

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

**PROPERTY:** 803 5th Street.

**FILE NO.** PB 17-0157

**IN RE:** The applicant, The Fifth Hotel, LLC, requested Conditional Use approval for the construction of a new 5-story hotel including mechanical parking, pursuant to Chapter 118, Article IV and Chapter 130, Article II of the City Code.

**LEGAL DESCRIPTION:** The east 100 ft of Lots 7 & 8, Block 74, Ocean Beach Addition No. 3, According to the Plat Thereof, as Recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, Florida.

**MEETING DATE:** December 19, 2017

**CONDITIONAL USE PERMIT**

The applicant, The Fifth Hotel, LLC, requested a Conditional Use approval for the construction of a new 5-story hotel including mechanical parking, pursuant to Chapter 118, Article IV and Chapter 130, Article II of the City 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:

The property in question is located in the CPS-2 – Commercial Performance Standard District, General Mixed Use.

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;

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:

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1. This Conditional Use Permit is issued to The Fifth Hotel, LLC, to construct a five (5) story hotel including mechanical parking. 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 180 days from the issuance of the business tax receipt (BTR) for the hotel and the accessory use construction approved as part of this CUP, which shall include providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations 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).

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 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, in advance, to affirm their understanding of the conditions listed herein.
4. The Planning Board shall retain the right to call the owner or operator back before them 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.
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, and landscape drawings, which shall be subject to the review and approval of staff; at a minimum, such plans shall satisfy the following:
  - a. Bike racks shall be located in the front of the building or within enclosed area of the building. Such bike racks shall be located within those areas of the property that are easily accessible, safe, and secure. The final design details, dimensions, location and quantity of exterior bike racks shall be subject to the review and approval of staff. Such plans shall also comply with all applicable regulations and requirements of the City Code.

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- b. 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.
  - c. A permanent generator sufficient to power the mechanical lifts or other means to allow mechanical lifts to be lowered and cars removed manually without the use of power shall be required, in a manner to be reviewed and approved by staff.
  - d. All existing overhead utilities abutting the subject site shall be placed underground at the sole expense of the applicant.
8. All new construction over 7,000 square feet or ground floor additions (whether attached or detached) to existing structures that encompass over 10,000 square feet of additional floor area shall be required to be, at a minimum, certified as LEED Gold by USGBC. In lieu of achieving LEED Gold certification, properties can elect to pay a sustainability fee, pursuant to Chapter 133 of the City Code. This fee is set as a percentage of the cost of construction.
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 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. All mechanical parking lifts must be inspected and certified as safe and in good working order by a licensed mechanical engineer at least once per year and the findings of the inspection shall be summarized in a report signed by the same licensed mechanical engineer or firm. Such report shall be furnished to the Planning Director and the Building Official.
  - e. All parking lifts shall be maintained and kept in good working order.
  - f. Parking operation shall be by valet attendants only. A contract with a valet operator shall be submitted to staff for review and approval prior to a final Certificate of Occupancy or Business Tax Receipt, whichever occurs first.
  - g. Any off-site valet operation use shall require the review and approval of the Planning Board as a modification to this Conditional Use Permit.
10. 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 the proposed restaurant and retail area.
    - i. Hours of operation: Indoors(ground floor): 7:00 AM to 2:00 AM.  
Outdoors (second floor): 7:00 AM to 12:00 AM.
  - b. Delivery trucks shall only be permitted to make deliveries from the designated loading spaces contained within the property.
  - c. Delivery trucks shall not be allowed to idle in the loading areas.
  - d. The size of all delivery/service vehicles shall be limited to the size of the loading zones provided on-site.
  - e. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
  - a. Deliveries and waste collections may occur daily between 8:00 AM and 3:00 PM.
  - 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.
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- 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. 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
  - k. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

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14. 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.
15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
16. 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.
17. 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.

Dated this 21<sup>st</sup> day of DECEMBER, 2017.

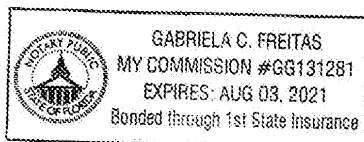
PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush

Michael Belush, AICP  
Chief of Planning and Zoning  
For Chairman

STATE OF FLORIDA       )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December, 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.



Gabriela C. Freitas  
Notary

Print Name Gabriela C. Freitas

Notary Public, State of Florida

My Commission Expires: 8-3-21

Commission Number: GG131281

{NOTARIAL SEAL}

Approved As To Form:  
Legal Department [Signature], 12/26/17

Filed with the Clerk of the Planning Board on Jessica Guelly 12/26/17  
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