

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: September 26, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB17-0152, PB 16-0053.1045 5th Street - The BLVD at Lenox MCUP**

REQUEST

The applicants, MAC 1045 5th Street, LLC, and MAC 1031 5th Street, LLC, are requesting 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.

RECOMMENDATION

Approval of the requested modification, and continuance of the Lenox Avenue streetscape plan to a future date.

HISTORY

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

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

Lot Size: 43,500 SF / 0.998 AC

Maximum FAR: 2.0 – 87,000 SF

Proposed FAR: 1.93 – 83,641 SF Total Area as represented by the applicant

Maximum Height: 50'-0"

Proposed Height: 51'-7" (Variance of 1'-7" approved by HPB)

Proposed Uses:

Retail: 64,930 SF

Parking: 218 Spaces (217 Required)

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 following:

Uses which may be Permitted: Single family detached dwellings, single family attached dwellings, townhouse dwellings, apartments, apartment hotels, hotels and commercial 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 – A concurrency analysis will be performed at the time of building permit application. Kimley-Horn & Associates was retained by the applicant to conduct a traffic study. FTE, Inc. was selected by the City and paid by the applicant to conduct a peer review. See the Memorandum from the Transportation Department.

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

Consistent – The project received variances to exceed the maximum permitted building height and to eliminate the open court requirement.

- 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 proposal would provide 218 parking spaces on site, which satisfies the minimum parking requirements of 217 spaces for the proposed retail uses pursuant

to the regulations of Parking District 1. This provides for one (1) surplus parking space. See Parking and Access Analysis.

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 use is a typically permitted use in the C-PS2 zoning district. The Conditional Use Permit is required because the scale of building exceeds 50,000 square feet. Therefore, the proposed project is not expected to create any negative impact on the surrounding neighborhood due to a concentration of uses.

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

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

1. **Whether the proposed business operations plan has been provided, including hours of operation, number of employees, goals of business, and other operational characteristics pertinent to the application, and that such plan is compatible with the neighborhood in which it is located.**

Consistent – As previously approved, the applicant's letter of intent indicates that there will be three levels of retail within the building. It indicates that tenants have not yet been selected, however, it is expected the retail will operate throughout the day and evening. Conditions regarding the operations to minimize the impact to surrounding residents are included in the original CUP.

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

Consistent – As previously approved, the proposed project would require five (5) loading spaces pursuant to the City Code. The plans depict five (5) off-street loading berths internal to the building that are accessed through the Michigan Court alley. Trucks will go north on the alley and back into the loading berths. The letter of intent does not include hours of operation for delivery trucks.

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

Consistent – The scale of the proposed project is compatible with nearby buildings. There are several buildings within the vicinity that are of a similar scale. Nevertheless, staff is recommending conditions to minimize potential adverse impacts.

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.**

Consistent – The proposed 218 spaces would satisfy required parking. The parking is accessed from the northwestern portion of the property along Lenox Avenue. It is indicated that the parking will be for self-parking. In addition, the Traffic Study provides an analysis of parking operations.

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

Consistent – The plans indicate that a large proportion of the retail bays are located directly along the 5th Street and Lenox Avenue frontages. These retail bays will be directly accessible from the sidewalk. There will be direct elevator and escalator access to the upper level retail bays from a lobby on the southwest corner of the property. Additionally, there will be direct access to the retail areas from the parking garage. See Parking and Access Analysis.

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

Consistent – The letter of intent indicates that there will be on-site security personnel. The letter also indicates that there will be a comprehensive security system that includes video camera monitoring 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.**

Consistent - Kimley-Horn & Associates was retained by the applicant to conduct a traffic study. FTE, Inc. was selected by the City and paid by the applicant to conduct a peer review. See the Memorandum from the Transportation Department.

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

Consistent – The letter of intent indicates that parking and loading spaces are located

entirely within the structure, so the applicant does not anticipate any significant noise from these operations.

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.

Consistent – The letter of intent indicates that the applicant would contract with a waste collection company. Trash pick-up would occur via the trash and loading area contained within the building as needed. Additionally, it is indicated that cleaning and maintenance staff will monitor the property and adjacent rights-of-way to maintain them clean and free from debris. Staff is recommending additional conditions to ensure that sanitation functions do not impact surrounding areas. See Delivery and Sanitation Analysis.

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

Consistent – The proposed structure is primarily surrounded by commercial uses to which minimal impacts are expected; however, it could create some negative impacts on the multi-family residential uses to the north and northeast. Staff is recommending conditions to minimize that potential.

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

Consistent –The C-PS2 zoning district permits development such as that proposed. While there are other commercial uses in the surrounding vicinity, no negative impacts from a cumulative effect are expected.

ANALYSIS

When initially approved by the Board on November 15, 2016, a right turn-in and right turn-out was required for the driveway access to the facility:

7(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.

The applicant is now proposing to modify this condition as follows:

7(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.

The Transportation Department has reviewed the modified traffic impact analysis for this modification, including the potential impact on the surrounding area, and has concluded that the roadways and site can accommodate this modification (see Transportation Memo, attached).

The left turn-in will require the removal of the existing landscape median along Lenox avenue located northward of the garage access. In addition, there is a potential to expand the sidewalk by eliminating one north bound lane. The two existing north bound lanes only exist along Lenox Avenue adjacent to the proposed development. While staff believes this is a feasible and desirable option, the plan for this has not been fully reviewed by the Transportation and Public Works Departments. As this information is integral to the modification being requested, staff

would recommend that streetscape plans for Lenox Avenue adjacent to the subject site be continued to a future date. The revised plans should include plans and cross-sections that graphically reflect the reduction in travel lanes, new street elevation and wider sidewalks, for the review and approval of the Public Works and Transportation Departments.

While understanding that the city right-of-way project may not be ready to proceed concurrently with the development of the private property, it is necessary for city staff and the board to obtain a clear picture of the final plan being approved as part of the modification.

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.

TRM/MAB/AG

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ZONING/SITE MAP



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. ADDMON 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: PB16-0053, PB17-0152

IN RE: The applicants, MAC 1045 5th Street, LLC, and MAC 1031 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:** (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, September 26, 2017

MODIFIED CONDITIONAL USE PERMIT

The applicants, MAC 1045 5th Street, LLC, and MAC 1031 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, 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.

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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 approved by the Planning Board, prior to the issuance of a permit for the reconfiguration of the garage access and removal of the Lenox Avenue landscape median.
 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).
12. 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.
13. 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.
14. 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.
15. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
16. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
17. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the 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.
18. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.
19. 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.

