

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members
Historic Preservation Board

DATE: December 13, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: HPB16-0059, **1045 5th Street, 1031 5th Street, 527 Lenox Avenue & 543 Lenox Avenue.**

The applicants, MAC 1045 5th Street, LLC & MAC 1031 5th Street, LLC, are requesting a Certificate of Appropriateness for the total demolition of two 'Non-Contributing' buildings and for the design of a new 4-story commercial building, including variances to exceed the maximum permitted building height and to eliminate the open court requirement.

STAFF RECOMMENDATION

Approval Certificate of Appropriateness with conditions.
Approval of the variances with conditions

BACKGROUND

On October 11, 2016, the Board continued the subject application to a date certain of December 13, 2016.

EXISTING STRUCTURES

Local Historic District:

Ocean Beach

1031 5th Street

Status:	Non-Contributing
Original Architect:	N/A
Construction Date:	1926

1045 5th Street

Status:	Non-Contributing
Original Architect:	Caldwell Haddad Skaggs Inc.
Construction Date:	1990

ZONING / SITE DATA

Legal Description:

Parcel 1: Lot 9, Block 98 of MCGUIRE'S SUBDIVISION being a resubdivision of Lots 6, 7, 8, 9, 10, 11, Block 98 of OCEAN BEACH ADDITION NO.3 according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Parcel 2: Lots 12 through 14, inclusive, Block 98 of OCEAN BEACH ADDITION NO. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Lots 10 and 11 of MCGUIRE'S SUBDIVISION of Lots 6 through 11, Block 98 of OCEAN BEACH ADDITION NO. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Zoning:	C-PS2, Commercial Performance Standard District, general mixed-use commercial
Future Land Use Designation:	C-PS2, Commercial Performance Standard District, general mixed-use commercial
Lot Size:	43,500 S.F. / 2.0 Max FAR
Existing FAR:	15,380 S.F. / 0.35 FAR
Proposed FAR:	82,251 S.F. / 1.89 FAR
Existing Height:	1 and 2-story
Proposed Height:	4-story / 53'-0" (variance requested)
Existing Use/Condition:	Commercial
Proposed Use:	Commercial

THE PROJECT

The applicant has submitted plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects, dated 10/24/2016.

The applicant is requesting a Certificate of Appropriateness for the total demolition of two 'Non-Contributing' buildings and for the design of a new 4-story commercial building, including variances to exceed the maximum permitted building height and to eliminate the open court requirement.

The applicant is requesting the following variances:

1. A variance to exceed by 2'-1" the maximum allowed building height of 50'-0" in order to construct a new 4-story commercial building up to 52'-1" as measured from 13.0' NGVD.

- Variance requested from:

Sec. 142-698. – Commercial performance standard area requirements.

(b) The commercial performance standard area requirements are as follows:

Maximum Building Height, C-PS-2:-- 50 feet-- East of Lenox.

The applicant is proposing the finish floor at 5.72' NGVD with a future rising of the first floor up to 13.0' NGVD. Recent changes in the Code allow the finish floor of a building to be up to 5 feet above flood elevation, which in this case is 13.0' NGVD. As measured from this elevation, the building is 52'-1", which exceeds the maximum height allowed of 50 feet. Staff has no objection to the proposed height increase at the first floor, based on the future sea level rise. The applicant has submitted an alternate elevation showing the floor is elevated to 13.0' NGVD in the event that the streets and sidewalks are raised in the future. This alternate design shown on sheet 43, is equally successful as the currently proposed design.

2. A variance to eliminate the requirement to provide an open court area at the front of the property, in order to construct a new 4-story commercial building without an open court along 5th Street.

- Variance requested from:

Sec. 142- 699. - Setback requirements in the C-PS1, 2, 3, 4 districts.

(c) For lots greater than 100 feet in width the front setback shall be extended to include at least one open court with a minimum area of three square feet for every linear foot of lot frontage.

The front of the building along 5th Street is proposed at zero setback. Although it appears that the front setback is larger due to the 10 foot public right of way along this side, the open court area is required to be provided within the front of the property. The site is comprised of 6 lots with an area of 43,500 sf and a maximum FAR of 87,000 SF, of which 450 SF (~0.51% of the total FAR) shall be provided as an open court area on 5th Street. The project has an FAR of 82,251, as represented by the architect. The applicant is requesting a variance to eliminate the open court requirement that applies to properties with a minimum of 100 feet in width at the front. The subject property exceeds the minimum width with 150 feet of frontage.

As stated by the applicant in the letter of intent, the need to provide parking and loading on the property and the existing one way alley are the reasons for the variance request. Based on the large area and lot width of the property, staff believes that if this particular variance is granted, additional mitigation along Lenox Avenue is needed. In this regard, some of the properties in the area have the front facing Lenox Avenue and this is the larger street side of the property. As suggested by staff, the applicant has modified the façade fronting on Lenox to incorporate 67 sf of open court yard. Based on the size of the lot, staff recommends that an additional six (6") inches of setback along Lenox Avenue be provided, in order to increase the width of the sidewalk. This will help the project be more compatible with the historic urban character of the area. The purpose of the open court requirement is to break up long uninterrupted building mass and increasing the setback along Lenox Avenue would be consistent with this purpose. Historically, most buildings in this area were situated on one or two lots, and the applicant's project is comprised of six (6) lots.

PRACTICAL DIFFICULTY AND HARDSHIP CRITERIA

The applicant has submitted plans and documents with the application that staff has concluded satisfy Article 1, Section 2 of the Related Special Acts.

Additionally, staff has concluded that the plans and documents submitted with the application satisfy compliance with the following hardship criteria as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

- That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

Satisfied

- That the special conditions and circumstances do not result from the action of the applicant;

Satisfied

- That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

Satisfied

- That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

Satisfied

- That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

Satisfied

- That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

Satisfied

- That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.
 - **Satisfied**

COMPLIANCE WITH ZONING CODE

A preliminary review of the project indicates that the application, as proposed, is not consistent with the following City Code sections, with the exception of the variances requested herein:

1. Section 142-699. Canopy and projections extending over the public right of way shall be approved by the Public Works Department.
2. Section 138-171. Signage, as proposed will require variances.

The above noted comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Zoning Administrator prior to the issuance of a Building Permit.

CONSISTENCY WITH 2025 COMPREHENSIVE PLAN

A preliminary review of the project indicates that the proposed **commercial use** appears to be **consistent** with the Future Land Use Map of the Comprehensive Plan.

COMPLIANCE WITH CERTIFICATE OF APPROPRIATENESS CRITERIA

A decision on an application for a Certificate of Appropriateness shall be based upon the following:

- I. Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable, compliance with the following criteria pursuant to Section 118-564(a)(1) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
 - a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time.
Satisfied
 - b. Other guidelines/policies/plans adopted or approved by Resolution or Ordinance by the City Commission.
Satisfied
- II. In determining whether a particular application is compatible with surrounding properties, the Board shall consider the following criteria pursuant to Section 118-564(a)(2) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):
 - a. Exterior architectural features.
Satisfied
 - b. General design, scale, massing and arrangement.
Satisfied
 - c. Texture and material and color.
Satisfied
 - d. The relationship of a, b, c, above, to other structures and features of the district.
Satisfied
 - e. The purpose for which the district was created.
Satisfied
 - f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.
Satisfied
 - g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.
Not Applicable
An historic resources report was not required.
 - h. The original architectural design or any subsequent modifications that have acquired significance.
Satisfied
- III. The examination of architectural drawings for consistency with the criteria pursuant to Section 118-564(a)(3) of the Miami Beach Code and stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public

interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community. The criteria referenced above are as follows (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):

- a. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
Not Satisfied
The width of the sidewalk along Lenox Avenue is insufficient to provide an adequate pedestrian experience.
- b. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
Not Satisfied
The applicant has applied for variances.
- c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the city identified in section 118-503.
Satisfied
- d. The proposed structure, and/or additions to an existing structure is appropriate to and compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties, or the purposes for which the district was created.
Satisfied
- e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.
Not Satisfied
The width of the sidewalk along Lenox Avenue is insufficient to provide an adequate pedestrian experience.
- f. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

Not Satisfied

The width of the sidewalk along Lenox Avenue is insufficient to provide a desirable pedestrian experience.

- g. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties and consistent with a City master plan, where applicable.

Satisfied

- h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

Satisfied

- i. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from Structures are adequately shielded from public view, adjacent properties and pedestrian areas.

Satisfied

- j. Any proposed new structure shall have an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

Satisfied

- k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a sidewalk street, or streets shall have residential or commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.

Satisfied

- l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Satisfied

- m. Any addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

Satisfied

- n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.

Satisfied

- o. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

Satisfied

CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION EVALUATION CRITERIA:

Section 118-564 (f)(4) of the Land Development Regulations of the Miami Beach Code provides criteria by which the Historic Preservation Board evaluates requests for a Certificate of Appropriateness for Demolition. The following is an analysis of the request based upon these criteria:

- a. The Building, Structure, Improvement, or Site is designated on either a national or state level as a part of an Historic Preservation District or as a Historic Architectural Landmark or Site, or is designated pursuant to Division 4, Article X, Chapter 118 of the Miami Beach Code as a Historic Building, Historic Structure or Historic Site, Historic Improvement, Historic Landscape Feature, historic interior or the Structure is of such historic/architectural interest or quality that it would reasonably meet national, state or local criteria for such designation.

Not Satisfied

Although the site is located within the Ocean Beach Local Historic District, the structures are classified as "Non Contributing" in the historic district.

- b. The Building, Structure, Improvement, or Site is of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense.

Not Satisfied

The existing structures would not be difficult and inordinately expensive to reproduce.

- c. The Building, Structure, Improvement, or Site is one of the last remaining examples of its kind in the neighborhood, the country, or the region, or is a distinctive example of an architectural or design style which contributes to the character of the district.

Not Satisfied

The subject structures do not contribute to the character of the district.

- d. The building, structure, improvement, or site is a contributing building, structure, improvement, site or landscape feature rather than a noncontributing building, structure, improvement, site or landscape feature in a historic district as defined in section 114-1, or is an architecturally significant feature of a public area of the interior of a historic or contributing building.

Not Satisfied

The subject structures are classified as Non-Contributing in the Miami Beach Historic Properties Database.

- e. Retention of the Building, Structure, Improvement, Landscape Feature or Site promotes the general welfare of the City by providing an opportunity for study of local history, architecture, and design or by developing an understanding of the importance and value of a particular culture and heritage.

Not Satisfied

The retention of the subject structures is not critical to developing an understanding of an important Miami Beach architectural style.

- f. If the proposed demolition is for the purpose of constructing a parking garage, the Board shall consider it if the parking garage is designed in a manner that is consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating

Historic Buildings, U.S. Department of the Interior (1983), as amended, and/or the design review guidelines for that particular district.

Not Applicable

The demolition proposed in the subject application is not for the purpose of constructing a parking garage.

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- g. In the event an applicant or property owner proposes the total demolition of a contributing structure, historic structure or architecturally significant feature, there shall be definite plans presented to the board for the reuse of the property if the proposed demolition is approved and carried out.

Not Applicable

The existing buildings are classified as Non-Contributing structures.

- h. The Dade County Unsafe Structures Board has ordered the demolition of a Structure without option.

Not Applicable

The Miami-Dade County Unsafe Structures Board has not ordered the demolition of the subject building.

ANALYSIS

The applicant is proposing to construct a new 4-story commercial structure located at the northwest corner of 5th Street and Lenox Avenue. The structure will contain approximately 82,251 square feet of retail space, divided amongst three floors. Parking for the building is to be located on the third, fourth, and rooftop levels.

Several retail bays are located directly along 5th Street and Lenox Avenue. These retail bays will be directly accessible from the sidewalk. The primary pedestrian access to the upper floors is located at the southwest corner of the building on 5th Street, with additional access directly from the parking levels.

The subject site currently contains two 'Non-Contributing' buildings. One building is a 2-story night club constructed in 1990 and the other is a 1-story car rental establishment constructed in 1926. Staff has no objection to the demolition of these buildings as both can be characterized as simple utilitarian structures with very little architectural value.

Located on one of the most heavily traveled commercial corridors on the beach, the proposed building achieves a high level of compatibility with its neighbors in terms of its overall scale and massing. The architect has successfully created an active street presence along both street facades with the introduction of retail storefronts accessed directly from the sidewalk. The introduction of these retail spaces will serve to greatly enhance the pedestrian experience.

Since the October 11, 2016 meeting, the applicant has submitted revised plans in response to several of staff's previously stated concerns. The currently proposed plans include the following modifications:

- The east elevation has been further developed in a manner more consistent with the north, south and west elevations.
- The sidewalk along Lenox Avenue has been increased by 1'-0".
- Modification of the landscape plan including the introduction of 3 buttonwood trees along 5th Street and 8 gumbo limbo trees along Lenox Avenue.

- Modification of parking garage entrance/exit with 2 divided lanes textured surface and left turn lanes on Lenox Avenue.

Staff is supportive of the overall contemporary design language of the proposed structure which incorporates variations in surface materials and changes in plane, resulting in a project that responds well to existing historic district and the site conditions while advancing the City's 21st Century design continuum.

Staff's only remaining concern is with regard to the sidewalk width along Lenox Avenue. While the applicant has increased the building setback from 0'-0" to 1'-0" along Lenox Avenue, staff believes that while 2'-0" would be ideal, a minimum setback of 1'-6" at the ground level is needed to adequately address the pedestrian experience. Consequently, staff would recommend that the building be setback an additional 6" in order to provide a minimum sidewalk width of 12'-0", inclusive of canopy shade trees spaced 20'-0" on center. This could be accomplished by reducing the width of "retail tenant 1" bay and the vehicular lanes of the parking ramp by 6". It is important to note that the resulting 26'-0" vehicular ramp would still exceed the minimum width required by Code by 4'-0". Staff believes that this minor adjustment will result in a significantly more desirable and safer pedestrian experience.

Finally, it is important to note that the proposed project was approved by the Planning Board on November 15, 2016. Important issues related to the operations of the project, including parking, traffic, noise, deliveries, sanitation and security were addressed by Planning Board.

VARIANCE ANALYSIS

The project as proposed requires two variances. Variance #1 is to exceed the maximum building height to which staff has no objections as a successful alternate design has been provided to address the future raising of the street and sidewalks.

Variance #2 is also recommended for approval, provided an additional setback is incorporated on the side facing Lenox Avenue to facilitate a better pedestrian experience and compatibility with the surrounding historic context, as noted in the project section of the report.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be approved, subject to the conditions enumerated in the attached draft Order, which address the inconsistencies with the aforementioned Certificate of Appropriateness criteria and Practical Difficulty and Hardship criteria, as applicable.

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: December 13, 2016

FILE NO: HPB616-0059

PROPERTY: 1045 5th Street, 1031 5th Street, 527 Lenox Avenue & 543 Lenox Avenue

APPLICANT: MAC 1045 5th Street, LLC & MAC 1031 5th Street, LLC

LEGAL: Parcel 1: Lot 9, Block 98 of MCGUIRE'S SUBDIVISION being a resubdivision of Lots 6, 7, 8, 9, 10, 11, Block 98 of OCEAN BEACH ADDITION NO.3 according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Parcel 2: Lots 12 through 14, inclusive, Block 98 of OCEAN BEACH ADDITION NO. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Lots 10 and 11 of MCGUIRE'S SUBDIVISION of Lots 6 through 11, Block 98 of OCEAN BEACH ADDITION NO. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

IN RE: The application for a Certificate of Appropriateness for the total demolition of two 'Non-Contributing' buildings and for the design of a new 4-story commercial building, including variances to exceed the maximum permitted building height and to eliminate the open court requirement.

ORDER

The City of Miami Beach Historic Preservation Board 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:

I. Certificate of Appropriateness

- A. The subject site is located within the Ocean Beach Local Historic District.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted:
 - 1. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
 - 2. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code.

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3. Is not consistent with Certificate of Appropriateness Criteria 'a', 'b', 'e' & 'f' in Section 118-564(a)(3) of the Miami Beach Code.
 4. Is not consistent with Certificate of Appropriateness Criteria 'a-e' for Demolition in Section 118-564(f)(4) of the Miami Beach Code.
- C. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met:
1. Revised elevations, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
 - a. The ground floor shall be setback a minimum of 18" from the Lenox Avenue property line in order to increase the Lenox Avenue sidewalk to a minimum of 12'-0" in width, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - b. Final details of all exterior surface finishes and materials, including samples, shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - c. The final design and details of all exterior lighting shall be provided, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board. Lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding historic district.
 - d. The internal garage lighting shall be shielded to inhibit direct views of all internal light sources from either the street or adjacent properties, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - e. All kitchen venting and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - f. All building signage shall require a separate permit. A uniform sign plan for the new building shall be required. Signage shall consist of reverse channel, back-lit letters, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - g. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms; such transformers and vault rooms, and all other related devices and fixtures, shall not be provided within the interior of the building, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

- h. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and elevation drawings and shall be screened from view, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- 2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
 - a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - c. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed garage, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan in order to ensure
 - d. The applicant shall install and additional 6 city-wide standard bicycle racks at the middle portion of the property, adjacent to the storefront.
 - e. Canopy shade street trees shall be required within the sidewalk along Lenox Avenue and 5th Street, spaced 20'-0" on center if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.
 - f. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
 - g. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.

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- h. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow prevention devices. Backflow prevention devices shall not be permitted within any required yard or any area fronting a street or sidewalk, ~~unless otherwise permitted by the Land Development Regulations.~~ The location of all backflow prevention devices, and how they are screened from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all post-indicator valves (PIV), fire department connections (FDC) and all other related devices and fixtures, which shall be clearly indicated on the site and landscape plans.

In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s), which were either approved by the Board with modifications, or denied (Underlying denotes new language and ~~striketrough~~ denotes stricken language):
 1. A variance to exceed by 2'-1" the maximum allowed building height of 50'-0" in order to construct a new 4-story commercial building up to 52'-1" as measured from 13.0' NGVD.
 2. A variance to eliminate the requirement to provide an open court area at the front of the property, in order to construct a new 4-story commercial building without an open court along 5th Street.
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special

privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

C. The Board hereby **Approves** the Variance requests as noted in II.A.1 and II. A.2, and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. 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 of the modified plans, even if the modifications do not affect variances approved by the Board.
2. All rooftop light poles shall be limited to a maximum height of 10'-0". All roof-top lighting fixtures shall be designed to preclude light from spilling over to adjacent properties, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
3. Approval from the public Works department shall be required in order to construct the canopy and building projections over the public right of way facing Lenox Avenue and the alley.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

III. General Terms and Conditions applying to both 'I. Certificate of Appropriateness' and 'II. Variances' noted above.

- A. Where one or more parcels are unified for a single development, the property owner shall execute and record an unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.

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- B. Applicant agrees that in the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- C. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
- A. The Final Order shall be recorded in the Public Records of Miami-Dade County, within 30 days of the Board approval.
- B. Applicant shall submit revised plans pursuant to Board conditions no later than 60 days after Board approval, as required.
- C. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
- D. The Final 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.
- E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
- F. 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.

IT IS HEREBY 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 are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the application is GRANTED, for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects, dated 10-24-2016, and as approved by the Historic Preservation Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the

conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the application will expire and become null and void.

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this Order shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated this _____ day of _____, 20__.

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
DEBORAH TACKETT
CHIEF OF HISTORIC PRESERVATION
FOR THE CHAIR

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Deborah Tackett, Chief of Historic Preservation,

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Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: _____

Approved As To Form:
City Attorney's Office: _____ ()

Filed with the Clerk of the Historic Preservation Board on _____ ()

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