



ZONING, LAND USE AND ENVIRONMENTAL LAW

200 S. Biscayne Boulevard
Suite 300, Miami, FL 33131

www.brzoninglaw.com

305.377.6236 office

305.377.6222 fax

mamster@brzoninglaw.com

VIA ELECTRONIC & HAND DELIVERY

December 6, 2021

Deborah Tackett, Chief of Historic Preservation Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: HPB21-0486 - Request for a Certificate of Appropriateness, Variance and Waiver for the Property located at 411 and 419 Michigan Avenue, and 944 5 Street, Miami Beach, Florida

Dear Debbie:

This law firm represents 411 Michigan SOFI Owner, LLC ("Applicant") in their application concerning the three adjacent parcels located at 411 and 419 Michigan Avenue, and 944 5 Street (collectively the "Property") in the City of Miami Beach, Florida ("City"). Please consider this letter the Applicant's letter of intent in support of a Certificate of Appropriateness, variance and waiver allowing the construction of a new five-story office building with mechanical parking lifts, and the preservation and re-location of an existing two-story contributing building.

Property Description. The Property is located along the major 5th Street corridor. It is comprised of approximately 21,000 square feet (0.48 acres) located on the southwest corner of the intersection of 5th Street and Michigan Avenue and abuts an alley on the east. The Property's three (3) parcels are identified by Miami-Dade County Folio Nos. 02-4203-010-0030, 02-4203-009-6170, 02-4203-009-6160. The Property is located in the Ocean Beach Historic District and is zoned C-PS2, Commercial Performance Standard, General Mixed-Use Commercial ("C-PS2"), a zoning district allowing a wide range of commercial uses and office uses as main permitted uses.

Currently, the parcels located at 944 5 Street and 419 Michigan Avenue are developed with a foundation for an approved project that planned to provide underground parking. The parcel

located at 411 Michigan Avenue contains two small buildings, both of which are listed as “contributing” in the City’s Historic Properties Database.

Property History. The two contributing structures were built one year apart. In 1933, a single-story structure located at the rear alley was built as a garage (“Garage Structure”). In 1934, a two-story residence (“Historic Building”) was built in front of the Garage Structure in the middle of the parcel. In 1954, the Garage Structure was converted into a bedroom and bathroom. In 2012, a previous owner received a Certificate of Appropriateness to demolish the Garage Structure, restore the Historic Building, and construct a new three-story and four-story building as part of an office complex. See Exhibit A, HPB File No. 7323. In 2014, a previous owner received a Certificate of Appropriateness to construct a 27,000 square foot boutique hotel on the two northern parcels located at 419 Michigan Avenue and 944 5 Street. See Exhibit B, HPB File No. 7450. Only the foundation, which accommodates underground parking, was completed before the project stalled.

Proposed Development. The Applicant proposes a five-story Class A office development with ground floor retail at the north portion of the Property, the preservation and re-location of the existing Historic Building at the southeast corner on Michigan with an open plaza in front and mechanical parking exclusively managed by valet, both in the basement of the office building and in a ground level parking structure behind the Historic Building (“Proposed Development”).

The relocation and restoration of the Historic Building will take it from obscurity at the center of the Property to prominence on Michigan and transform it into an engaging space for retail or a small café for the public to enjoy. Specifically, the Applicant seeks to restore the two-story structure by removing the second floor, thus creating a double-height space. The Applicant proposes to demolish the Garage Structure, as previously approved. The ground level of the main structure will contain approximately 3,125 square feet for retail and a lobby. Levels two through five will serve solely as Class A office space. There will also be access to the roof for office tenants only.

The Proposed Development will benefit the community by beautifying the Property, offering Class A office space to the South of Fifth neighborhood, and enhancing the pedestrian experience on 5th Street and Michigan Avenue. The simplistic yet elegant architecture, 14-foot tall ceilings, and ample parking opportunities will attract companies and firms to the City. The new uses will generate jobs and increase the tax base, thereby stimulating the local economy and jumpstarting consumer activity. Further, by developing the unused lot, this area will be activated during the daytime and attract more people to the other nearby daytime uses.

The Applicant has submitted a separate application for Conditional Use Approval ("CUP") from the Planning Board for two items: new construction exceeding 50,000 gross square feet,¹ pursuant to Section 142-693(g) of the City Code ("Code"), and to provide on-site parking through the use of mechanical parking lifts, in accordance with Code Section 130-38(5). See PB File No. PB21-0469.

To summarize, the Proposed Development will showcase the currently obscured Historic Building by bringing to it to front Michigan Avenue and provide much needed Class A office space in a new building with retail on the ground floor. The Proposed Development will result in a signature building designed by a well renowned international architect that features a clean, transparent, and elegant design. The Proposed Development is compatible with the nearby structures and will be a welcomed addition to the 5th Street corridor.

Code Amendment. To achieve the Class A Office component, the Applicant is working with the City on a Code Amendment to allow office uses at 75 feet where currently limited to 50 feet for this localized area by Jefferson and Michigan Avenues ("Code Amendment"). The purpose is not for extra floors, rather for the additional floor to ceiling heights necessary to attract Class A office tenants.

Evaluation of Appropriateness. 5th Street is a major transit and commercial corridor with many nearby properties containing buildings of similar or greater scale and massing. The buildings to the east and west of the Property are approximately 50 feet tall with rooftop structures even higher. On the northwest corner of the intersection of Alton Road and 5th Street, less than 600 feet from the Property, are buildings greater than 50 feet in height. Further, hotel and residential uses can be built at 75 feet at the Property. As such, the proposed height through the Code Amendment ensure that the high-quality development and street activation are in-line with the character of the area.

The design of the new structure ensures that the Proposed Development's massing does not impact the context and scale of the surrounding built environment. The Proposed Development incorporates architectural and artistic design features, such as deep balconies, to beautify the building facing the 5th Street corridor to the north and Michigan Avenue and the alley to centralize the massing. The placement of the private driveway and the lower scale Historic Building and parking structure towards the south serve as an appropriate transition to the lower scale neighborhood to the south. Altogether, the Proposed Development will be compatible with the surrounding neighborhood.

¹ Note that the Proposed Development is only 41,377 net square feet.

Variance Request – Open Court. In order to accommodate the Proposed Development, the Applicant respectfully requests the following variance:

1. Open Court Variance – A variance from the requirement of Section 142-699(c) to provide zero feet of open court area where three (3) square feet for every linear foot of lot frontage are required (“Open Court Variance”).

The Applicant requests the Open Court Variance for the following reasons. First, the simple yet elegant design of the office building would be negatively impacted by an open court. Despite this, the design captures the intent of the Code by providing a deep plaza/breezeway of 2,200 square feet at ground level, with a clear opening of 22’-6” high and 35’-11/12” feet deep, and 9’ deep balconies, above, also with high ceiling heights for light and air to permeate the frontage. Further, 566 square feet of open space, not including the open stairs, is located in front of the relocated historic building. Additionally, the building is resilient and has been designed to address sea level rise. Placing portions of the building and the abutting areas below design elevation risks flooding to the Property and the surrounding right of way.

Satisfaction of Hardship Criteria. The Applicant’s request satisfies all hardship criteria as follows:

- (1) 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;**

The Applicant has a challenging site with a contributing structure on the southwest corner and the need to provide all required parking and loading spaces on the Property. While the project does not contain a completely open court, the 2,200 square foot breezeway on the ground level is fully open and acts like an open court. This open area assists with breaking up the scale and massing of the south elevation, while still allowing the Applicant to provide the required parking and loading to develop this Property. Further, there is 566 square feet of open space in front of the relocated historic building. Taken together, the breezeway and open plaza satisfy the intent of the Code.

- (2) The special conditions and circumstances do not result from the action of the applicant;**

The Applicant did not create the need to raise the streets to protect from sea-level rise and flooding issues. Placing portions of the building and the abutting areas below design

elevation risks flooding to the Property and the surrounding right of way. The Applicant proposal accommodates near-term plans, and attempts to remain flexible for further raising of streets and sidewalks, while still maintaining the proposed development as viable.

- (3) **Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;**

The intent and purpose of Section 142-699(c) of the Code is to break up the scale and massing of the building. Granting of the Open Court Variance will not confer any special privilege on the Applicant, as the proposed development will contain a beautifully elegant office building and vast open areas on the ground level, both of which will serve the same purpose intended by the Code. The approval of the Open Court Variance will acknowledge that the project as designed complies with the intent of the Code section.

- (4) **Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;**

A literal interpretation of Section 142-699(c) of the Code would require a single 450 feet open court area on the Property. This would deprive the Applicant of a viable development to service the community with retail and all required parking and loading. In the alternative, the Applicant proposes to provide an open plaza, that is open to the sky, and 2,200 square foot breezeway on the ground level. This design satisfies the intent of the Code requirement while allowing for viable development that will benefit the surrounding area.

- (5) **The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;**

The Open Court Variance request is the minimum variance necessary to allow for the proposed development while still satisfying the intent of the Code and allowing for successful redevelopment of the Property to serve the community.

- (6) **The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and**

The Open Court Variance will be in harmony with the intent and purpose of the Code as the proposed structure is designed to break up the scale and massing of the building, while allowing locations for public access. The ground level of the building is open and, and functions like an open court that breaks up the scale and massing of the building. Further, the design of the open plaza on the southwest corner of the Property will also break up the massing.

(7) 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. The planning and zoning director may require applicants to submit documentation to support this requirement prior to the scheduling of a public hearing or any time prior to the board of adjustment voting on the applicant's request.

The variance requested are consistent with the City's comprehensive plan and do not reduce the levels of service as set forth in the plan.

Practical Difficulty. The Applicant has challenging existing conditions. First, in order to preserve and highlight the historic structure, the Applicant will re-locate the historic structure to the frontage of Michigan Avenue. Second, the Applicant will adaptively re-use the existing foundation and underground parking for the Proposed Development. Together, these challenges present practical difficulties to develop a fully compliant open court. Despite this, the Proposed Development provides a plaza open to the sky of approximately 566 square feet, not counting the open stairs, in front of the Historic Building and 2,200 square foot 22'-6" tall breezeway on the ground level of the office building with 9' deep balconies above. Together, these minimize the scale and massing of the frontage. Therefore, this design satisfies the intent of the Code requirement while allowing for viable development that will benefit the surrounding area.

Waiver Request – Off-Street Loading. The Applicant provides an extra-long, narrow loading space (10' x 30'-10") on private property along the alley. While narrow, the alley, which is 20' wide and southbound for its entire width, can accommodate the remainder for short-term loading operations by using 5' on the Property and 5' in the portion of the alley, which does not obstruct traffic from being able to still travel effectively south in the alley. Alleys in commercial areas commonly accommodate short-term loading operations, and the Proposed Development ensures safer operations. The proposed uses likely will neither require extensive nor frequent loading; however, should the need arise, loading can occur outside of peak hours in the private driveway.

Sea Level Rise and Resiliency Criteria. The Applicant's proposal is compliant with the sea level rise and resiliency review criteria provided in City Code Section 133-50(a) as follows:

(1) A recycling or salvage plan for partial or total demolition shall be provided.

The northern portion of the Property contains the foundation of the stalled project, which will be utilized so no demolition will be needed. For the demolition associated with the Garage Structure, the Applicant will provide a recycling or salvage plan during the permitting phase of the project.

(2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

The Applicant's project will include entirely hurricane impact windows.

(3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

The balconies of the offices will be operable and will allow passive cooling system. The central atrium opening to the rooftop provides additional passive cooling.

(4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

The Applicant will be providing landscaping on the Property, which will be resilient.

(5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

Sea level rise projections, land elevation and elevation of surrounding properties were considered, as was the City's general plan to elevate the adjacent roadways. The Project has been designed to accommodate the raising of the roads, both now and in the future (see response to item (6) below), and complies with the minimum elevation requirements of the Florida Building Code.

(6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

The ground floor, driveways, and garage ramping will be adaptable to raising of the adjacent public rights-of-way, both for the minimal raising in the short-term and potential for significant raising in the future. The future first floor will be at 9 feet NGVD, where BFE is 8 feet. Also, the height of the first floor will be able to accommodate any future need to increase the height of the ground level. This will ensure continued use of the lobby and retail. Further, the critical mechanical and electrical systems will be located above BFE and flood proofing will be provided within habitable space where necessary.

(7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

All critical mechanical and electrical systems will be located above base flood elevation.

(8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

The Historic Building will be raised so its floor is at the future crown of the road to provide flood protection and ensure compatibility with the sidewalks for appropriate pedestrian experience. The new structure will be above base flood elevation.

(9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Habitable space is not located below the BFE, and the lowest floor may be substantially raised above BFE.

(10) Where feasible and appropriate, water retention systems shall be provided.

The Applicant will analyze and provide a water retention system, if feasible, during the permitting phase.

(11) Cool pavement materials or porous pavement materials shall be utilized.

Cool pavement materials or porous pavement materials will be utilized where possible.

(12) The design of each project shall minimize the potential for heat island effects on-site.

The proposed design provides a number of shaded open spaces and non-air-conditioned shaded spaces to strategically minimize the potential for heat island effects on site.

Conclusion. We believe that the approval of the Proposed Development embraces the character of the area with preservation of the Historic Building and moving it to prominence on Michigan Avenue and also promotes quality infill redevelopment on the Property to attract much needed Class A office in a beautifully designed building. We look forward to your favorable review of the Project. Please contact me on my direct line at (305) 377-6236 should you have any questions or concerns.

Sincerely,



Matthew Amster

Attachments



CFN 2012R0744174
DR Bk 28318 Pgs 4973 - 4979; (7pgs)
RECORDED 10/18/2012 13:09:43
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: September 11, 2012

FILE NO: 7323

PROPERTY: 411 Michigan Avenue

LEGAL: Lot 8, Block 83 of "Ocean Beach, Fla.", according to the Plat thereof, as recorded in Plat Book 2, at page 81 of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for a Certificate of Appropriateness for the demolition of an existing single story building, the partial demolition, renovation and restoration of an existing 2-story building, and the construction of a new 3-story building and a new 4-story building, as part of a new office complex.

CERTIFICATION

THIS IS TO CERTIFY THAT THE ATTACHED DOCUMENT IS A TRUE AND ACCURATE COPY OF THE ORIGINAL ON FILE IN THE OFFICE OF THE PLANNING DEPARTMENT.

CITY OF MIAMI BEACH

[Signature] 10-11-2012
(Signature of Planning Director or Designee) (Date)

Personally known to me or Produced ID:

[Signature]

Notary Public, State of Florida at Large

Printed Name: TERESA MARIA

My Commission Expires: (Seal) 12-2-13

This document contains 7 pages.



ORDER

The applicant, The applicant, 411 Aqua, LLC, filed an application with the City of Miami Beach Planning Department for a Certificate of Appropriateness.

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:

- A. The subject structure is classified as 'Contributing' (Historic) in the Miami Beach Historic Properties Database and is located within the Ocean Beach 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 is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code, is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code, is not

[Handwritten initials]

consistent with Certificate of Appropriateness Criteria 'b' in Section 118-564(a)(3) of the Miami Beach Code, and is not consistent with Certificate of Appropriateness for Demolition Criteria 'b', 'c' and 'e' in Section 118-564(f)(4) of the Miami Beach Code.

C. The project would remain consistent with the criteria and requirements of section 118-564 if the following conditions are met:

1. Revised elevation, site plan and floor plan drawings shall be submitted; at a minimum, such drawings shall incorporate the following:
 - a. Building 'B' shall be shifted to the west between 3'-0" and 4'-0".
 - b. The design of the north elevation of Building 'B' (the rear building) shall be further developed in order to further break down the massing and provide more architectural interest, in a manner to be reviewed and approved by staff.
 - c. The design of the south elevation of Building 'B' (the rear building) shall be further developed in order to further break down the massing and provide more architectural interest, in a manner to be reviewed and approved by staff.
 - d. The upper portion of the west elevation of Building 'A' (the front building), facing Meridian Avenue, shall be modified to make all glass heights equal, in a manner to be reviewed and approved by staff.
 - e. The exterior elevations of the historic residence, located in the center of the property, shall be restored to match the original design to the maximum extent possible, in a manner to be reviewed and approved by staff.
 - f. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view.
 - g. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
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. The applicant has proffered to landscape the east side of the neighboring property located immediately to the south, subject to the review and approval by staff
 - b. 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.

- c. The utilization of root barriers and/or structural soil, as applicable, shall be clearly delineated on the revised landscape plan.
 - d. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventers and all other related devices and fixtures; such fixtures and devices shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of backflow preventers, siamese pipes or other related devices and fixtures, if any, and how they are screened with landscape material 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.
 - e. 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 permitted within any required yard or any area fronting a street or sidewalk. The location of any exterior transformers, and how they are screened with landscape material 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.
 - f. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect for the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.
3. All building signage shall be consistent in type, composed of flush mounted, non-plastic, individual letters and shall require a separate permit.
 4. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff and shall require a separate permit.
 5. A traffic mitigation plan, which addresses all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, if required, shall be submitted prior to the issuance of a Building Permit and the final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
 6. Revised drawings, with corresponding color photographs, that are separate from the construction documents, drawn to scale and clearly documenting the existing conditions of the subject building, shall be submitted. Such drawings and photographs shall include all four elevations and interior floor plans of the building, as well as a site plan.
 7. An historic analysis of the existing structure, inclusive of a photographic and written description of the history and evolution of the original building on site, shall be submitted to and approved by staff and installed, prior to the issuance of a Certificate of Occupancy (C.O.) or Temporary Certificate of Occupancy (T.C.O.); such historic analysis shall be displayed prominently within the public area of the structure, in a location to be determined by staff.

8. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).
9. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.
10. The applicant may be required to submit a separate analysis for water and sewer requirements, at the discretion of the Public Works Director, or designee. Based on a preliminary review of the proposed project, the following may be required by the Public Works Department:
 - a. A traffic and neighborhood impact study shall be conducted as a means to measure a proposed development's impact on transportation and neighborhoods. The study shall address all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, and if required, shall be submitted prior to the issuance of a Building Permit. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code. The developer shall refer to the most recent City of Miami Beach's Traffic and Neighborhood Impact Methodology as issued by the Public Works Department.
 - b. Remove/replace sidewalks, curbs and gutters on all street frontages, if applicable. Unless otherwise specified, the standard color for city sidewalks is red, and the standard curb and gutter color is gray.
 - c. Mill/resurface asphalt in rear alley along property, if applicable.
 - d. Provide underground utility service connections and on-site transformer location, if necessary.
 - e. Provide back-flow prevention devices on all water services.
 - f. Provide on-site, self-contained storm water drainage for the proposed development.
 - g. Meet water/sewer concurrency requirements including a hydraulic water model analysis and gravity sewer system capacity analysis as determined by the Department and the required upgrades to water and sewer mains servicing this project.
 - h. Payment of City utility impact fees for water meters/services.
 - i. Provide flood barrier ramps to underground parking or minimum slab elevation to be at highest adjacent crown road elevation plus 8".
 - j. Right-of-way permit must be obtained from Public Works.
 - k. All right-of-way encroachments must be removed.


U.S.S.
U.S.S.

- I. All planting/landscaping in the public right-of-way must be approved by the Public Works and Parks Departments.
11. A drawn plan and written procedure for the proposed demolition shall be prepared and submitted by a Professional Structural Engineer, registered in the State of Florida, which fully ensures the protection of the public safety, as well as the protection of the existing structure on the subject site and all existing structures adjacent to the subject site during the course of demolition.
12. The Certificate of Appropriateness for Demolition shall only remain in effect for the period of time that there is an active Certificate of Appropriateness for the associated new construction on the subject property.
13. At the time of completion of the project, only a **Final** Certificate of Occupancy (CO) or **Final** Certificate of Completion (CC) may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CO or CC. This shall not prohibit the issuance of a Partial or Temporary CO, or a Partial or Temporary CC.
14. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
15. 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.
16. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
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.

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 by the Board, that the Certificate of Appropriateness is GRANTED for the above-referenced project subject to those certain conditions specified in paragraph C of the Findings of Fact (Condition Nos. 1-17, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Historic Preservation Board, as determined by staff, "411 Michigan Avenue", as prepared by 3 Design Architecture , undated.

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.

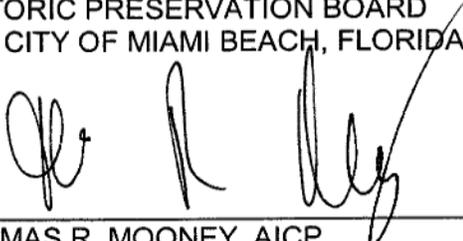
The issuance of a Certificate of Appropriateness does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean 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 Certificate of Appropriateness was granted, the Certificate of Appropriateness will expire and become null and void. 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 Certificate of Appropriateness will expire and become null and void.

In accordance with Section 118-561 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 Certificate of Appropriateness to Section 118-564, City Code, for revocation or modification of the Certificate of Appropriateness.

Dated this 28th day of SEPTEMBER, 2012.

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: 
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR



Page 7 of 7
HPB File No. 7323
Meeting Date: September 11, 2012

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

The foregoing instrument was acknowledged before me this 28th day of September 2012 by Thomas R. Mooney, Design and Preservation Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



TERESA MARIA
MY COMMISSION # DD 928148
EXPIRES: December 2, 2013
Bonded Thru Budget Notary Services

Teresa Maria
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 12-2-13

Approved As To Form: _____
Legal Department: *JPKed* (9-27-2012)

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

F:\PLAN\HPB\12HPB\Sep12\7323-SEP2012.FO.docx

[Handwritten mark]



CFN 2014R0794314
OR Bk 29394 Pgs 1805 - 18117 (7pgs)
RECORDED 11/18/2014 09:52:30
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: September 9, 2014

FILE NO: 7450

PROPERTY: 419 Michigan Avenue

LEGAL: **Parcel 1:** The south 50 feet of Lots 1, 2, 3, 4 and 5 of Witham's Resubdivision of Lots 10, 11 and 12, Block 83, Ocean Beach Addition No. 3, According to the Plat Thereof, as Recorded in Plat Book 9, Page 10, of the Public Records of Miami-Dade County, Florida.

Parcel 2: Lot 9, Block 83, 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.

IN RE: The Application for a Certificate of Appropriateness for the total demolition of two existing non-contributing structures and the construction of a new 4-story hotel.

ORDER

The applicant, RG Michigan 2014, filed an application with the City of Miami Beach Planning Department for a Certificate of Appropriateness.

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:

- A. The subject structures are classified as a 'Non-Contributing' structure in the Miami Beach Historic Properties Database, and are 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 is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code, is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code, is not consistent with Certificate of Appropriateness Criteria 'c', 'g' & 'i' in Section 118-564(a)(3) of

CERTIFICATION

THIS IS TO CERTIFY THAT THE ATTACHED DOCUMENT IS A TRUE AND ACCURATE COPY OF THE ORIGINAL ON FILE IN THE OFFICE OF THE PLANNING DEPARTMENT.
CITY OF MIAMI BEACH

On 9-23-14 (Date)
(Signature of Planning Director or Designee)

Personally known to me or Produced ID: _____

Notary Public, State of Florida at Large
Printed Name: Miriam M. Merino
My Commission Expires: (Seal) _____

This document contains 7 pages.

the Miami Beach Code, and is not consistent with Certificate of Appropriateness Criteria for Demolition 'a-e' 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 elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
 - a. 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.
 - b. The final location and details of all exterior ramp and railings systems, including materials, dimensions and finishes, 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.
 - c. Final details of all proposed storefront systems and associated details shall be provided for all of the structures on the project site, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - d. 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. Exterior lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding historic district. No florescent or intensive 'white' lighting (or similar intensive lighting) visible from the adjacent public rights or way or adjacent properties shall be permitted.
 - e. A fully enclosed air conditioned trash room that is sufficiently sized to handle the entire trash load of the building at all times shall be required, located within the envelope of the building, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - f. 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.
 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. Street trees shall be required along 5th Street and Michigan Avenue, placed with a minimum 36" clear space between the tree trunk and the back of curb, 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. Silva Cells in tree pits, with the City Standard black and white bound aggregate system and fertilization trench, irrigation, and two (2) up-lights per City standards, shall be required for all street and shade trees, in a manner to be reviewed and approved the Board.
 - c. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the final revised landscape plan.
 - d. 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.
3. The Applicant agrees to the following operational conditions for any and all permitted hotel 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.

a. OUTDOOR CONDITIONS

- i. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced. Owner agrees to include the rules and regulations set forth in these conditions in any contract or assignment.
- ii. No exterior loudspeakers are permitted except those necessary for fire and life safety purposes.
- iii. All DJ or live music is prohibited in the exterior spaces of the property. Rooftop accessory bar counters shall be directly associated with the ground level restaurant, including all services from the rooftop accessory bar. All rooftop food and beverage services to hotel guests and their invitees, shall cease no later than 8:00 PM.
- iv. The applicant will establish rules that prohibit guests from operating electronic amplification devices on the exterior areas of the premises, with the exception of headphones, earphones, personal computers and hand held communication devices.
- v. Owner agrees to install an exhaust system, if required by code, for the future kitchen that will substantially reduce grease and smoke that would otherwise escape to the surrounding area. This may include the installation of a fan in connection with the kitchen exhaust system within the interior of the building in order to reduce noise levels at the exhaust outlet. Any such exhaust system shall be located along the east end of



the property, near the centerline, and not directly adjacent to the southernmost property line.

- vi. No cooling towers will be permitted on the rooftop, unless as a direct result of emergency circumstances and may only be used on a temporary basis. Any exterior mechanical devices must be low noise emitting and must be screened from site; also any fan/exhaust for the garage shall be located along the east end of the property, near the centerline, and not directly adjacent to the southernmost property line.

b. NOISE CONDITIONS

- i. The Historic Preservation Board (HPB) or the Planning Director shall retain the right to call the owners and/or operators back before the HPB at the expense of the owners and/ or operators, to impose and/or modify any operating conditions if necessary. An adverse adjudication of a violation against the owner or operator is not necessary for the board to have jurisdiction over the matter under this condition. This condition vests jurisdiction independent of any other condition hereof.
- ii. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, as determined by Code Compliance shall be deemed a violation of this Order and subject the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first sentence of this subparagraph.
- iii. 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 manufacturers specifications, the applicant shall take such reasonable steps as to mitigate the noise with noise attenuating materials as reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- iv. Notwithstanding the occupancy and seat counts shown on the plans submitted, calculations for concurrency for the project shall be determined by the Planning Department prior to approval of a building permit. Such calculations shall be based upon the intensity of any proposed accessory uses as measured by the number of seats in dining areas.

a. OPERATIONAL CONDITIONS

- i. All trash containers shall utilize inflatable or other noise mitigating rubber wheels, or the path for the trash containers shall consist of a suitable finish that reduces noise, in a manner to be reviewed and approved by staff.

- ii. 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. Doors shall remain closed and secured when not in active use.
- iii. Garbage and recycling dumpsters / containers shall be closed at all times except when in active use.
- iv. Garbage pickups and service deliveries shall not take place between 5 PM and 8 AM, seven days a week. Deliveries of daily perishable food items may occur in the alley, located along the east end of the property, or such other location as the City deems appropriate.
- v. Applicant shall ensure that hotel personnel do not place trash or recycling into any exterior dumpsters or receptacles between 5 PM and 8 AM, seven days a week.
- vi. In the event rooftop lights are installed, they shall be shielded from nearby residential uses, and not exceed 42" in height above the roof deck.
- vii. Any kitchen and other venting shall be chased along the east end of the property, near the centerline, and not directly adjacent to the southernmost property line and any venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors.
- viii. Equipment and supplies shall not be stored in areas visible from adjacent streets, alleys or nearby buildings.
- ix. Management will ensure that the premises are maintained litter-free.
- x. Valet service for the hotel and its accessory uses shall be limited to an "on call" operation, with no outdoor valet stand located on the property or the public right of way. Unless otherwise permitted by the City, valets shall be limited to the use of a single passenger loading space.
- xi. Applicant agrees not to seek an entertainment or dance hall license for the premises or authorize lessees to do so.
- xii. No members of the public may enter the restaurant establishment or bar, and be seated for services after 11:00 PM Sunday through Thursday or after 1:00 AM Friday or Saturday. Seating may continue to occur through closing times (12:00 AM Sunday through Thursday and 2:00 AM Friday and Saturdays) at the hotel restaurant and bar, for hotel guests and their invitees.
- xiii. No sidewalk café will be sought or utilized by the applicant or any lessees.



4. 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.
5. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
6. 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.
7. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
8. 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 by the Board, that the Certificate of Appropriateness is GRANTED for the above-referenced project subject to those certain conditions specified in paragraph C of the Findings of Fact (Condition Nos. 1-8 inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Historic Preservation Board, as determined by staff, entitled "Michigan Hotel" as prepared by Kobi Karp, Architecture, Interior Design, Planning, dated 7.18.2014.

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 a Certificate of Appropriateness 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 Certificate of Appropriateness was granted, the Certificate of Appropriateness will expire and become null and void. If the Full Building Permit for the project



Page 7 of 7
HPB File No. 7440
Meeting Date: September 9, 2014

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 Certificate of Appropriateness will expire and become null and void.

In accordance with Section 118-561 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 Certificate of Appropriateness to Section 118-564, City Code, for revocation or modification of the Certificate of Appropriateness.

Dated this 18th day of SEPTEMBER, 2014.

HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
THOMAS R. MOONEY, AICP
PLANNING DIRECTOR
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this 18th day of September 2014 by Thomas R. Mooney, Planning Director, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



TERESA MARIA
MY COMMISSION # FF 042188
EXPIRES: December 2, 2017
Bonded Thru Budget Notary Services

[Signature]
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 12-2-17

Approved As To Form: [Signature]
City Attorney's Office: [Signature] (9-16-14)

Filed with the Clerk of the Historic Preservation Board on [Signature] (9-19-14)

[Handwritten mark]