the impact on the pedestrian environment, in particular a high wall that would be built adjacent to the sidewalk. Staff will be suggesting that changes be made as part of the HPB application to better address the pedestrian realm.

The off-street parking for the development is located in two (2) structures and contains a total of 85 spaces. The first is an underground area accessed by two (2) car elevators. This area contains 58 spaces that are provided with two-vehicle mechanical lift stackers. The other area is an above ground structure on the south edge of the property. This structure contains 27 spaces that are provided with three-vehicle mechanical lift stackers. The access to the parking structures will be from the adjacent alley. All parking will be operated through valet service 24 hours a day. Additionally, the project will be providing facilities to facilitate alternative modes of travel, including bicycle parking, scooter parking, carpool parking, and shower facilities.

As required by section 130-38 (c)(i), the applicant provided drawings to demonstrate how the required parking could be provided using traditional means. As the parking is being provided primarily in basement levels, the use of parking lifts will result in a less deep excavation, as traditional parking would require two underground levels, whereas the proposed mechanical system will only require one underground level. The underground mechanical parking system will be located entirely within an enclosed structure and will not be visible from surrounding properties.

As the parking is located underground, it is required to comply with the requirements of section 130-60 of the LDRs, which provides criteria for below grade off-street parking. As a result, the underground parking will have to comply with pedestal setbacks, allow for future adaption of 5th Street and Michigan Avenue, and provide excess water pumping capacity.

### **Traffic, Parking and Access**

The applicant has provided a Traffic Impact Analysis prepared by Langan Engineering & Environmental Services, Inc. Access to the parking areas is from the adjacent alleys. The car elevators are proposed to be located immediately adjacent to the alley with no stacking capacity. The access to the parking structure on the south of the property is from a driveway that leads in from the alley.

The Transportation Department has concerns with the potential from queuing on adjacent streets. Given the proposed office use and location of the car elevators within the site, providing 100% of the parking through mechanical lift valet operation may cause queuing on adjacent streets given that employees tend to arrive and leave at similar times. The Transportation Department has recommended conditions to ensure that there is sufficient queuing capacity and valet runners to minimize that potential.

### **Noise and visibility**

Given the proposed uses, significant noise is not expected to be generated from the project. Regarding potential noise from the mechanical parking, the proposed lifts are enclosed within the structure at the basement level and in a screened garage structure on the south of property. As such they will not be visible from adjacent buildings and no mechanical noises are expected to be heard from outside of the buildings.

### **Delivery and Sanitation**

Pursuant to section 130-101 of the LDRs, the proposed use requires three (3) loading spaces. However, because the project falls within an Historic District and contains a historic structure, the applicants will be seeking a waiver from the HPB to reduce the requirement to one (1) space. Given the nature of the proposed uses, the development is not expected to create significant demands for deliveries.

The proposed loading area is located within on the east side of the property and split between the private property and the public alley. Refuse disposal will be accommodated via an enclosed trash room near the loading area. Staff is recommending that the hours for loading be limited to off-peak

daytime hours in order to minimize traffic disruptions and for noise to negatively impact surrounding properties.

**RECOMMENDATION**

In view of the foregoing analysis, staff recommends the Conditional Use Permit be approved, subject to the conditions enumerated in the attached Draft Order.

**ZONING/SITE MAP**



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

**PROPERTY:** 411, 419 Michigan Avenue and 944 5 Street

**FILE NO.** PB21-0455

**IN RE:** An application has been filed requesting conditional use approval for a new 5-story development exceeding 50,000 square feet, including the use of a mechanical parking, pursuant to Chapter 118, Article IV, and Chapter 130, Article II of the City Code.

**LEGAL DESCRIPTION:** *Parcel 1:* Lot 8, Block 83, OCEAN BEACH, FLA ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, page 81, of the Public Records of Miami-Dade County, Florida.

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*Parcel 3:* The South 50 feet of Lots 1, 2, 3, 4 and 5, of WHITHAM'S RESUBDIVISION OF LOTS 10, 11 AND 12, IN BLOCK 83 OF OCEAN BEACH FLA. ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 9, page 10, of the Public Records of Miami-Dade County, Florida.

**MEETING DATE:** January 25, 2022

**CONDITIONAL USE PERMIT**

The applicant, 411 Michigan SOFI Owner, LLC, requested a Conditional Use approval for the construction of a new 5-story development exceeding 50,000 square feet, including the use of a mechanical parking, pursuant to Chapter 118, Article IV, and Chapter 130, 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:

The property in question is located in the C-PS2, General Mixed-Use Commercial Performance Standard District;

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

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;

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

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

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

**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 Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, 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 411 Michigan SOFI Owner, LLC (the applicant) and owner of the property. 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 Certificate of Use/Business Tax Receipt.
3. The following shall apply to the operation of the entire project:
  - a. All trash containers shall utilize rubber wheels, as well as a path consisting of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
  - b. All trash rooms shall be air conditioned and sound-proofed in a manner to be approved by staff. The doors to the trash rooms shall remain closed and secured when not in use and all trash dumpsters shall be closed at all times except when in use.
  - c. 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.
  - d. The property and adjacent rights-of-way be maintained clean and free from debris
  - e. Except as may be required for Fire, Building, or Life Safety Code purposes, no speakers or televisions of any kind shall be affixed to, installed, or otherwise located on the exterior of the premises within the boundaries of the project, except for a distributed sound system, which may not be played louder than at an ambient volume level (i.e. at a volume that does not interfere with normal conversation), subject to the review and approval of staff.
  - f. No patrons shall be allowed to queue on public rights-of-way.

- g. No exterior bars or accessory outdoor bar counters shall be permitted anywhere on the premises.
  - h. Establishments with outdoor cafes or sidewalk café permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served in the restaurant and shall not be permitted to have outdoor speakers.
  - i. Commercial uses on the rooftop are prohibited.
  - j. Use of the rooftop shall be limited to building tenants and their guests.
- 4. A progress report shall be scheduled before the Planning Board 90 days after obtaining a business tax receipt (BTR).
- 5. The Planning Board shall retain the right to call the owner or operator back before the Board and make modifications to this Conditional Use Permit should there be valid complaints, as determined by Code Compliance, 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.
- 6. 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.
- 7. 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.
- 8. The applicant shall address the following Transportation, Mobility, Concurrency, Delivery, and Parking requirements:
  - a. 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, and any other fair share cost that may be due and owing.
  - b. Property managers and business operators for all residential and commercial uses shall ensure that deliveries are made as approved in this Conditional Use Permit. At no time shall delivery trucks block traffic flow on the public right-of-way.
  - c. The applicant shall submit an MOT (Maintenance of Traffic) plan to Public Works Department and Transportation Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
  - d. The developer shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management Plan, prior to the issuance of a building permit.
  - e. The applicant shall provide on-site bicycle parking facilities to accommodate a minimum of forty (25) bicycle parking spaces.

- b) That the garage shall be in operation 24 hours per day, seven days a week, as proposed by the applicant.
  - c) Parking for spaces with mechanical lifts shall be shall only be operated through valet parking. Valet parking shall be provided 24 hours per day, seven days a week.
  - d) A sufficient number of valet attendants shall be provided on site to ensure that queuing onto 5<sup>th</sup> Street or Michigan Avenue does not occur at any time.
  - e) The facility shall maintain adequate backup generators sufficient to power the vehicle lifts. The generators shall be maintained in proper operating condition. The generators shall be installed in accordance with Code requirements regarding minimum flood plain criteria.
  - f) Backing into or out of the site shall not be permitted.
  - a. 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 to the review and approval of staff.
  - b. Commercial deliveries and trash collection shall take place only at the designated area proposed by the applicant as shown in the plans.
  - c. Scheduled commercial deliveries or trash pick-up shall only be permitted between 9:30 AM and 4:00 PM.
  - d. There shall be no queuing of delivery, garbage, or moving trucks in the public right of way, with the exception of the portion of the loading bay identified on plans that falls within the alley.
  - e. Delivery trucks shall not be allowed to idle in loading areas or driveways.
  - f. Warning signs prohibiting horn honking, tire-screeching, or car alarm sounding shall be posted prominently by the applicant in the parking area.
9. The development shall comply with the “Green Buildings” requirements in Chapter 133, Article I of the City Code.
10. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a Building permit.
11. The applicant, operator and/or owner, both now and in the future, shall abide by all the documents and statements submitted with this application, as well as all conditions of this Order.
12. The applicant shall resolve all outstanding violations and fines on the property, if any, prior to the issuance of a building permit for the project.
13. 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, of the City Code

14. The applicant shall obtain a full building permit within 18 months from the date of approval of this Conditional Use Permit, 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.
15. 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.
16. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
17. 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.
18. 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.
19. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit for inspection by the City (i.e. Planning Department, Code Compliance Department, Building Department, and Fire Department staff), to ensure compliance with the terms and conditions of this Conditional Use Permit. Failure to provide access may result in revocation of the Conditional Use Permit.

Dated \_\_\_\_\_

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
Rogelio A. Madan, AICP  
Chief of Planning and Sustainability  
for Chairman

STATE OF FLORIDA )

COUNTY OF MIAMI-DADE )

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

[NOTARIAL SEAL]

Notary:  
Print Name:  
Notary Public, State of Florida  
My Commission Expires:  
Commission Number:

Approved As To Form: \_\_\_\_\_  
Legal Department \_\_\_\_\_ ( )

Filed with the Clerk of the Planning Board on \_\_\_\_\_ ( )