



ZONING, LAND USE AND ENVIRONMENTAL LAW

200 S. Biscayne Boulevard
Suite 300, Miami, FL 33131

www.brzoninglaw.com

305.377.6236 office
305.377.6222 fax
mamster@brzoninglaw.com

VIA ELECTRONIC MAIL

January 31, 2022

Thomas Mooney, Planning Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: **PB22-0564** – Request for Modification of Conditional Use Permit PB16-0053 and PB17-0152 for the Property located at 1045 5 Street

Dear Tom:

This law firm represents MAC 1045 5th Street LLC (the "Applicant") in its application concerning the parcel located at 1045 5 Street (the "Property"). Please consider this letter the Applicant's letter of intent in support of a modification of Conditional Use Permit (CUP) issued by the Planning Board (PB) as PB Order Number PB16-0053, as modified by PB Order PB17-0152, in order to clarify that the existing commercial development on the Property is entitled to the full range of uses permitted under Section 142-693 and Section 142-1255 of the City Code (the "Code").

Property Description. The Property is located along the major 5th Street corridor. It is comprised of approximately 43,500 square feet (approximately 1 acre) located on the northeast corner of the intersection of Lenox Avenue and 5th Street. The Property is identified by Miami-Dade County Folio No. 02-4204-002-0040. The Property is located within the Ocean Beach Historic District. The Property is zoned C-PS2, Commercial Performance Standard, General Mixed-use

Commercial ("C-PS2"), a zoning district allowing a wide range of commercial uses as a main permitted use.

The Property is currently improved with a 4-story commercial building, described further below. A five (5) story commercial development neighbors the Property to the west. Retail development neighbors the Property to the east. A five (5) story mixed-use office building lies to the south of the Property across 5th Street. Two (2) story multifamily buildings neighbor the Property to the north.

Approved Development Program. In 2016 & 2017, the PB, pursuant to PB Order Numbers PB16-0053 and PB17-0152, and the Historic Preservation Board (HPB), through HPB Order Number HPB16-0059, approved a 4-story development consisting of a parking garage and multiple commercial bays (the "Project"). See Composite Exhibit A, Prior Approvals. Completed in 2019, the Project is mostly occupied, including Target, and Burlington. The first two (2) levels of the structure contain commercial space, except for ramps at the north and east to access internal parking. The third level has commercial space along the south and west and parking in the interior. There are two (2) additional levels of parking on the fourth floor and the rooftop level, which is open-air. The majority of the parking fronting each of 5th Street and Lenox Avenue is be lined with commercial uses and the remaining is screened with decorative design features.

The Project has pedestrian access all along 5th Street and Lenox Avenue, with vehicular access to the parking garage at the northern end of the Property on Lenox Avenue. The parking consists of self-parking using an electronic ticketing and payment system; there is no valet. Also, there are neither tandem parking spaces nor mechanical lifts. The core area for the stairs and elevator is at the southwest corner of the Property and serves as a focal point for the Project. Loading and trash collection take place through the one-way alley at the east side of the Property. The loading area is entirely within the private property. Loading and trash collection activities take place as previously approved between 8:00 AM and 6:00 PM on Mondays through Fridays and between 10:00 AM and 6:00 PM on Saturdays and Sundays.

Modification Request. The Applicant respectfully requests clarification of the permitted uses for the Property. Specifically, the Applicant seeks clarification that the full range of uses permitted in the CPS-2 zoning district under Section 142-693 of the Code and the medical use classifications specified for the CPS-2 zoning district under Section 142-1255 of the Code are allowed at the Property, subject to any further requirements of the Code

and/or conditions of the Prior Approvals. Importantly, this request simply makes clear what uses may be permitted at the Project and is not seeking approval of any specific use. If other approvals are necessary, those would be sought separately and prior to establishment of such use.

Based on the foregoing, we propose that the subject of modified CUP be as follows:

The applicant, MAC 1045 5th Street LLC, requested modifications to a previously issued Conditional Use Permit for the construction of a 4-story commercial development exceeding 50,000 square feet, including a parking garage. Specifically, the applicant requests clarification that the full range of uses permitted in CPS-2 zoning district through Sections 142-693 and 142-1255 of the Code may be permitted at the already constructed building.

Additionally, we propose new condition no. 2 as follows, with all other conditions appropriately renumbered:

2. The full range of uses permitted in the CPS-2 zoning district such as, but not limited to, retail, restaurant, café, bar, office, personal service establishments, gym, dry cleaning, similar uses and medical uses pursuant to Section 142-693 of the Code and the medical use classifications specified for the CPS-2 zoning district in Section 142-1255 of the Code, are allowed at the Property, subject to any further requirements of the Code and/or conditions of this CUP and HPB Order HPB16-0059, as may be amended from time to time.

Conditional Use Criteria. As the total size of new construction exceeds 50,000 square feet, the Project received conditional use approval from the Planning Board pursuant to Section 142-303(a)(10) of the City Code ("Code") on November 15, 2016 through PB16-0053. The Modification requests continue to satisfy the criteria.

- (i) General Guidelines for Conditional Uses. Pursuant to Code Section 118-191(a), review and approval of conditional uses includes evaluation of the proposed use in relation to the following guidelines:

(1) The use is consistent with the comprehensive plan or neighborhood plan if one exists for the area in which the property is located.

A commercial project with on-site parking is consistent with the comprehensive plan and permitted by the underlying C-PS2 district regulations.

(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.

The intended use will not change the intensity of the project.

(3) Structures and uses associated with the request are consistent with these land development regulations.

The commercial project with on-site parking is designed to be consistent with the C-PS2 district regulations.

(4) The public health, safety, morals, and general welfare will not be adversely affected.

This proposed modification/clarification does not adversely impact the public. Medical uses are necessary to serve the needs of the public health, safety, morals, and general welfare.

(5) Adequate off-street parking facilities will be provided.

The existing structure provides adequate off-street parking facilities.

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

The Applicants' design team has taken great care to design a quality development that will provide for the safety and security of the entire area. Since the building was developed in 2020, the building has operated in a manner that respect neighboring property, persons, and promotes and neighborhood values.

(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.

The proposed modification is intended to diversify the kinds of uses permitted within the existing building. The clarification that medical uses are a permitted use within this building does not result in an unreasonable concentration of medical uses, as certain medical uses are themselves subject to distance separation requirements. At which time that a specific use is proposed for a unit within the building, the use will be evaluated for compliance with distance separation requirements, which prevent over-concentration of similar uses.

(ii) Supplemental Review Criteria for New Construction. Pursuant to Code Section 118-192(b) of the Code, the Planning Board's review of an application for conditional use for new structures 50,000 square feet and over considers the following supplemental 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.

The Applicants are providing a building with multiple units for leasing to a variety of permitted commercial uses and medical uses. Like other area retail, the businesses will hire the necessary employees to manage their operations and will generally be open throughout the day and evening to serve their customers. The Proposed Development will consist of three (3) levels of commercial units, including permitted medical uses in the C-PS2 District, and three (3) levels of parking that serve all patrons visiting the commercial uses. The first floor retail will have pedestrian access all along the street frontage of 5th Street and Lenox Ave.

(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 will mitigate any adverse impacts to adjoining and nearby properties, and neighborhood.

As previously approved, the Applicants will continue to utilize the alley along the eastern side of the Property for loading and trash collection. The actual loading and trash collection takes place at an internalized on-site loading area with all 5 required loading spaces. Delivery trucks access the five (5) large loading bays from the one-way alley by driving north from 5th Street and backing into the loading spaces, then driving forward to leave. These bays are entirely enclosed inside the Property and off of the right-of-way. The provision of off-street loading serves to mitigate the impacts of the project.

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

The nearby area contains numerous buildings of similar or greater scale and massing. The buildings to the west and south of the Property are both five (5) stories and larger than the development proposed for the Property. The high quality development and street activation are in line with the character of the area. The design of the structure ensures that the Project's massing does not impact the context and scale of the surrounding built environment. The inclusion of the left turn-in will increase access to the Property and improve traffic circulation. Specifically, the Proposed Development minimizes scale and massing towards the multifamily structures to the north and northeast of the Property. The Proposed Development also incorporates architectural and artistic design features to beautify the structure facing the multifamily structures to the north and northeast.

(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.

A parking plan has been included along with the traffic study. The proposed structure provides 224 on-site parking spaces, for self-parking. Access to the parking garage is at the northern portion of the Property along Lenox Avenue.

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

The Project is designed to allow for maximum pedestrian activity and access to the retail along the street frontages at 5th Street and Lenox Avenue. The Applicants have maximized the amount of retail on the first floor to service the pedestrian activity. The southwest corner of the Property has the elevator and stair access to facilitate circulation within the building and between the street level, the retail and the parking garage.

(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.

Safety on the Property is maintained by onsite security personnel, as well as a comprehensive security system employing video camera monitoring within all areas throughout the Property.

(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.

The Applicants have engaged a traffic engineer to determine the effect of diversifying uses within the existing building. The original report produced by Kimley-Horn, Inc. was submitted with the prior application and peer reviewed. Kimley-Horn, Inc. prepared subsequent reports to address new left turn-in and small amount of additional square footage and the Applicants submitted these reports and correspondence from the City's Transportation Department with the application. With the proposed modification, The Applicant submitted a trip generation equivalency matrix that as reviewed and approved by City Transportation Department Staff.

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

The Applicants propose off-street loading areas, which serve to buffer noise and visual impacts. Much of the loading occurs within the building's enclosed, concrete walls, thus noise impacts will be minimized. Other safeguards will be employed to dampen and control noise from these operations, including limiting the hours.

(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.

The Applicants contract with a waste collection company for refuse collection as needed during daytime hours only from a trash room with direct access to Michigan Court. Internally, cleaning and maintenance staff will monitor the Property and its adjoining rights-of-way to maintain the areas clean and free from debris.

(10) Whether the proximity of the proposed structure to similar sized structures and to residential uses creates adverse impacts and how such impacts are mitigated.

The Project is smaller in size compared to other existing structures and approved projects along 5th Street and in the nearby area, and its unique design reduces the building's presence when viewed from the north, northeast and east.

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

This urban, mixed-use area is active with a variety of uses, pedestrian activity and automobile activity. As already approved and developed, the building adds to this environment and service the area without negative impact by improving vehicular access and circulation, providing all required parking on-site and providing ample bicycle parking.

Sea Level Rise and Resiliency Criteria. The Project 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 for demolition was provided at permitting.

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

Hurricane proof impact windows have been provided.

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

The Project includes passive cooling systems.

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

The Project's landscaping is Florida-friendly and resilient.

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.

Sea level rise projections were implemented with the Prior Approvals and through construction, including having a taller first floor to accommodate future raising of the streets.

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.

As built, the Project is adaptable to future raising of the adjacent streets.

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

All mechanical and electrical systems are located above base flood elevation.

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

The Project is entirely new construction with proper floodproofing measures for the ground level.

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.

The Project is entirely new construction with proper floodproofing measures for the ground level.

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

Water retention systems have been provided.

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

Cool pavement materials and/or porous pavement materials have been utilized.

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

The Project contains landscaping around the perimeter of the site and the roof has light colors to minimize potential for heat island effects on-site.

Conclusion. We respectfully ask for your clarification that the Property is entitled to the full range of uses permitted in CPS-2 zoning district under Section 142-693 and Section 142-1255 of the Code. We look forward to your favorable consideration. Please contact me on my direct line at (305) 377-6236 should you have any questions or concerns.

Sincerely,



Matthew Amster

Attachment

cc: Michael Comras
Michael W. Larkin, Esq.
Nicholas J. Rodriguez-Caballero, Esq.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: December 13, 2016

FILE NO: HPB16-0059

PROPERTY: 1045 5th Street, 1031 5th Street, 527 Lenox Avenue & 543 Lenox Avenue

APPLICANT: MAC 1045 5th Street, LLC & MAC 1031 5th Street, LLC

LEGAL: Parcel 1: Lot 9, Block 98 of MCGUIRE'S SUBDIVISION being a resubdivision of Lots 6, 7, 8, 9, 10, 11, Block 98 of OCEAN BEACH ADDITION NO.3 according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Parcel 2: Lots 12 through 14, inclusive, Block 98 of OCEAN BEACH ADDITION NO. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Lots 10 and 11 of MCGUIRE'S SUBDIVISION of Lots 6 through 11, Block 98 of OCEAN BEACH ADDITION NO. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

IN RE: The application for a Certificate of Appropriateness for the total demolition of two 'Non-Contributing' buildings and for the design of a new 4-story commercial building, including variances to exceed the maximum permitted building height and to eliminate the open court requirement.

ORDER

The City of Miami Beach Historic Preservation 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. Certificate of Appropriateness

~~A. The subject site is located within the Ocean Beach Local Historic District.~~

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:

1. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
2. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code.
3. Is not consistent with Certificate of Appropriateness Criteria 'a', 'b', 'e' & 'f' in Section 118-564(a)(3) of the Miami Beach Code.



Page 2 of 8
HPB16-0059

Meeting Date: December 13, 2016

4. Is not consistent with Certificate of Appropriateness Criteria 'a-e' for Demolition in Section 118-564(f)(4) of the Miami Beach Code.

C. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met:

1. Revised elevations, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
 - a. The design for the North elevation shall be consistent with the revised sheets 26, 49 and 50 submitted by the Applicant to the Board on December 13, 2016, entitled "BLVD at Lenox" as prepared by Zyscovich Architects, dated 12/09/16, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - b. The ground floor shall be setback a minimum of 12" from the Lenox Avenue property line in order to increase the Lenox Avenue sidewalk to a minimum of 10'-6" in width, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - c. 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 Certificate of Appropriateness Criteria and/or the directions from the Board.
 - d. The final design and details of all exterior lighting shall be provided, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board. Lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding historic district.
 - e. The internal garage lighting shall be shielded to inhibit direct views of all internal light sources from either the street or adjacent properties, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- f. All kitchen venting and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- g. All building signage shall require a separate permit. A uniform sign plan for the new building shall be required. Signage shall consist of reverse channel, back-lit letters, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- h. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms; such transformers and

Page 3 of 8
HPB16-0059

Meeting Date: December 13, 2016

vault rooms, and all other related devices and fixtures, shall not be provided within the interior of the building, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

- i. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and elevation drawings and shall be screened from view, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - j. In the event that the City Commission renames or co-names 5th Street as "Miami Beach Boulevard", the Applicant shall provide a bronze plaque, which includes a brief biography of former City of Miami Beach Mayor John H. Levi, at the property, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
2. 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 garage, 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.
 - d. Within 6 months of BTRs being issued for at least 75% of the retail areas, the applicant shall prepare a bicycle use analysis for the property to determine if additional bicycle racks are needed and, if warranted, install up to an additional 6 city-wide standard bicycle racks subject to the review and approval of staff.



Page 4 of 8
HPB16-0059

Meeting Date: December 13, 2016

- e. Canopy shade street trees shall be required within the sidewalk along Lenox Avenue and 5th Street, spaced approximately 20'-0" on center if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.
- f. 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.
- g. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- h. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow prevention devices. Backflow prevention devices shall not be permitted within any required yard or any area fronting a street or sidewalk, unless otherwise permitted by the Land Development Regulations. The location of all backflow prevention devices, and how they are screened 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. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all post-indicator valves (PIV), fire department connections (FDC) and all other related devices and fixtures, which shall be clearly indicated on the site and landscape plans.

In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s), which were either approved by the Board with modifications, or denied (Underlying denotes new language and ~~strikethrough~~ denotes stricken language):
 1. ~~A variance to exceed by 2'-1" the maximum allowed building height of 50'-0" in order to construct a new 4-story commercial building up to 52'-1" as measured from 13.0' NGVD.~~
 2. A variance to eliminate the requirement to provide an open court area at the front of the property, in order to construct a new 4-story commercial building without an open court along 5th Street.
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

Page 5 of 8

HPB16-0059

Meeting Date: December 13, 2016

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That 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;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That 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.

C. The Board hereby **Approves** the Variance requests as noted in II.A.1 and II. A.2, and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. 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 of the modified plans, even if the modifications do not affect variances approved by the Board.
2. All rooftop lighting fixtures shall be designed in manner to preclude light from spilling over to adjacent properties and the number and location of rooftop light poles great than 10'-0" in height shall be consistent with number and location light poles shown on sheets 26 and 27 of the plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects, dated 10-24-2016, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

Page 6 of 8
HPB16-0059

Meeting Date: December 13, 2016

3. Approval from the public Works department shall be required in order to construct the canopy and building projections over the public right of way facing Lenox Avenue and the alley.

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. Certificate of Appropriateness' and 'II. Variances' noted above.

- A. Where one or more parcels are unified for a single development, the property owner shall execute and record an 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. Applicant agrees that 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, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- C. 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.
- A. The Final Order shall be recorded in the Public Records of Miami-Dade County, within 30 days of the Board approval.
- B. Applicant shall submit revised plans pursuant to Board conditions no later than 60 days after Board approval, as required.
- C. 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.
- D. 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.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

Page 7 of 8

HPB16-0059

Meeting Date: December 13, 2016

- F. 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 Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects, dated 10-24-2016 and plans entitled "BLVD at Lenox" as prepared by Zyscovich Architects, dated 12/09/16, and as modified and approved by the Historic Preservation 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 set forth in this Order. No building permit may be issued unless and until all 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 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 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 should 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 15 day of December, 2016.

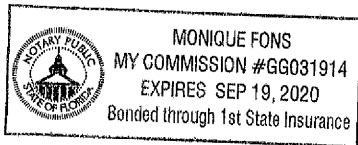
HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

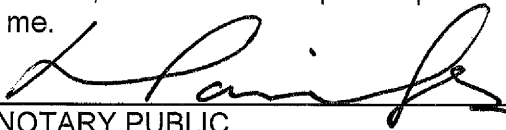
Page 8 of 8
 HPB16-0059
 Meeting Date: December 13, 2016

BY: 
 DEBORAH TACKETT
 CHIEF OF HISTORIC PRESERVATION
 FOR THE CHAIR

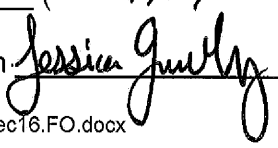
STATE OF FLORIDA)
)SS
 COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 15th day of December 2016 by Deborah Tackett, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.




 NOTARY PUBLIC
 Miami-Dade County, Florida
 My commission expires: 9/19/2020

Approved As To Form
 City Attorney's Office:  (12/14/16)

Filed with the Clerk of the Historic Preservation Board on  (12/15/16)

F:\PLAN\HBP\16HPB\12-13-2016\Final Orders\HPB16-0059_1045 5th St.Dec16.FO.docx



**HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida**

MEETING DATE: December 11, 2018

FILE NO: HPB18-0245

PROPERTY: 1045 5th Street, 1031 5th Street, 527 Lenox Avenue & 543 Lenox Avenue

APPLICANTS: MAC 1045 5th Street & MAC 1031 5th Street, LLC

LEGAL: Parcel 1: Lot 9, Block 98 of McGuire's Subdivision being a resubdivision of Lots 6, 7, 8, 9, 10, 11, Block 98 of Ocean Beach Addition No. 3 according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Parcel 2: Lots 12 through 14, inclusive, Block 98 of Ocean Beach Addition No. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Parcel 3: Lots 10 and 11 of McGuire's Subdivision of Lots 6 through 11, Block 98 of Ocean Beach Addition No. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

IN RE: The application for modifications to a previously issued Certificate of Appropriateness for the total demolition of two Non-Contributing buildings and the construction of a new 4-story commercial building. Specifically, the applicant is requesting to modify a condition of the Order to introduce varying signage types including variances from the maximum area allowed for: projecting and wall signs, a directory sign, and directional signs; variances for the installation of signs above the ground floor, and for the installation of signs without providing direct access from the street, as part of a comprehensive master signage plan for a 4-story commercial building, including a parking garage.

SUPPLEMENTAL ORDER

The City of Miami Beach Historic Preservation 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. Certificate of Appropriateness

- A. The subject site is located within the Ocean Beach Local Historic District.
- 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:



Page 2 of 7
 HPB18-0245
 Meeting Date: November 9, 2018

1. Is consistent with Sea Level Rise and Resiliency Review Criteria in Section 133-50(a) of the Miami Beach Code.
 2. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
 3. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code.
 4. Is not consistent with Certificate of Appropriateness Criteria 'b' in Section 118-564(a)(3) of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met:
1. Revised elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
 - a. ~~All building signage shall require a separate permit. A uniform sign plan for the new building shall be required. Signage shall consist of reverse channel, back-lit letters, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.~~
 - a. Final design and details of the proposed signage shall be provided, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s) which were either approved by the Board with modifications, or denied:

The following variances were approved by the Board:

A. Sign area at the ground floor.

Variances to exceed by 5.3 square feet the maximum allowed aggregate sign area (which ranges from 15 Square feet to 27.6 Square feet for each commercial space) in order to install one 5.3 square feet projecting sign for twelve (12) commercial spaces at the ground level along Lenox Avenue and 5th Street, resulting in an aggregate sign area ranging from 20.3 square feet to 32.9 square feet for each commercial space.

Page 3 of 7
 HPB18-0245
 Meeting Date: November 9, 2018

A variance to exceed by 48 square feet the maximum of zero (0) square feet of sign area allowed in order to install a wall sign (Target) with 48 square feet at the ground floor facing Lenox Avenue.

B. Street Access.

Variances from the requirement of having direct access to the street for each licensed establishment, for six (6) signs facing Lenox Avenue and seven (7) signs facing 5th Street.

C. Location

Variances for the location of five (5) signs facing Lenox Avenue and seven (7) signs facing 5th Street, to be located above the ground floor.

D. Sign area above the ground floor.

Variances to exceed the maximum sign area of zero square feet in order to install three (3) wall signs on the third (3rd) floor facing Lenox Avenue and three (3) wall signs on the third (3rd) floor facing 5th street, each with an area of 25 square feet.

Variances to exceed the maximum sign area of zero (0) square feet in order to install one (1) wall sign and one (1) projecting sign associated with Target on the second floor facing Lenox Avenue, with an aggregate area of 52.2 square feet, and to install three (3) wall signs and one (1) projecting sign associated with Target on the second floor facing 5th Street, with an aggregate area of 117.7 square feet.

E. Projecting sign area

Variances to exceed by 5 Square feet the maximum sign area of 15 Square feet allowed for a projecting sign in order to install one projecting sign (Target sign A) facing Lenox Avenue and one projecting sign facing 5th Street, each with an area of 20 square feet.

G. Directional sign area

A variance to exceed by 8 Square feet the maximum area of two (2) square feet allowed for exempted signs in order to install a parking sign with 10 square feet at the second floor facing 5th Street.

F. Directory sign area

A variance to exceed by 18 square feet the maximum area of six (6) square feet allowed for a directory sign in order to install a directory sign with 24 square feet at the ground floor facing 5th Street.

- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, only as it relates to variance(s) II.A.A., II.A.B, II.A.C, II.A.D., II.A.E., and II.A.G., allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City

Page 4 of 7
 HPB18-0245
 Meeting Date: November 9, 2018

Code, only as it relates to variance(s) II.A.A., II.A.B, II.A.C, II.A.D., II.A.E., and II.A.G:

That 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;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That 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.

C. The Board hereby **Approves** the requested variance(s) A, B, C, D, E, F and G and imposes the following condition based on its authority in Section 118-354 of the Miami Beach City Code:

1. 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 of the modified plans, even if the modifications do not affect variances approved by the Board.

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. Certificate of Appropriateness' and 'II. Variances' noted above.

- A. A copy of all pages of the recorded Supplemental 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.

Page 5 of 7

HPB18-0245

Meeting Date: November 9, 2018

- B. The Supplemental Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- C. The Supplemental 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.
- D. The previous Final Order dated December 13, 2016 shall remain in full force and effect, except to the extent modified herein.
- E. Where one or more parcels are unified for a single development, the property owner shall execute and record an unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- F. Applicant agrees that 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, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- G. 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.
- H. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- I. 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.
- J. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board, and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.

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 Findings of Fact, to which the applicant has agreed.



Page 6 of 7
 HPB18-0245
 Meeting Date: November 9, 2018

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects and Everbrite, LLC., dated October 5, 2018, and as approved by the Historic Preservation Board, as determined by staff and the previously approved plans.

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 set forth in this Order. No building permit may be issued unless and until all 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 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 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 should 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 13 day of December, 2018.

HISTORIC PRESERVATION BOARD
 THE CITY OF MIAMI BEACH, FLORIDA

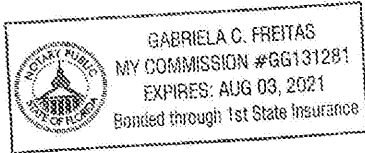
BY: 
 DEBORAH TACKETT
 PRESERVATION AND DESIGN MANAGER
 FOR THE CHAIR

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



Page 7 of 7
 HPB18-0245
 Meeting Date: November 9, 2018

The foregoing instrument was acknowledged before me this 13th day of December 2018 by Deborah Tackett, Preservation and Design Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.



[Signature]
 NOTARY PUBLIC

Miami-Dade County, Florida

My commission expires: 8-3-21

Approved As To Form: [Signature]

City Attorney's Office: [Signature] (12/13/18)

Filed with the Clerk of the Historic Preservation Board on [Signature] (12/13/18)

[Signature]

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

PROPERTY: 1045 5TH Street

FILE NO: PB16-0053, PB17-0152

IN RE: The applicant, MAC 1045 5th Street, LLC, requested modifications to a previously issued Conditional Use Permit for the construction of a 4-story commercial development exceeding 50,000 square feet, including a parking garage. Specifically, the applicants are requesting to modify the previously approved garage access and increase the retail area, pursuant to Chapter 142, Article II and Chapter 118, Article IV of the City Code.

**LEGAL
DESCRIPTION:** See "Exhibit A"

MEETING DATE: November 15, 2016, September 26, 2017

MODIFIED CONDITIONAL USE PERMIT

The applicant, MAC 1045 5th Street, LLC, filed an application for modifications to a Conditional Use approval for the construction of a new 4-story commercial development exceeding 50,000 square feet, including a parking garage, pursuant to Chapter 142, Article II and Chapter 118, Article IV of the City Code. Notice of the request for Conditional Use 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 record for this matter:

That the property in question is located in the Commercial Performance Standards District, General Mixed-Use Commercial (C-PS2);

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 City Code;

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 if the following conditions are met.

ms

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 which were amended by the Board, that the Conditional Use Permit as requested and set forth above be **GRANTED**, subject to the following conditions to which the applicant has agreed. Underlining denotes added language, and ~~strikethrough~~ denotes stricken language from the November 15, 2016 Conditional Use Permit:

1. This Conditional Use Permit is issued to MAC 1045 5th Street, LLC, as the applicant and owner of the property. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
2. 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, prior to the issuance of a building permit.
3. 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.
4. The plans shall be revised to ensure compliance with the Land Development Regulations prior to obtaining a building permit.
5. A revised streetscape plan for Lenox Avenue, prepared by a professional Landscape Architect, registered in the State of Florida, shall be submitted to and subject to the review and approval of staff, prior to the issuance of a permit for the reconfiguration of the garage access and removal of the Lenox Avenue landscape median. If approved by the Public Works and Transportation Departments, one of the north travel lanes shall be eliminated and the sidewalk adjacent to the subject property widened, in a manner to be approved by staff.
6. Prior to the issuance of a building permit for the project, the applicant shall submit an operational plan and narrative for the operation the parking garage. This operational plan and narrative shall be subject to the review and approval of staff and, at a minimum, shall satisfy the following:
 - a) That the garage may be in operation 24 hours per day, seven days a week, as proposed by the applicant.
 - b) There shall be monitoring of the garage during all hours of operation.
 - c) Warning signs prohibiting horn honking or car alarm sounding shall be posted prominently in a location, subject to the review and approval of staff.



-
7. The following shall apply to the operation of the entire facility:
- a) 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.
 - b) Adequate air-conditioned and noise baffled trash room space shall be provided, in a manner to be approved by the Planning staff. Doors shall remain closed and secured when not in active use.
 - c) Trash dumpster covers shall be closed at all times except when in active use.
 - d) Delivery trucks shall not be allowed to idle in loading areas or in the alley.
 - e) Trash pick-ups and deliveries shall only take place between 8:00 AM and 6:00 PM on Mondays through Fridays; and 10:00 AM and 6:00 PM on Saturdays and Sundays.
 - f) Except as may be required for security, fire or building code/Life Safety Code purposes, no speakers affixed to or otherwise located on the exterior of the building shall be permitted.
8. Prior to the issuance of any Building Permit for the project, the applicant shall address the following Concurrency, Traffic and Parking requirements:
- a) There shall be sufficient area queuing in the entrance ramps to accommodate anticipated traffic without extending onto Lenox Avenue, prior to a vehicle's arrival at an entry gate.
 - b) The applicant shall comply with mitigation measures as may be deemed necessary by the City as a result of the traffic study peer review process, prior to any retail tenant obtaining a Business Tax Receipt.
 - c) A mountable curb shall be utilized for vehicles to enter the building to improve pedestrian flow along Lenox Avenue, in a manner to be reviewed and approved by staff.
 - d) A Method of Transportation (MOT), as applicable, shall be submitted to Public Works 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.
 - e) If applicable, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.

-
- f) A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - g) Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of Occupancy or Business Tax Receipt, whichever comes first. If required, a one-time fee in lieu of providing the required parking on site or in combination with an annual fee, as determined by staff, shall be paid prior to the issuance of the Certificate of Occupancy.
 - h) The applicant shall provide 40 short-term bicycle parking spaces on the site that are available to customers and employees on the site, in a manner to be reviewed and approved by staff.
 - i) The applicant shall provide transit information to the public, including route schedules and maps within the lobby of the building in a manner to be reviewed and approved by the Transportation Department.
 - j) The driveway shall be designed and signed for a right turn-in, left turn-in and right turn-out only, in a manner to be reviewed and approved by staff.
 - k) A Transportation Demand Management Plan (TDM) shall be provided for review and approval of the Transportation Department prior to the issuance of a building permit for the interior build-out of individual tenant spaces.
9. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use should there be valid complaints or violations (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise related to parking or loading operations.
10. 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.
11. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 180 days from the time 75% of the commercial space is in operation. The progress report shall include, but not be limited to, updated information on traffic conditions surrounding the site. 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).

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

PROPERTY: 1045 5TH Street

FILE NO: PB16-0053

IN RE: The applicants, MAC 1045 5th Street, LLC, and MAC 1031 5th Street, LLC, requested Conditional Use approval for the construction of a new 4-story commercial development exceeding 50,000 square feet, including a parking garage, pursuant to Chapter 142, Article II and Chapter 118, Article IV of the City Code.

**LEGAL
DESCRIPTION:** (Parcel 1) 1031 5TH Street

LOTS 9, BLOCK 98, MCGUIRE'S SUBDIVISION BEING A RESUBDIVISION OF LOTS 6, 7, 8, 9, 10, AND 11, BLOCK 98 OF OCEAN BEACH ADDITION NUMBER 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, PAGE 83, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

and

(Parcel 2) 1045 5th Street

LOTS 12, THROUGH 14, INCLUSIVE, BLOCK 98, OF OCEAN BEACH, FLORIDA ADDITION NUMBER 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 2, PAGE 81, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

LOTS 10 AND 11, OF MCGUIRE'S RESUBDIVISION OF LOTS 6 THROUGH 11, BLOCK 98 OF OCEAN BEACH, FLORIDA ADDITION NUMBER 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, PAGE 83, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

MEETING DATE: November 15, 2016

CONDITIONAL USE PERMIT

The applicants, MAC 1045 5th Street, LLC, and MAC 1031 5th Street, LLC, filed an application for Conditional Use approval for the construction of a new 4-story commercial development exceeding 50,000 square feet, including a parking garage, pursuant to Chapter 142, Article II and Chapter 118, Article IV of the City Code. Notice of the request for Conditional Use was

MB

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 record for this matter:

That the property in question is located in the Commercial Performance Standards District, General Mixed-Use Commercial (C-PS2);

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 City Code;

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 if the following conditions are met.

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 which were amended by the Board, that the Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed:

1. This Conditional Use Permit is issued to MAC 1045 5th Street, LLC, and MAC 1031 5th Street, LLC, as the applicant and owner of the property. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
2. 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, prior to the issuance of a building permit.
3. 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.
4. The plans shall be revised to ensure compliance with the Land Development Regulations prior to obtaining a building permit.
5. Prior to the issuance of a building permit for the project, the applicant shall submit an operational plan and narrative for the operation the parking garage. This operational plan

and narrative shall be subject to the review and approval of staff and, at a minimum, shall satisfy the following:

- a) That the garage may be in operation 24 hours per day, seven days a week, as proposed by the applicant.
- b) ~~There shall be monitoring of the garage during all hours of operation.~~
- c) Warning signs prohibiting horn honking or car alarm sounding shall be posted prominently in a location, subject to the review and approval of staff.

6. The following shall apply to the operation of the entire facility:

- a) 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.
- b) Adequate air-conditioned and noise baffled trash room space shall be provided, in a manner to be approved by the Planning staff. Doors shall remain closed and secured when not in active use.
- c) Trash dumpster covers shall be closed at all times except when in active use.
- d) Delivery trucks shall not be allowed to idle in loading areas or in the alley.
- e) Trash pick-ups and deliveries shall only take place between 8:00 AM and 6:00 PM on Mondays through Fridays; and 10:00 AM and 6:00 PM on Saturdays and Sundays.
- f) Except as may be required for security, fire or building code/Life Safety Code purposes, no speakers affixed to or otherwise located on the exterior of the building shall be permitted.

7. Prior to the issuance of any Building Permit for the project, the applicant shall address the following Concurrency, Traffic and Parking requirements:

- a) There shall be sufficient area queuing in the entrance ramps to accommodate ~~anticipated traffic without extending onto Lenox Avenue, prior to a vehicle's~~ arrival at an entry gate.
- b) The applicant shall comply with mitigation measures as may be deemed necessary by the City as a result of the traffic study peer review process, prior to any retail tenant obtaining a Business Tax Receipt.
- c) A mountable curb shall be utilized for vehicles to enter the building to improve pedestrian flow along Lenox Avenue, in a manner to be reviewed and approved by staff.
- d) A Method of Transportation (MOT), as applicable, shall be submitted to Public

ms

Works 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.

- e) If applicable, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.
 - f) A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - g) Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of Occupancy or Business Tax Receipt, whichever comes first. If required, a one-time fee in lieu of providing the required parking on site or in combination with an annual fee, as determined by staff, shall be paid prior to the issuance of the Certificate of Occupancy.
 - h) The applicant shall provide 40 short-term bicycle parking spaces on the site that are available to customers and employees on the site, in a manner to be reviewed and approved by staff.
 - i) The applicant shall provide transit information to the public, including route schedules and maps within the lobby of the building in a manner to be reviewed and approved by the Transportation Department.
 - j) The driveway shall be designed and signed for a right turn-in and right turn-out only, in a manner to be reviewed and approved by staff.
 - k) A Transportation Demand Management Plan (TDM) shall be provided for review and approval of the Transportation Department prior to the issuance of a building permit for the interior build-out of individual tenant spaces.
8. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use should there be valid complaints or violations (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise related to parking or loading operations.
9. 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.
10. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 180 days from the time 75% of the commercial space is in operation. The progress report shall include, but not be limited to, updated information on traffic conditions surrounding the

site. 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).

11. ~~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. Any substantial modifications to the plans submitted and approved as part of this application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans.~~
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. 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.~~
15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
16. 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 City Code, and shall be subject to enforcement procedures set forth in Section 114-8 of the Code and such other enforcement procedures as are permitted by law. 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.
17. ~~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.~~
18. As voluntarily proffered by the Applicant, no more than fifty percent (50%) of the ground floor may be aggregated with the second floor for a single tenant, unless otherwise approved by the Planning Board at a public hearing.
19. As voluntarily proffered by the Applicant, a minimum of three (3) separate retail establishments shall be located on the ground floor facing 5th Street, unless otherwise approved by the Planning Board at a public hearing.

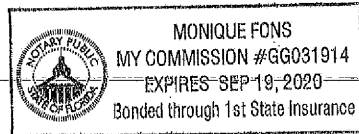
Dated this 19th day of JANUARY, 2017.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
 Michael Belush, Planning and Zoning Manager
 For Chairman

STATE OF FLORIDA)
 COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 19th day of January, 2017, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



{NOTARIAL SEAL}

Monique Fons
 Notary:
 Print Name MONIQUE FONS
 Notary Public, State of Florida
 My Commission Expires: SEP. 19 2020
 Commission Number:

Approved As To Form:
 Legal Department

Michael Belush 1/18/17

Filed with the Clerk of the Planning Board on 1/19/2017 (MB)

MB