

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
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COMMISSION MEMORANDUM

TO: Dan Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: December 12, 2018

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY NOTICED PUBLIC HEARING, AS REQUIRED PURSUANT TO SECTION 82-93(b), OF THE CITY CODE, FINDING THAT THE CRITERIA SET FORTH IN SECTION 82-94, OF THE CITY CODE, HAS BEEN SATISFIED, AND APPROVING A REVOCABLE PERMIT REQUEST BY MAC 1045 5TH ST, LLC, FOR THE UNIFIED SITE LOCATED AT 1031 5TH STREET, 1045 5TH STREET, 527 LENOX AVENUE, AND 543 LENOX AVENUE, IN ORDER TO ALLOW THE PARTIAL ENCROACHMENT OF THE CITY'S RIGHT-OF-WAY BY: (1) BUILDING EYEBROWS, FINS, BUILDING WALL SIGNAGE, PROJECTING SIGNAGE, AND ROOF OVERHANG EXTENDING 1'-11", 2'-4 1/2", 3", 2'-3 1/2" AND 2'-4 1/2", RESPECTIVELY, AND WITH A MAXIMUM OF 2'-4 1/2", INTO THE LENOX AVENUE PUBLIC RIGHT-OF-WAY; AND (2) BUILDING EYEBROWS STRETCHING 11 1/2" INTO THE ADJACENT PUBLIC ALLEY WAY, MICHIGAN COURT; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE REVOCABLE PERMIT.**

The following is a revised version of the Commission Memo, item number R7D, of the December 12, 2018 Commission agenda.

BACKGROUND

MAC 1045 5th ST, LLC (the "Applicant"), the owner of the properties located at 1045 5th Street, 1031 5th Street, 527 Lenox Avenue, and 543 Lenox Avenue, is requesting a revocable permit to allow the partial encroachment of the City's right-of-way by (1) building eyebrows, fins, building wall signage, projecting signage, and roof overhang, extending 1'-11", 2'-4 1/2", 3", 2'-3 1/2", and 2'-4 1/2", respectively, with a maximum of 2'-4 1/2" into the Lenox Avenue public right-of-way; and (2) building eyebrows stretching 11 1/2" into the adjacent public alley way known as Michigan Court.

On November 15, 2016, the City's Planning Board approved a Conditional Use Permit (CUP) for the construction of the new 4-story commercial building exceeding 50,000 square feet through the final order issued under PB File No.: 16-0053.

On September 26, 2017, the Planning Board (PB) modified the CUP under final order issued under PB File No.: 17-0152.

On December 13, 2016, the City's Historic Preservation Board (HPB) approved the design for the new 4-story commercial building through the final order issued under HPB File No.: 16-0059.

On December 11, 2018, the HPB will hear the Applicant's request for a master signage plan for the approved project under HPB File No.: 18-0245.

The design approved under the CUP and by the HPB allows an encroachment over the public rights-of-way, which requires a revocable permit.

The Applicant is requesting to encroach into the public right-of-way and has applied for a revocable permit to allow for: 1) building eyebrows, fins, building wall and projecting signage, and roof overhang, that begin at an elevation of 8'-5" (one wall sign), 10'-1" (seven projecting signs), 15'-½" or higher (eyebrows, fins, other signage and roof overhang) above the ground level and extend no more than 2'-4 ½" into the Lenox Avenue public right-of-way; and 2) building eyebrows that begin at an elevation of 15'-½" or higher above the ground level and extend no more than 11 ½" into the adjacent public alley way known as Michigan Court.

As additional benefit the Applicant is proposing to install additional trees along with colorful groundcover and shrubs subject to the approval of the Public Works Department.

Pursuant to Section 82-93(a), of the City Code, on September 12, 2018, the City Commission scheduled the public hearing for October 17, 2018, to consider the request for a revocable permit and, additionally, in accordance with Section 82-93(b), of the City Code, to mail notice of the public hearing to owners of land lying within 375 feet of the existing permit area at least 15 days prior to the public hearing.

The City Commission open and continued the item to the November 17, 2018 City Commission meeting.

On November 17, 2018, the City Commission opened and continued the item to the December 12, 2018 City Commission meeting.

Pursuant to Section 82-94, of the City Code, the City Commission shall review the revocable permit request and determine whether the request shall be granted or denied based upon the following criteria:

- (1) That the applicant's need is substantial.

The Applicant respectfully requests the revocable permit in order to comply with the conditions of the HPB Order Nos. HPB16-0059 and HPB18-0245 to achieve the design of the project. The revocable permit will allow the Property to maintain compliance with these development approvals and be compatible with the surrounding area. Additionally, the revocable permit will allow the Applicant to provide appropriate signage that will direct passing patrons and motorists on Lenox Avenue and 5th Street to the designated parking garage entrance and tenants.

(2) That the applicant holds title to an abutting property.

The Applicant owns the Property as confirmed by the opinion of title included with the application package.

(3) That the proposed improvements comply with applicable codes, ordinances, regulations, neighborhood plans and laws.

The proposed fins, eyebrows, signage and roof overhang will comply with applicable codes, ordinances, regulations, neighborhood plans and laws, as evidenced by the HPB and PB approvals. The Applicant has requested a revocable permit to ensure that encroachment of the required fins, eyebrows, signage and roof overhang complies with the applicable regulations.

(4) That the grant of such application will have no adverse effect on governmental/utility easements and uses on the property.

The grant of the revocable permit will allow the Applicant to improve the Property in accordance with the approved design. The encroachments are minimal and will be installed at an appropriate height, allowing for minimum clearances of 8'-5" (one wall sign), 10'-1" (seven projecting signs), 15'-1/2" or higher (eyebrows, fins, other signage and roof overhang), which permits free pedestrian passage below the fins, eyebrows, and signage and does not obstruct the right-of-way. The encroachment will have no adverse effect on governmental/utility easements and uses on the property.

(5) That the grant of the revocable permit will enhance the neighborhood and/or community with such amenities as, for example, but without limiting the foregoing, enhanced landscaping, improved drainage, improved lighting, improved security, and/or public benefits proffered by the applicant;

The proposed encroachment will allow for the redevelopment of the Property with a signature, multi-level retail building as approved by HPB and PB that will be certified as a green building and accommodate the future raising of Lenox Avenue. The Approved Development will make better use of the property by providing for needed daytime retail use in the area with appropriate wayfinding signage for the safe and efficient movement of pedestrians and motorists, and improving the overall pedestrian experience in the neighborhood, including providing landscape enhancements in the nearby vicinity.

(6) That granting the revocable permit requested will not confer on the applicant any special privilege that is denied by this article to other owner of land, structures or buildings subject to similar conditions located in the same zoning district.

Granting the revocable permit will not confer any special privilege upon the Applicant. Any property owner within the City of Miami Beach can apply for a revocable permit provided that the application meets the criteria stated in the Code, does not interfere with the utilization of public property, and enhances the community.

(7) That granting the revocable permit will be in harmony with the general intent and purpose of this article, and that such revocable permit will not be injurious to surrounding properties, the neighborhood, or otherwise detrimental to the public welfare. In order to grant a revocable permit, the City Commission must make an affirmative finding with respect to each of the criteria set forth above. These findings may be made by one motion addressed to all findings or, at the request of any member of the Commission, a finding or findings shall be considered separately. The findings shall be made prior to the vote on the application. The revocable permit application shall be considered as a whole unless any member of the City Commission shall request that the application be considered in parts, in which event the application shall be considered in such parts as requested. In light of the particular circumstances involved with each separate revocable permit request, the grant of any revocable permit shall not constitute or be deemed a precedent for the grant of any other revocable permit.

The City Administration's review and recommendation to grant the permit request is set forth on the Commission Memorandum accompanying this Resolution, which Memorandum is incorporated by reference herein.

CONCLUSION

The Administration recommends approving the Resolution

JLM/ETC/RWG 

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