

**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.

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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.

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- 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.
20. 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 5th day of OCTOBER, 2017.

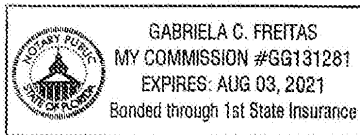
PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush

Michael Belush, Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 5 day of OCTOBER, 2017, by Michael Belush, Chief of Planning and Zoning for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[NOTARIAL SEAL]

Notary: Gabriela C. Freitas

Print Name Gabriela C. Freitas

Notary Public, State of Florida

My Commission Expires: 8-3-21

Commission Number: GG131281

Approved As To Form:
Legal Department [Signature] 10/5/17

Filed with the Clerk of the Planning Board on [Signature] (10/5/17)

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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.

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