

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: February 28, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0564. a.k.a. PB17-0152 f.k.a PB16-0053. 1045 5th Street. The BLVD at Lenox.**

REQUEST

An application has been filed requesting a modification to a previously modified conditional use permit for a 4-story commercial development exceeding 50,000 square feet, including a parking garage. Specifically, the applicants are requesting clarification on the allowable uses to include the medical use classifications allowed in this zoning district, pursuant to Section 118, Article IV and Chapter 142 Article II of the City Code.

RECOMMENDATION

Approval of the requested modification, subject to the conditions enumerated in the attached draft Order.

HISTORY

November 15, 2016 The Planning Board issued a Conditional Use approval for the construction of a new 4-story commercial development exceeding 50,000 square feet, including a parking garage.

September 26, 2017 The Planning Board approved a Modification to the previously approved Conditional Use permit to modify the garage access and increase the retail area.

ZONING / SITE DATA

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

Zoning: Commercial Performance Standards District, General Mixed-Use Commercial (C-PS2)

Legal Description: See Exhibit "A"

Surrounding Uses: See Zoning/Site Map at the end of this report.

North: (6th Street) Multifamily Residential

South: (5th Street) Retail/Office

East: (Michigan Court Alley) Commercial

West: (Lennox Avenue) Retail/Commercial

Proposed Uses: Commercial and medical uses

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 use is consistent with the City's Comprehensive Plan, as the C-PS2 Category permits the proposed uses.

- 2. The intended Use or construction would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.**

Consistent – Medical uses will not increase the intensity of the project. A mobility fee analysis will be performed at the time of building permit application to mitigate any potential impacts.

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

Consistent – The proposed uses are consistent with the C-PS2 zoning district and medical use regulations.

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

Consistent - The proposal is not expected to adversely affect the general welfare of nearby residents.

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

Consistent – The building provides 218 parking spaces on site, which satisfies the minimum parking requirements of 217 spaces for retail uses pursuant to the regulations of Parking District 1. This provides for one (1) surplus parking space. Medical uses have the same parking requirement as retail uses.

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

Consistent - The proposed project is not expected to adversely affect surrounding values; however, staff is recommending conditions to provide further safeguards.

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

Consistent – The proposed modification to clarify that medical uses are permitted is consistent with the uses permitted as of right in the C-PS2 zoning district. 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 the time in which a specific medical use is proposed for a unit within the building, there will be an evaluation of the use for compliance with distance separation requirements, which prevents an over-concentration of similar uses. Therefore, the proposed modification is not expected to create any negative impact on the surrounding neighborhood due to a concentration of similar uses.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development 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. This is an existing building.

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

Satisfied. This is an existing building.

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

Satisfied. This is an existing building.

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

Satisfied. This is an existing building.

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. This is an existing building.

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. This is an existing building.

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

Satisfied. This is an existing building.

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

Satisfied. This is an existing building.

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. This is an existing building.

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

Satisfied. This is an existing building.

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

Satisfied. This is an existing building.

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

Satisfied. This is an existing building.

ANALYSIS

When initially considered by the Planning Board on November 15, 2016, the project was approved as a new 4-story commercial development exceeding 50,000 square feet. The plans submitted indicated that the building would be used for retail purposes and did not contemplate any medical uses. The applicant has since indicated that they have received interest from a tenant that is proposing a class II medical use.

As a result, the Applicant is seeking a modification to all a full range of uses, currently permitted in the CPS-2 zoning district under Section 142-693 of the Code, as well as the medical use classifications specified for the CPS-2 zoning district under Section 142-1255 of the Code, subject to any further requirements of the Code and/or conditions of the CUP. This request seeks to make clear what uses may be permitted in the building and is not seeking approval of any specific use or tenant.

In this regard, the applicant is requesting the following condition regarding allowable uses be incorporated in the attached draft order:

2. *The full range of uses permitted in the CPS-2 zoning district 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, as may be amended from time to time.*

Staff is supportive of modifying the CUP order to allow Class I, II, and IV medical uses, as they are main permitted uses in the C-PS2 district, and they have hours and impacts that are similar to that of retail uses. If not for the CUP, the use would be permitted at the site as of right. If a Class III, V, or VI medical use was to be proposed in the future, an additional modification to the CUP would be required. Class VII and VIII medical uses are prohibited in the C-PS2 district.

Staff does have a concern including the term “full range of uses” within the proposed conditions, and recommends that a tighter, but broader, set of controls be used as it pertains to the use of

the building. To this end, the following, revised condition, has been included in the attached draft order:

2. The following uses shall be permitted within the building:
 - a. Residential.
 - b. Retail, office, personal service and similar commercial uses.
 - c. Restaurants, cafés and bars, with or without alcoholic beverages, and subject to all applicable requirements of the City Code.
 - d. Allowable medical uses pursuant to Section 142-693 of the City Code and the medical use classifications specified for the CPS-2 zoning district in Section 142-1255 of the Code.

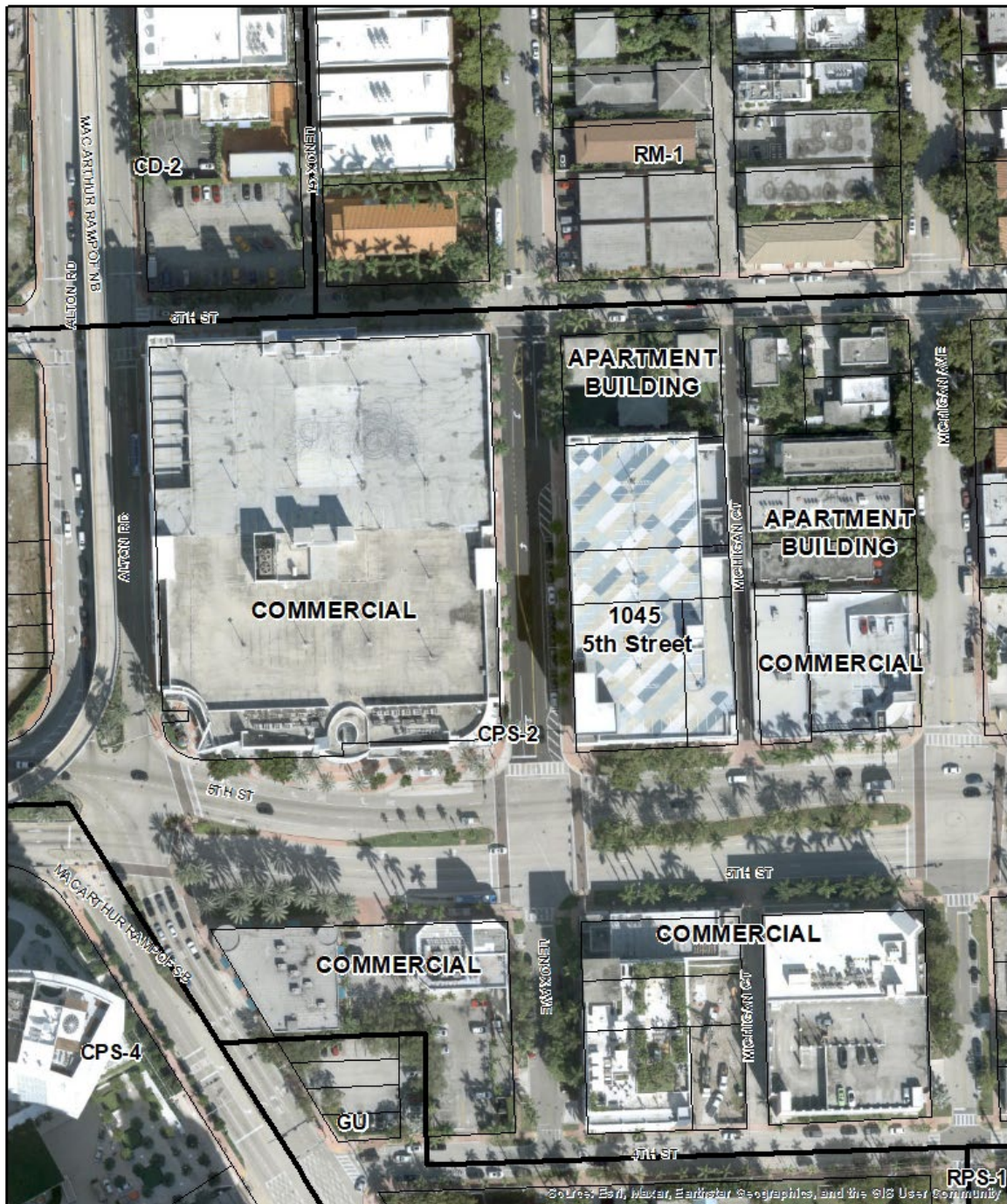
The foregoing uses shall be subject to any applicable requirements of the City Code and/or conditions of this CUP, as may be amended from time to time, as well as any subsequent amendments to the City Code.

In addition to allowing applicable medical uses, the proposed condition anticipates a future, potential broader mix of uses, without creating unintended consequences.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application for a Conditional Use Permit be granted, subject to the conditions enumerated in the attached draft Order.

ZONING/SITE MAP



MIAMI BEACH
PLANNING DEPARTMENT

1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139 P 305.673.7550 www.miamibeachfl.gov

0 25 50 100 150 200 250 Feet



EXHIBIT A

LEGAL DESCRIPTION:

Lots 9, 10 and 11 less the South 10.00 feet thereof, Block 98, McGUIRES' SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6 at Page 83 and Lots 12, 13 and 14, Block 98, OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2 at Page 81, all being of the Public Records of Miami-Dade County, Florida.

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

PROPERTY: 1045 5TH Street

FILE NO: PB22-0564. a.k.a. PB17-0152 f.k.a PB16-0053.

IN RE: An application has been filed requesting a modification to a previously modified conditional use permit for a 4-story commercial development exceeding 50,000 square feet, including a parking garage. Specifically, the applicants are requesting clarification on the allowable uses to include the medical use classifications allowed in this zoning district, pursuant to Section 118, Article IV and Chapter 142 Article II of the City Code.

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

MEETING DATE: September 26, 2017, February 28, 2023

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.

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. The following uses shall be permitted within the building:
 - a. Residential.
 - b. Retail, office, personal service and similar commercial uses.
 - c. Restaurants, cafés and bars, with or without alcoholic beverages, and subject to all applicable requirements of the City Code.
 - d. Allowable medical uses pursuant to Section 142-693 of the City Code and the medical use classifications specified for the CPS-2 zoning district in Section 142-1255 of the Code.

The foregoing uses shall be subject to any applicable requirements of the City Code and/or conditions of this CUP, as may be amended from time to time, as well as any subsequent amendments to the City Code.

3. 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.
4. 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.
5. The plans shall be revised to ensure compliance with the Land Development Regulations prior to obtaining a building permit.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
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 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).

13. 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.
14. 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.
15. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, of the City Code.
16. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
17. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
18. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the 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.
19. 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.
20. 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.
21. 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.

Filed with the Clerk of the Planning Board on _____ ()

EXHIBIT A

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