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CFN: 20240137762 BOOK 34102 PAGE 3335
DATE:02/21/2024 04:11:50 PM
JUAN FERNANDEZ-BARQUIN
CLERK OF THE COURT & COMPTROLLER
MIAMI-DADE COUNTY, FL

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

**PROPERTY**: 230 Lincoln Road

**FILE NO.** PB 23-0604

**IN RE:** An application has been filed requesting a conditional use permit for a convenience store in the CD-3 zoning district on Lincoln Road, pursuant to Chapter 2, Article V, Section 2.5.2 and Chapter 7, Article II, Section 7.2.12 of the Miami Beach Resiliency Code.

**LEGAL DESCRIPTION:** See Appendix "A" at the end of this order.

**MEETING DATE:** January 30, 2024

## CONDITIONAL USE PERMIT

The applicant, Five Below Inc, filed an application with the Planning Director pursuant to Chapter 2, Article V, Section 2.5.2 and Chapter 7, Article V, Section 7.5.5 of the Miami Beach Resiliency Code. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

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

That the property in question is located in the CD-3 - Commercial, high Intensity Zoning District;

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

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

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

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

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

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

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the Business Tax Receipt (BTR). The Board reserves the right to modify the

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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, Section 2.5.2 (c)

2. This Conditional Use Permit is issued to Five Below Inc, as operator, for a convenience store. Any change of operator shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Business Tax Receipt. A progress report shall be scheduled within 60 days following the applicant's submission and staff's approval of the affidavit.

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.

4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.

5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.

6. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:

   A. The project authorized by this Conditional Use Permit is for the creation and operation of a convenience store, subject to the criteria listed below:

      i. Entertainment, as defined in City Code Section 1.2.2.9 shall be strictly prohibited in all indoor and outdoor areas.

      ii. Sound generated from the venue, including, but not limited to, recorded music and patron conversations, shall not be plainly audible from adjacent residential buildings.

      iii. No exterior speakers shall be permitted except those necessary for fire and life safety purposes.

      iv. Televisions and projectors shall not be located anywhere in the exterior areas of the property.

      v. No dancehall shall be permitted on the site.

      vi. Special event permits shall be prohibited.

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B. Deliveries may only occur on-site between 9:00 AM and 3:30 PM Monday to Friday; 9:00 AM to 5:00 PM Saturday and Sunday, or off-site as specified by the City in approved loading zones in the vicinity.

C. Delivery trucks shall not be allowed to idle in the loading zone.

D. Equipment and supplies shall not be stored in areas visible from streets, or nearby buildings

E. Waste collections may occur daily between 9:00 AM and 3:30 PM Monday to Friday or between 9:00 AM and 5:00 PM Saturday and Sunday.

F. Security staff shall monitor overall business operations.

G. 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.

H. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.

I. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day.

J. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

7. The applicant shall address the following Transportation, Mobility, Concurrency and Parking requirements, as applicable:

A. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.

B. The applicant shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit.

8. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this establishment.

9. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.

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10. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.

11. 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 2.5.2.5, Code of the City of Miami Beach, Florida.

12. 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.

13. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

14. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Chapter 1, Article III, 1.3.8 of said Miami Beach Resiliency Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

15. 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.

16. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit (not private residences or hotel rooms) for inspection by the City (i.e. Planning Department, Code Compliance Department, Building Department, and Fire Department staff), to ensure compliance with the terms and conditions of this Conditional Use Permit. Failure to provide access may result in revocation of the Conditional Use Permit.

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Dated 2/20/2024 | 5:50 PM EST

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
BY: Rogelio Madan
Rogelio A. Madan, AICP
Development and Resiliency Officer
for Chairman

STATE OF FLORIDA )

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 21 day of February, 2024, by Rogelio A. Madan, Development and Resiliency Officer for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

MIRIAM HERRERA
Notary Public - State of Florida
Commission # HH 470768
My Comm. Expires Dec 16, 2027
Bonded through National Notary Assn.

Notary:
Print Name: Miriam Herrera
Notary Public, State of Florida
My Commission Expires: 12-16-27
Commission Number: HH 470768

Approved As To Form:
Legal Department DocuSigned by: Nicholas 2/20/2024 | 5:45 PM EST ( )

Filed with the Clerk of the Planning Board on DocuSigned by: Jessica Gonzalez 2/20/2024 | 8:03 PM EST

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## Appendix A

### Legal Description:

PARCEL 1: That part of Lots 4, 5, 6, 9, 10 and 11, and that part of a 20-foot strip of land formerly an alley lying immediately South of Lots 9, 10 and 11, of Block 54, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, as recorded in Plat Book 2, Page 77, of the Public Records of Miami-Dade County, Florida, more particularly described as follows: Beginning at a point on the Southerly line of Lincoln Road at a distance of 40 feet Westerly from the Northeast corner of Lot 9 aforesaid (the Northerly line of Lot 9 and the Southerly line of Lincoln Road being identical); thence (1) run Westerly along the Southerly line of Lincoln Road a distance of 30 feet to a point; thence (2) run Southerly, parallel with the dividing line between Lots 9 and 10, of Block 54 aforesaid, 100 feet to a point; thence (3) run Westerly and parallel with the Southerly line of Lincoln Road a distance of 35 feet, more or less, to a point, which point is a distance of 5 feet Westerly from the dividing line of Lots 10 and 11, of Block 54 aforesaid; thence (4) run Southerly, along a line parallel with and 5 feet Westerly from the dividing line between Lots 10 and 11 and the extension thereof Southerly, a distance of 196.8 feet, more or less, to the Southerly line of the North 1/2 of Lot 4, Block 54 aforesaid; thence (5) run Easterly, along the Southerly line of the North 1/2 of the said Lot 4, a distance of 100 feet, more or less, to a point, said point being 5 feet Westerly from the dividing line between Lots 8 and 9, Block 54, extended Southerly; thence (6) run Northerly, along a line parallel with and 5 feet Westerly from the dividing line between the said Lots 8 and 9 (as extended Southerly), a distance of 196.8 feet, more or less, to a point 100 feet distant from the Southerly line of Lincoln Road; thence (7) run Westerly, parallel with the Southerly line of Lincoln Road, a distance of 35 feet to a point; thence (8) run Northerly, parallel with the dividing line between Lots 9 and 10 aforesaid, 100 feet to the place of beginning.

PARCEL 2: TOGETHER WITH a non-exclusive easement granted pursuant to Easement Right over Private Road recorded in Deed Book 2600, Page 459, as affected by Declaration as to Permanent Easements recorded in Deed Book 3622, Page 49, both of the Public Records of Miami-Dade County, Florida, being more particularly described as follows: That part of the South 20 feet of the North 1/2 of Lot 4, Block 54, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, recorded in Plat Book 2, Page 77, of the Public Records of Miami Dade County, Florida, lying East of the dividing line between Lots 8 and 9, of said Block 54, as extended Southerly to a point where it intersects the Southerly line of the North 1/2 of said Lot 4.

PARCEL 3: TOGETHER WITH a non-exclusive 5 foot easement over the South 20 feet of the North 1/2 of Lot 4, Block 54, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, recorded in Plat Book 2, Page 77, of the Public Records of Miami-Dade County, Florida, granted in that certain Warranty Deed recorded in Official Records Book 9933, Page 976, of the the Public Records of Miami-Dade County, Florida; which said 5 foot strip of land is bounded on the East by the extension Southerly of the boundary line between Lots 8 and 9, of said Block 54, to a point where it intersects the Southerly line of the North 1/2 of said Lot 4; on the South by the Southerly line of the North 1/2 of said Lot 4; on the West by the East line of the land described as Parcel 1 herein; and on the North by the North line of the South 20 feet of the North 1/2 of said Lot 4, of the Public Records of Miami Dade County, Florida.

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