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DATE:02/21/2024 04:02:18 PM
JUAN FERNANDEZ-BARQUIN
CLERK OF THE COURT & COMPTROLLER
MIAMI-DADE COUNTY, FL

PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 1733-1759 Purdy Avenue and 1724-1752 Bay Road

FILE NO. PB23-0606, f.k.a. PB20-0344, a.k.a. PB18-0168, a.k.a. PB17-0168

IN RE: An application has been filed requesting modifications to a previously issued conditional use permit for a mixed-use structure over 50,000 square feet, and conditional use approval for two restaurants, each exceeding 100 seats. Specifically, the applicant is requesting modifications to the restaurants to increase the number of seats, increase the maximum occupancy content, and modify required off-street parking calculations, pursuant to Chapter 2, Article V, Section 2.5.2, Chapter 5, Article II and Chapter 7, Article II, of the Miami Beach Resiliency Code.

LEGAL DESCRIPTION: East ½ and West ½ of Lot 3, Lot 4, Lot 5, Lot 6, and Lot 7, Block 16, of the Island View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page 115 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: January 30, 2024, December 14, 2020; November 27, 2018;

CONDITIONAL USE PERMIT

An application was filed requesting modifications to a previously issued conditional use permit for a mixed-use structure over 50,000 square feet, and conditional use approval for two restaurants, each exceeding 100 seats, pursuant to Chapter 2, Article V and Chapter 7, Article II 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 record for this matter:

The property in question is located in the CD-2 – Commercial, Medium Intensity Zoning District;

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

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

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

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

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,

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and the staff report and analysis, which is adopted herein, including the staff recommendations, that the modifications to the Conditional Use Permit be GRANTED, as provided below:

1. This Conditional Use Permit (CUP) is issued to Sunset Land Associates, LLC, and SH Owner, LLC, to construct a five (5) story mixed use project, consisting of office, retail, personal service, restaurant, and residential uses, or any combination of such uses. Any proposed change to the uses approved in this Conditional Use shall require the review and approval of the Planning Board.

2. 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) for any of the uses on site.

   When BTRs are issued for at least 75% of the building area, but no later than one (1) year from the issuance of a BTR for any of the proposed uses on site, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations, if any, and loading/servicing of the building.

   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)~~ Section 2.5.2.5 of the Miami Beach Resiliency Code.

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property applicants, operators, and all successors in interest and assigns. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest or equivalent, 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.

4. The Planning Board shall retain the right to call the owner or operator back before the Board and make modifications to this Conditional Use Permit should there be valid complaints 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.

5. 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. Pursuant to Chapter 2, Article V of the Miami Beach Resiliency Code, a substantial modification means any increase in lot area, parking requirements, floor area ratio, density, or lot coverage. Notwithstanding the foregoing, this condition shall not limit the applicant's/owner's ability to modify the volume and/or height of the proposed project pursuant to the allowable height regulations, so long as said modification does not result in an increase to the analyzed and approved impacts.

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

7. As part of the building permit plans for the project, the applicant shall submit revised architectural drawings, which shall be subject to the review and approval of staff; at a minimum, such plans shall satisfy the following:

    a. The garage level parking (second floor), shall be set back a minimum of ten (10') feet from the south property line. The entirety of such setback area (the roof of the ground floor) shall be open to the sky from this level upwards. The final design of this area shall be subject to the review and approval of the Design Review Board.

    b. At the garage level on the south side, a floor to ceiling wall that must be at least 75% solid shall be provided, in a manner to be reviewed and approved by staff.

    c. The floor of the garage shall be designed and constructed to minimize tire noise, in a manner to be approved and certified by a qualified acoustic engineer, subject to the review and approval of staff.

    d. No building exhaust shall be permitted on the south elevation.

    e. The travel lane for the breezeway (with the exception of the designated center drop-off/pick up area) under the building shall be reduced to the greatest extent possible, and shall not utilize raised curbing along each side of the lane, in order to maximize the area designated for pedestrian use, while still allowing sufficient access for emergency vehicles. in a manner to be reviewed and approved by staff. However, this shall not preclude the use of a mountable curb, in a manner to be reviewed and approved by staff.

    f. The Applicant shall submit and execute a hold harmless agreement and covenant running with the land, in a form acceptable to the City Attorney, indemnifying and holding the City harmless from and against any and all actions, claims, liabilities, losses and expenses including, but not limited to, attorney's fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from an accident involving a motor vehicle or other vehicle or instrumentality, except those claims from negligence by a City employee operating a City-owned vehicle while operating in the employee's official capacity, occurring in the breezeway (including the vehicle travel and/or pedestrian lanes).

    g. All existing overhead utilities abutting the subject site shall be placed underground at the sole expense of the applicant.

8. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, 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. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of one (1) retail spaces, up to one (1) ~~two (2)~~ cafés, (2) full service restaurants, and office uses, subject to the criteria listed below:

i. ~~The combined food and beverage areas of the property covered in the CUP shall have a maximum occupant content of approximately 420 persons or any lesser such occupant content as determined by the Fire Marshal. The two (2) proposed restaurants that require a CUP may allocate occupancy in any way, provided that the total number of restaurant seats, including outdoor seats on private property and bar seats, shall not exceed 238 seats, and the occupant content for each restaurant shall not exceed 199 persons per establishment pursuant to Section 142-303(b).~~ Each of two (2) full-service restaurants approved pursuant to this CUP shall not exceed 199 indoor seats per establishment and the total occupancy content for each restaurant, including outdoor seating shall be determined by the Fire Marshall and shall not exceed 299 persons respectively, pursuant to Section 7.2.11.2.b.iii.

ii. The cafe shall not exceed 18 interior seats and 4 exterior seats.

iii. The indoor portions of the restaurants may operate until 11:30 PM Sunday through Wednesday and 12:30 AM, Thursday through Saturday.

iv All exterior operations of the restaurants shall be closed from 11:00 PM to 8:00 AM, seven (7) days per week.

v All patrons seated in the outdoor or sidewalk café areas shall not be allowed to order only alcoholic beverages without also ordering food.

vi. At all times that alcoholic beverages are being served, a full kitchen offering the full menu must be open and staffed.

vii. All areas of the venue(s) shall not be permitted to have entertainment which includes a DJ or music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation.)

viii. As proffered by the applicant, there shall not be any exterior speakers except those required by the Fire Department or Building life safety code.

ix As proffered by the applicant, the following uses shall not be permitted on the property: entertainment establishments, package stores, tattoo studios, stand-alone bars, check cashing stores, and pawnshops.

b. Delivery trucks shall only be permitted to make deliveries from the designated loading spaces either contained within the property or designated off street spaces authorized by the Parking Department.

c. Delivery trucks shall not be allowed to idle in the loading areas.

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

e. Deliveries may occur daily between 7:00 AM and 4:30 PM.

f. Waste collections may occur daily between 8:00 AM and 10:00 AM.

f. 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.

g. 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.

h. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.

i. Garbage dumpster covers shall be closed at all times except when in active use.

j. Restaurant personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.

k Patrons shall not be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.

l. 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

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

n. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.

9. The following shall apply to the operation of the proposed parking garage:

a. There shall be security personnel of at least one person, on-site, monitoring the garage during all hours of operation.

b Signs prohibiting tire-screeching and unnecessary horn-honking shall be posted at

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the garage entrance.

c. Signs to minimize vehicle conflict in the driveways in and out of the property shall be posted in appropriate locations.

d. The minimum parking required by the land development regulations shall be provided.

e. The overhead roll-up entry door to the garage level shall, at a minimum, remain open daily from 7:00 am to 12:00 am.

10. The applicant shall address the following Concurrency and Traffic requirements, as applicable:

a. If a full building permit for the proposed development is not issued within 18 months from the meeting date at which the project was approved, and provided that an extension to the approval is granted due to an extension of time granted either by the Planning Board, or as a matter of right through the issuance of a State of Emergency Declaration by the state of Florida, a full revised traffic study shall be submitted prior to the issuance of a building permit, and in a manner to be reviewed by the Transportation Department.

b. A Method of Transportation (MOT) 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.

c. 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.

d. 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.

e A revised bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Business Tax Receipt.

f Valet or loading activities shall not block vehicle travel on Purdy Avenue, Bay Road or the garage ramp at any time.

g. Valet pick-up and delivery of vehicles may be located in designated on-street parking spaces, subject to the review and approval of the Parking Department. Should such on-street valet operation not be approved by the Parking Department, the Planning Board shall be required to review and approve any alternative valet operation.

h. Given that the Traffic Impact Study did not include an analysis of ride-share transportation, one (1) space shall be designated for passenger loading on Purdy

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Avenue and two (2) spaces shall be designated for the proposed valet service (for a total of three (3) spaces), subject to the approval of the Parking Department.

i. No stand-by or temporary parking shall be allowed in any valet-designated on-street parking space at any time.

j. The breezeway automatic bollard shall remain raised to prohibit all non-emergency and non-residential vehicular traffic from 7:00 PM to 12:00 AM on Thursdays, Fridays, and Saturdays. Residents of the building shall have access to lower the bollards via remote control or other electronic means to gain vehicular access to the breezeway.

k. The gate analysis and valet operational plan is based on the technical specifications provided by the applicant consisting of a minimum gate operating speed of twenty (20) inches per second and minimum bollard operating speed of six (6) centimeters per second. Any gate or bollard slower than the aforementioned figures shall not be used.

l. The applicant shall work with the Transportation Department to provide a comprehensive Transportation Demand Management Plan prior to the issuance of a Certificate of Occupancy for the development.

11. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a Building permit.

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

13. 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.

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

15. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

16. 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.

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Underlining denotes new language
~~Strikethrough~~ denotes stricken language

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

DocuSigned by:
Approved As To Form:
Legal Department D. Tackley (2/20/2024 | 5:45 PM EST

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

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