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VIA ELECTRONIC & HAND DELIVERY

May 16, 2022

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 – Revised 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 revised letter of intent in support of a Certificate of Appropriateness, one variance and one waiver allowing the construction of a new five-story office building with mechanical parking lifts, and the preservation and re-location of two existing contributing buildings.

Since the April 12, 2022 Historic Preservation Board meeting, the Applicant has made following changes to the project:

- Relocate, preserve, raise and adaptively reuse the contributing single-story garage structure as an open-air café in conjunction with the relocated two-story structure (instead of previously proposed demolition);
- Shift the contributing two-story structure closer to Michigan Avenue to accommodate retention of the 1-story structure;
- Reduce the length of and number of parking spaces in the mechanical parking structure;
- Shift the mechanical parking structure east towards the alley to accommodate retention of the 1-story structure;

- Push the office structure to the north, including the ground level podium;
- Reduce the balconies on the south façade; and
- Withdraw the drive-aisle variance.

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 southeast 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.[1] 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 hotel 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 quality infill development in this commercial area of South Beach; a five-story Class A office development with ground floor retail at the north portion of the Property abutting the major transit corridor and aligned with other office buildings to the east and west, the preservation and relocation of the existing Historic Building at the southwest corner on Michigan with an open plaza in front and the relocated Garage Structure behind, and a new mechanical parking structure to the east. For resiliency,

[1] Since filing the Application , the Applicant unified the parcels with a unity of title and completed a folio combination with the Property Appraiser's office. The Property is now identified as 411 Michigan Avenue under Folio No. 02-4203-010-0030.

both relocated structures will be raised to 9' NGVD, which will match the finished floor elevation of the office building. All uses shall be exclusively managed by valet, both in the basement of the office building, an important adaptive reuse of the failed prior project, and in the ground level parking structure behind the Historic Building and Garage Structure ("Proposed Development"). A one-way eastbound private driveway located between the contributing buildings/new parking structure and the office building will serve as the main vehicle entrance and valet drop-off and pick-up location.

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 approximately 681 square feet in size 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.

In addition to prominently placing the Historic Building along Michigan Avenue, the Applicant's revised proposal adaptively reuses the Garage Structure as part of the café for public use and enjoyment. The Garage Structure will be placed behind the Historic Structure connected to the Historic Building by a small walkway. The Garage Structure will be open to the sky, creating a unique outdoor seating experience. Notably the proposal maintains the same layout and orientation of the historic structures, Historic Structure in front, Garage Structure behind, and neither will be rotated. Together, the structures will house a small café approximately 1,189 square feet in size.

The ground level of the office building will contain the lobby, with main access from Michigan Avenue, and approximately 3,003 square feet for retail. Levels two through five will serve solely as Class A office space that wrap around a central landscaped atrium that lets natural light penetrate all levels. There will also be access to the roof for office tenants and their guests only. The basement – the built but never utilized parking level – will be used as previously proposed with parking accessed by two car elevators accessed from the alley.

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 floors, 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.

On January 25, 2022, the Planning Board approved the Applicant's separate application for Conditional Use Approval ("CUP") for two items: new construction exceeding 50,000 gross square feet,[2] 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 Exhibit C, Draft Order[3] for PB File No. PB21-0455.

On April 12, 2022, the Historic Preservation Board heard the Applicant's application for a Certificate of Appropriateness allowing the construction of a new five-story office building with mechanical parking lifts, and the preservation and relocation of the Historic Building including (1) a variance from the requirement of Section 142-699(c) of the Code to provide zero feet of open court area where three (3) square feet for every linear foot of lot frontage are required and (2) a waiver from off-street loading requirements. See Exhibit D, Draft Order for HPB File No. HPB21-0486.

Since the April 12, 2022 Historic Preservation Board meeting, the Applicant has made certain changes to the Proposed Development. The Applicant now includes the relocation, preservation, and adaptive reuse of the Garage Structure. To accommodate this behind and connected to the Historic Building, the Applicant has reduced the length of the mechanical parking structure by eliminating two of the mechanical parking lifts. Through this change, the Applicant is able to effectively preserve both historic structures and adaptively reuse the Garage Structure as an open-air café. Further, in order to address concerns of the proximity of the office building to the contributing buildings, the Applicant has pushed the office building by 2' to the north and further reduced the balconies on the south façade by 1', which shifts them a total of 3'. Lastly, the Applicant is withdrawing the drive-aisle variance as the plans now provide a drive-aisle 22' in width.

Enhancement of the Pedestrian Experience of the Podium. To address concerns about the pedestrian experience of the podium, the Applicant has softened the podium wall against the sidewalk on both 5th Street and Michigan Avenue. See Exhibit E, Podium Renderings. The Applicant provides a tiered step and planter system that reduces the wall at the sidewalk to just over 2 feet and then steps back further to the actual podium. To further enhance the pedestrian experience, the Applicant will slope the sidewalk on Michigan Avenue so the podium wall is further reduced in that area. Landscaping in the planters along both frontages will improve the pedestrian experience by providing a lusher and more natural environment. Lastly, the Applicant introduces a second stair to better activate the corner of the Property at the intersection of 5th Street and Michigan Avenue.

[2] Note that The Proposed Development Is only 41,583 net square feet.
[3] The Final Order as approved by the PB is not yet available.

Due to the introduction of the tiered planters, the northernmost row of mechanical parking stackers will be single level, which results in a reduction of seven (7) parking spaces. To offset this reduction, additional scooter parking has been provided and the Applicant complies with the required parking requirements. See Exhibit F, Parking Calculations.

Address South Neighbors' Concerns. Through the Applicant's ongoing efforts to address the south neighbors' concerns about the closeness of the ground level parking structure to their buildings, the Applicant has shifted that structure the full 5 feet from the south property line that the neighbors requested.[4] It is important to note that this commercial mixed-use zoning district does not require any setback along the south property line, however, the Applicant agrees to provide the separation as an appropriate buffer between the Proposed Development and the buildings on the adjacent properties to the south.

To summarize, the Proposed Development will showcase the currently obscured Historic Building by bringing to it to front Michigan Avenue, preserve and relocate the associated 1-story Garage Structure and provide much needed Class A office space in a new building with retail on the ground floor that is appropriately located abutting the major thoroughfare of 5th Street. 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 worked with the City on a Code Amendment to allow office uses at 75 feet, where currently limited to 50 feet, for this localized area on the south side of 5th Street east of Jefferson ("Code Amendment"). Importantly, the Code already allowed hotel and residential development at 75 feet on the Property. The Code Amendment simply allows office use at the same height. The purpose is not for extra floors, rather for the additional floor to ceiling heights necessary to attract Class A office tenants. The City Commission approved the Code Amendment on February 9, 2022. See Exhibit G, Ordinance for Code Amendment.

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,

[4] As originally submitted, the Applicant provided 1'-3" setback and then modified to 2'-3" setback with the February 2022 resubmittal, and modified again to a 5' setback with the March resubmittal, which was heard by the HPB on April 22, 2022.

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 ensures 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 places the office building in the north portion only and incorporates architectural and artistic design features, such as 10-foot-deep balconies, which are setback 9" from the street frontages for a total setback of 10'-9" to the building walls, to beautify the building facing the 5th Street corridor to the north and Michigan Avenue and the alley. The design therefore effectively centralizes the massing. The placement of the private driveway and the lower scale Historic Building, Garage Structure 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.

Variance Request. Based on the revised design, in order to accommodate the Proposed Development, the Applicant respectfully requests one variance for the open court. Due to the structural changes in the south side of the office building, especially to the ground level podium, the Applicant does not need a variance for the drive-aisle width.

> Open Court Variance – A variance from the requirement of Section 142-699(c) of the Code 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 2,330 square feet at ground level, with a clear opening of 22'-6" high and almost 36 feet deep, and approximately 10 feet deep balconies offset more by 9" from the property line, above, also with high ceiling heights and highly transparent office areas for light and air to permeate the frontage.

Further, 482 square feet of open space, not including the open stairs, is located in front of the relocated Historic Building. Moreover, the balconies on the south side of the office building, especially the one at the second-floor level, have been reduced to provide adequate spacing from the contributing structures. Additionally, the office and contributing buildings are resilient with the finished floors at 9 feet NGVD to address sea level rise. Placing portions of the buildings and the abutting areas below design elevation risks flooding to the Property and the

surrounding right of way. Collectively, the openness in front of the buildings, and the 13'-10" wide interior driveway in between effectively break-up the massing along the front and allow compatibility with the historic development pattern in the area, thus meeting the intent and purpose of the Code.

Pursuant to the City Charter Subpart B – Related Special Acts, specifically Section 2, variances may be analyzed where there are practical difficulties or unnecessary hardships. Regarding the latter, preserving two historic structures provides a hardship when incorporating new construction. An excellent example is the Corcoran Gallery of Art located in Washington D.C., in the neighborhood of the White House. The Corcoran Gallery of Art is an elaborate Beaux Arts structure that, by its nature, makes new construction very difficult and challenging, because the new construction must be compatible with the existing historic building. In United Unions, Inc. v. D.C. Bd. of Zoning Adjustment, 554 A.2d 313 (D.C. 1989), the Corcoran sought to obtain certain variances from D.C.'s Board of Zoning Adjustment (BZA) to permit the construction of a proposed addition to the gallery, including a new parking facility. See Exhibit H, United Unions Case. The BZA granted the request and a nearby office building owner appealed the decision. The crux of the case focused on the question, "what exceptional conditions inherent in the property [justified] the variances granted by the BZA?"

The DC Court of Appeals held that, because the original Corcoran Gallery is a registered historic landmark of exceptional design, the applicant was required to comply with landmark preservation laws in the construction of the connected building, and present a plan that would replicate the style, materials, and workmanship of the original Corcoran building. The special status of its original structure as a landmark requiring an addition consistent with the original plan constituted a "special circumstance" justifying the variances. Specifically, the special qualities of the original Corcoran building and the space on which it was erected required the applicant to conceal rooftop elevator equipment within the building (thereby adding to its floor area ratio) and to construct the building in an odd-shaped space in a manner consistent with the original.

Here, similar to United Unions, the Applicant is under an obligation to respect the historic nature of the two contributing buildings. The Applicant does so by placing the driveway to the north to separate the buildings, with the current revision further pushing the office building to the north and providing narrower balconies to locate the south building wall and massing further away. This treatment provides the spacing and reduction in massing on Michigan that the Code intends, while notably also allowing the preservation of the contributing buildings. The confining characteristics of preserving the Historic Building and Garage Structure, adaptively reusing the

existing foundation and providing an adequate 5-foot setback buffer for the south neighbors requires the Open Court Variance.

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 two contributing structures at the southern portion and an existing, usable foundation for the failed prior hotel project, all of which will be preserved but significantly limit the placement of structures on the Property. A further special condition is that as a main use office, the need to provide all required parking and loading spaces on the Property is necessary for the viability of the use.

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

The Applicant did not create the special conditions of the contributing structures or the existing foundation, both of which were built before the Applicant owned the Property. Preserving contributing structures is a circumstance encouraged by the City and one that the Applicant has taken to heart by planning to not only preserve but relocate the Historic Building to prominence on Michigan Avenue frontage and incorporate the Garage Structure behind it. Further, the Applicant has no control over the need to address flood and sea-level rise issues and addresses them accordingly with the Proposed Development, notably raising the Historic Building and Garage Structure to 9 feet NGVD.

(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. Further, with the internal driveway and the open space at the front of the Historic Building, 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 Class A office and neighborhood-serving retail and all required parking and loading on site. In the alternative, the Applicant proposes to provide a 482 square foot open plaza in front of the Historic Building that is open to the sky, and 2,330 square foot breezeway on the ground level. Further, the design separates the office building from the Historic Building by an internal driveway that espouses the historic development pattern of the area and therefore 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. While the project does not contain a completely open court, the 2,330 square foot breezeway on the ground level is fully open and acts like an open court. This open area, along with the open interior driveway assists with breaking up the scale and massing of the south elevation, while still allowing the Applicant to provide the required parking and loading on site to develop this Property. Further, there is 482 square feet of open space in front of the relocated Historic Building. Taken together, the breezeway, open interior driveway and open plaza provide a historically contextual development pattern and satisfy the intent of the Code.

(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 functions like

an open court that breaks up the scale and massing of the building. Further, the design of the open interior driveway and open plaza in front of the relocated Historic Building 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 is consistent with the City's comprehensive plan and does not reduce the levels of service as set forth in the plan.

Practical Difficulty. As mentioned above, the City's Charter Subpart B – Related Special Acts, specifically Section 2, also provides that variances may be analyzed where practical difficulties exist. The Applicant has challenging existing conditions that create a practical difficulty. First, in order to preserve and highlight the Historic Building and the Garage Structure, the Applicant will relocate them towards the frontage of Michigan Avenue. Second, the Applicant will adaptively reuse the existing foundation and underground parking for the Proposed Development. Third, the Applicant will provide the south neighbors' their requested 5-foot setback for the ground-level parking structure. Together, these challenges present practical difficulties to develop a fully compliant open court.

Despite this, for the open court 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 2,330 square foot 22'-6" tall breezeway on the ground level of the office building with approximately 10-foot-deep balconies, further setback by 9". In addition, the placement of the open internal driveway in between the office building and Historic Building provides separation between buildings consistent with historic development patterns. 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. Due to the aforementioned constraints, the Applicant cannot provide dedicated off-street loading spaces on the Property. Deliveries for the proposed office building with only a small amount of retail are not anticipated to be frequent and will likely be made by small trucks and vans. The previous proposal located a large loading zone in the east, partially on the Property and partially in the alley. Based on the City's request to avoid loading in the alley, the Applicant will work with the City to establish one (1) or two (2)

commercial freight loading spaces on Michigan Avenue in the location of the three (3) current on-street spaces fronting the Proposed Development. The commercial freight loading spaces may be used during hours as established by the City.

Also, as agreed at the January 25, 2022 Planning Board meeting, the Applicant will work with delivery companies to conduct deliveries between 9:30 am and 4:00 pm on the private driveway to internalize these activities as much as possible. These hours are outside of the morning and afternoon peak drop-off and pick-up times for the main office use and therefore will avoid conflicts.

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 private drive will be at 5.26' and the sidewalk on Michigan will slope up to 5.26' at the main entrance. The future first floor will be at 9', where BFE is 8'. Also, the height of the first floor of the office building, at 22'-6", 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. The historic building is also being raised to 9' to ensure resiliency. 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 and Garage Structure will be raised so the floors are at 9' NGVD to provide flood protection and ensure compatibility with the sidewalks for appropriate pedestrian experience. The new structure will also 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 and maintain the lobby and retail.

(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, with associated variance and waiver, embraces the character of the area with preservation of the Historic Building and Garage Structure, moving the former to prominence on Michigan Avenue and incorporating the latter as part of the café for public enjoyment. The Project also promotes quality infill redevelopment on the Property to attract much needed Class A office in a beautifully designed, light and transparent 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

cc: Michael W. Larkin, Esq.
David Butter, Esq.

CFN 2012R0744174
OR Bk 28318 Pgs 4973 - 4979; (7pgs)
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HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: September 11, 2012

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
10-11-2012
(Signature of Planning Director or Designee) (Date)
Personally known to me or Produced ID:
Notary Public, State of Florida at Large
Printed Name: Teresa Maria
My Commission Expires: (Seal) 12-2-13
This document contains 7 pages.

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

NOTARY PUBLIC STATE OF FLORIDA

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.

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

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.

l. 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

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

The foregoing instrument was acknowledged before me this 28th day of September 20 12 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.

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

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

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

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

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Exhibit B

CFN 2014R0794314
OR Bk 29394 Pgs 1805 - 1811; (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

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

MIRIAM M. MERINO
MY COMMISSION EXPIRES
November 15, 2015
#EE 142165
Bonded thru Troy Fain Insurance
NOTARY PUBLIC, STATE OF FLORIDA

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

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. <u>OUTDOOR CONDITIONS</u>

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

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: _____
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.

NOTARY PUBLIC STATE OF FLORIDA
TERESA MARIA
MY COMMISSION # FF 042188
EXPIRES: December 2, 2017
Bonded Thru Budget Notary Services

_____
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 12-2-17

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

Filed with the Clerk of the Historic Preservation Board on _____ (9-19-14)

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PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 411, 419 Michigan Avenue and 944 5 Street

FILE NO. PB21-0455

IN RE: An application has been filed requesting conditional use approval for a new 5-story development exceeding 50,000 square feet, including the use of a mechanical parking, pursuant to Chapter 118, Article IV, and Chapter 130, Article II of the City Code.

LEGAL DESCRIPTION:

Parcel 1: Lot 8, Block 83, OCEAN BEACH, FLA 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.

Parcel 2: Lot 9, Block 83, OCEAN BEACH, FLA 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.

Parcel 3: The South 50 feet of Lots 1, 2, 3, 4 and 5, of WHITHHAM'S RESUBDIVISION OF LOTS 10, 11 AND 12, IN BLOCK 83 OF OCEAN BEACH FLA. 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.

.

MEETING DATE: January 25, 2022

CONDITIONAL USE PERMIT

The applicant, 411 Michigan SOFI Owner, LLC, requested a Conditional Use approval for the construction of a new 5-story development exceeding 50,000 square feet, including the use of a mechanical parking, pursuant to Chapter 118, Article IV, and Chapter 130, Article II of the City Code. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

The property in question is located in the C-PS2, General Mixed-Use Commercial Performance Standard District;

The use is consistent with the Comprehensive Plan for the area in which the property is located;

The intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

The structures and uses associated with the request are consistent with the Land Development Regulations;

The public health, safety, morals, and general welfare will not be adversely affected;

Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

2. This Conditional Use Permit is issued to 411 Michigan SOFI Owner, LLC (the applicant) and owner of the property. Any changes in ownership or 50% (fifty percent) or more stock ownership, or the equivalent, shall require the new owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Certificate of Use/Business Tax Receipt.

3. The following shall apply to the operation of the entire project:

    a. All trash containers shall utilize rubber wheels, as well as a path consisting of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.

    b. All trash rooms shall be air conditioned and sound-proofed in a manner to be approved by staff. The doors to the trash rooms shall remain closed and secured when not in use and all trash dumpsters shall be closed at all times except when in use.

    c. 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, subject to the review and approval of staff.

    d. The property and adjacent rights-of-way be maintained clean and free from debris

    e. Except as may be required for Fire, Building, or Life Safety Code purposes, no speakers or televisions of any kind shall be affixed to, installed, or otherwise located on the exterior of the premises within the boundaries of the project, except for a distributed sound system, which may not be played louder than at an ambient volume level (i.e. at a volume that does not interfere with normal conversation), subject to the review and approval of staff.

    f. No patrons shall be allowed to queue on public rights-of-way.

g. No exterior bars or accessory outdoor bar counters shall be permitted anywhere on the premises.

h. Establishments with outdoor cafes or sidewalk café permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served in the restaurant and shall not be permitted to have outdoor speakers.

i. Commercial uses on the rooftop are prohibited.

j. Use of the rooftop shall be limited to building tenants and their guests.

4. A progress report shall be scheduled before the Planning Board 90 days after obtaining a business tax receipt (BTR).

5. The Planning Board shall retain the right to call the owner or operator back before the Board and make modifications to this Conditional Use Permit should there be valid complaints, as determined by Code Compliance, about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.

6. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.

7. 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.

8. The applicant shall address the following Transportation, Mobility, Concurrency, Delivery, and Parking requirements:

a. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.

b. Property managers and business operators for all residential and commercial uses shall ensure that deliveries are made as approved in this Conditional Use Permit. At no time shall delivery trucks block traffic flow on the public right-of-way.

c. The applicant shall submit an MOT (Maintenance of Traffic) plan to Public Works Department and Transportation Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.

d. The developer shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management Plan, prior to the issuance of a building permit.

e. The applicant shall provide on-site bicycle parking facilities to accommodate a minimum of forty (25) bicycle parking spaces.

b) That the garage shall be in operation 24 hours per day, seven days a week, as proposed by the applicant.

c) Parking for spaces with mechanical lifts shall be shall only be operated through valet parking. Valet parking shall be provided 24 hours per day, seven days a week.

d) A sufficient number of valet attendants shall be provided on site to ensure that queuing onto 5th Street or Michigan Avenue does not occur at any time.

e) The facility shall maintain adequate backup generators sufficient to power the vehicle lifts. The generators shall be maintained in proper operating condition. The generators shall be installed in accordance with Code requirements regarding minimum flood plain criteria.

f) Backing into or out of the site shall not be permitted.

a. A delivery and refuse plan, including all delivery access points and routes, as well as the location of all trash and refuse areas, shall be provided and shall be subject to the review and approval of staff.

b. Commercial deliveries and trash collection shall take place only at the designated area proposed by the applicant as shown in the plans.

c. Scheduled commercial deliveries or trash pick-up shall only be permitted between 9:30 AM and 4:00 PM.

d. There shall be no queuing of delivery, garbage, or moving trucks in the public right of way, with the exception of the portion of the loading bay identified on plans that falls within the alley.

e. Delivery trucks shall not be allowed to idle in loading areas or driveways.

f. Warning signs prohibiting horn honking, tire-screeching, or car alarm sounding shall be posted prominently by the applicant in the parking area.

9. The development shall comply with the "Green Buildings" requirements in Chapter 133, Article I of the City Code.

10. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a Building permit.

11. The applicant, operator and/or owner, both now and in the future, shall abide by all the documents and statements submitted with this application, as well as all conditions of this Order.

12. The applicant shall resolve all outstanding violations and fines on the property, if any, prior to the issuance of a building permit for the project.

13. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation

of this Conditional Use Permit and subject to the remedies as described in section 118-194, of the City Code

14. The applicant shall obtain a full building permit within 18 months from the date of approval of this Conditional Use Permit, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.

15. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

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

17. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

18. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

19. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit for inspection by the City (i.e. Planning Department, Code Compliance Department, Building Department, and Fire Department staff), to ensure compliance with the terms and conditions of this Conditional Use Permit. Failure to provide access may result in revocation of the Conditional Use Permit.

Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Chief of Planning and Sustainability
for Chairman

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio A. Madan, Chief of Community Planning and Sustainability for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

_____
Notary:
Print Name:
[NOTARIAL SEAL] Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department _____ ( )

Filed with the Clerk of the Planning Board on _____ ( )

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: April 12, 2022

PROPERTY/FOLIO: 411 Michigan Avenue, 419 Michigan Avenue & 944 5th Street / 02-4203-010-0030

FILE NO: HPB21-0486

IN RE: An application has been filed by 411 Michigan SOFI Owner LLC, requesting a Certificate of Appropriateness for the total demolition of one existing building, the renovation, restoration and relocation of one existing building, the construction of a new office building, a variance to eliminate the open court requirement and one or more waivers.

LEGAL: The south 50 feet of Lots 1 thru 5 & Lots 8 & 9, Block 83, of Withams Re-Subdivision, according to the Plat Thereof, as Recorded in Plat Book 9, Page 10, of the Public Records of Miami-Dade County, Florida.

O R D E R

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 not consistent with Sea Level Rise and Resiliency Review Criteria (1) in Section 133-50(a) of the Miami Beach Code.

2. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.

3. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code.

4. Is not consistent with Certificate of Appropriateness Criteria ‘b’ in Section 118-564(a)(3) of the Miami Beach Code.

5. Is consistent with Certificate of Appropriateness Criteria 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 and 133-50(a) 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. The primary structure on site shall be fully renovated and restored, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board; at a minimum, this shall include the following:

i. All through-the-wall and through-the-window air conditioning units shall be removed and replaced with a central air conditioning system, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

ii. The existing non-original windows shall be replaced with new impact resistant windows and shall incorporate a muntin configuration that is consistent with available historical documentation, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

iii. There shall be no TCO or CO issued for the new office addition until the exterior restoration of the of the 1934 building, as approved by the Board, is substantially complete. Staff will perform an inspection of the property to ensure substantial completeness of the approved restoration prior to the approval of any TCO or CO for the new office addition.

b. The 3-level parking lift structure and associated drive aisle are not approved and shall be reviewed by the Historic Preservation Board at a future meeting.

c. The final details of the transition from the public sidewalks along Michigan Avenue and Fifth Street to the office building terraces shall be further refined, 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 transition from the sidewalk to terrace of the relocated 1934 building shall be further refined, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board. This may include a different railing type and/or the introduction of an intermediate terrace or planter.

e. The architect shall explore ways to minimize the impact of the southern balcony structures of the new office building on the Contributing 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.

f. All allowable encroachments at the roof level be reduced to the greatest extent possible, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

g. A plaque or historic display describing the history and evolution of the buildings shall be placed on the site and shall be located in a manner visible from the right of way, prior to the issuance of a Certificate of Occupancy for 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. 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.

i. 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. In accordance with Section 130-101(d) of the City Code, the requirement pertaining to providing off-street loading spaces is hereby waived, provided that a detailed plan delineating on-street loading is approved by the Parking Department.

3. 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 issuance of a Building Permit, the applicant shall provide a Tree Report prepared by a Certified Arborist for any existing canopy shade trees with a DBH of 3” or greater located in public or private property, which may be scheduled for removal or relocation for the review and approval of the City of Miami Beach Urban Forester.

   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.

   c. The project design shall minimize the potential for a project causing a heat island effect on site.

   d. Cool pavement materials or porous pavement materials shall be utilized.

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:

1. A variance to reduce by 450 sq. ft. the minimum required open court area of 450 sq. ft. in order to eliminate the open court requirement.

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 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.

The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.

C. The Board hereby **Approves** the requested variances 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.

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. The applicant agrees and shall be required to provide access to areas subject to this approval (not including private residences or hotel rooms) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the plans approved by the Board and conditions of this order.

B. The issuance of a building permit is contingent upon meeting Public School Concurrency requirements, if applicable. Applicant shall obtain a valid School Concurrency Determination Certificate (Certificate) issued by the Miami-Dade County Public Schools. The Certificate shall state the number of seats reserved at each school level. In the event sufficient seats are not available, a proportionate share mitigation plan shall be incorporated into a tri-party development agreement and duly executed. No building permit may be issued unless and until the applicant obtains a written finding from Miami-Dade County Public Schools that the applicant has satisfied school concurrency.

C. The relocation of any tree shall be subject to the approval of the Environment & Sustainability Director and/or Urban Forester, as applicable.

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

E. All applicable FPL transformers or vault rooms and backflow prevention devices shall be located within the building envelope with the exception of the valve (PIV) which may be visible and accessible from the street.

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.

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

H. 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.

I. 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.

J. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

K. 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.

L. Upon the issuance of a final Certificate of Occupancy or Certificate of Completion, as applicable, the project approved herein shall be maintained in accordance with the plans approved by the board and shall be subject to all conditions of approval herein, unless otherwise modified by the Board. Failure to maintain shall result in the issuance of a Code Compliance citation, and continued failure to comply may result in revocation of the Certificate of Occupancy, Completion and Business Tax Receipt.

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 **"Michigan & 5th", as prepared by CUBE 3, LLC, dated March 14, 2022**, 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
HISTORIC PRESERVATION & ARCHITECTURE OFFICER
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, Historic Preservation & Architecture Officer, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She 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 _____ ( )

Exhibit E

In an effort to enhance the pedestrian experience, the design includes a landscaped series of steps at the base of the new Office building.

CUBE 3

CUBE 3, LLC
111 SW 3rd Street, Floor 4
Miami, Florida 33133
License No. L18000278579

Jonathan W. Cardello, AIA

FL License No. AR93391

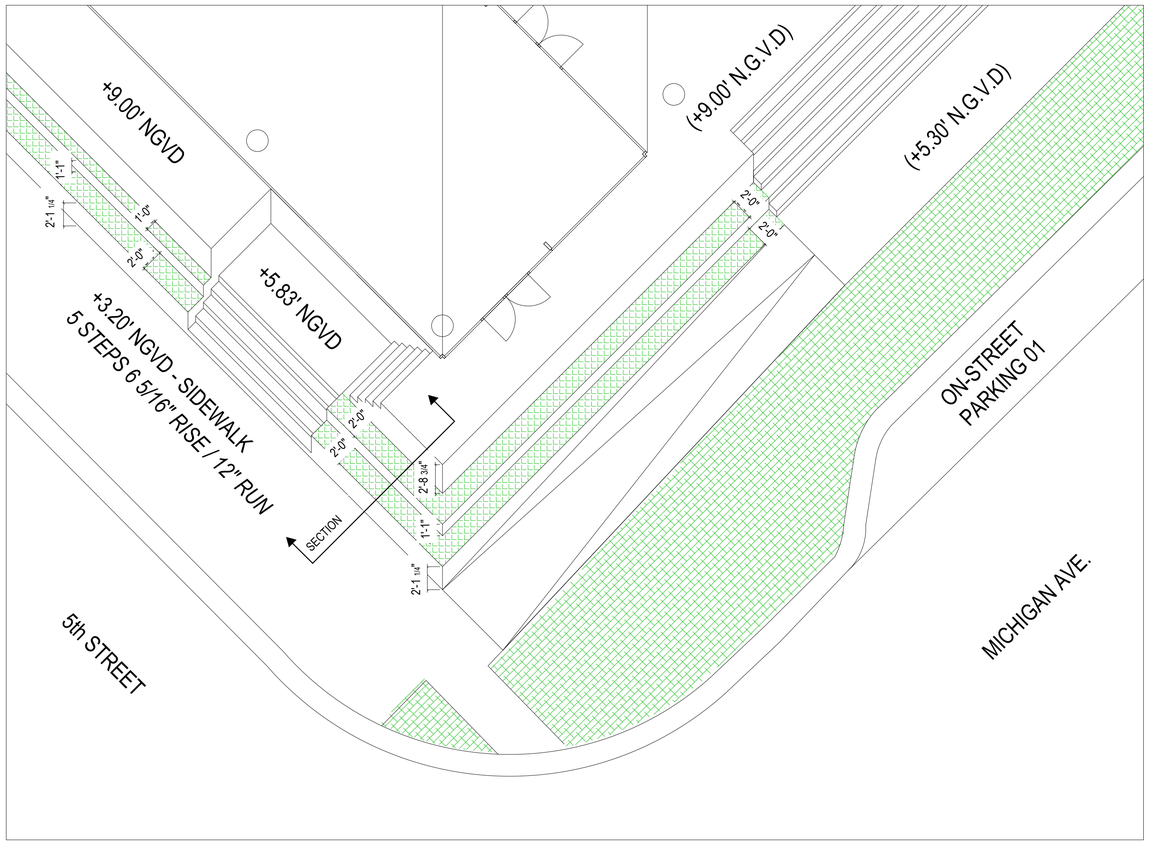
0' 20' 40' 80'

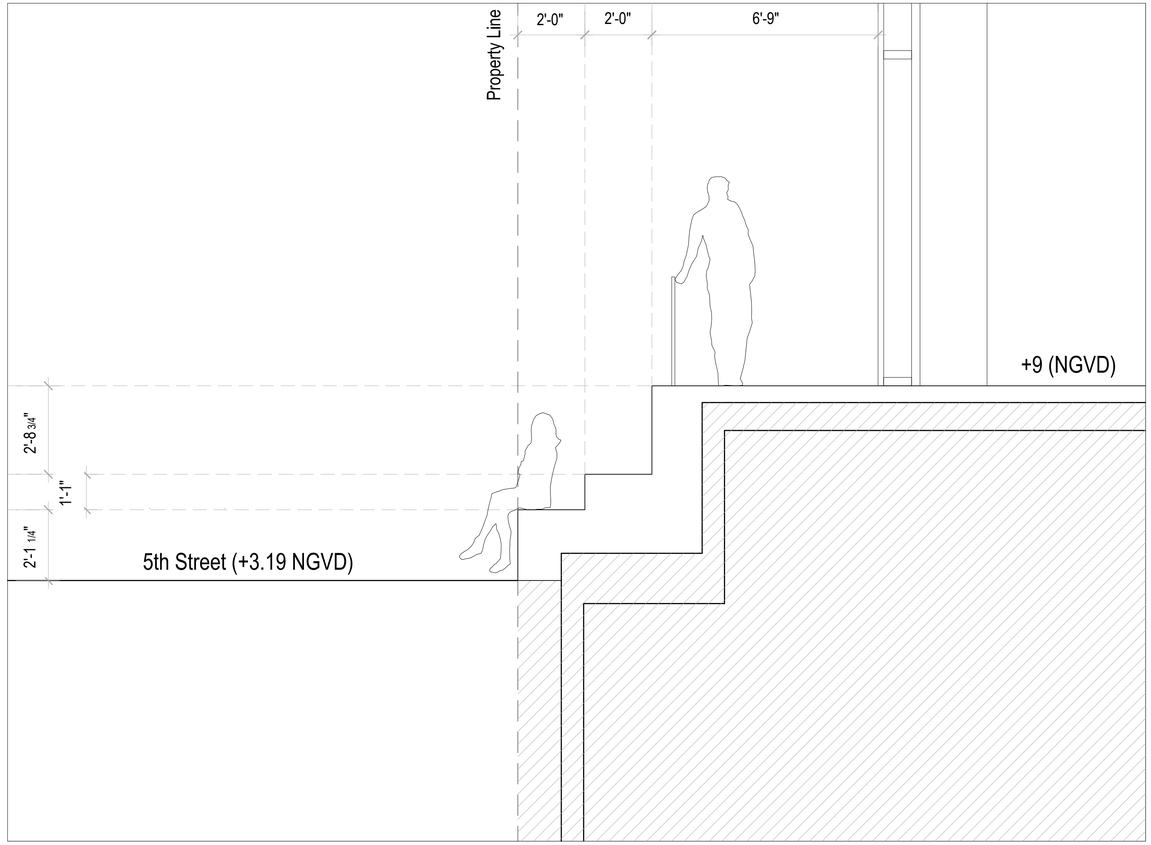
411 Michigan Avenue
Miami Beach, Florida

Street Frontage Experience
Scale: NTS

Final Submittal
7 February 2022

A2.5





CUBE 3, LLC
111 SW 3rd Street, Floor 4
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License No. L18000278579

Jonathan W. Cardello, AIA

FL License No. AR93391

0' 20' 40' 80'

411 Michigan Avenue

Miami Beach, Florida

Street Frontage Experience

Scale: NTS

Final Submittal
7 February 2022

A2.6

Exhibit F

CUBE 3, LLC
111 SW 3rd Street, Floor 4
Miami, Florida 33133
License No. L18000278579

Jonathan W. Cardello, AIA

FL License No. AR93391

Parking Requirements - Chapter 130 | Chapter 142-702

Parking District		Parking District No. 01		
Office or Office Building	Ground Floor | One Space per 300 square feet of floor area	1,861 SF 6 Parking Spaces		
	Upper Floors | One Space per 400 square feet of floor area	32,906 SF 82 Parking Spaces		
	Historic Property Ground Floor | One Space per 300 square feet of floor area	681 SF 2 Parking Spaces		
	Office or Office Building Required Parking =	**88 Parking Spaces**		
Retail Parking	Ground Floor | One Space per 300 square feet of floor area	3,003 SF 10 Parking Spaces		
	Retail Required Parking =	**10 Parking Spaces**		
	Total Parking Required =	**98 Parking Spaces**		
	Total Parking Required (after reductions) =	**72 Parking Spaces**	**72 Parking Spaces Provided**	
Mechanical Parking - Sec. 130-38	Two Sets of Schematics must be presented showing traditional parking and parking utilizing Mechanical Lifts			
Electric Vehicle Parking - Sec. 130-39	2.00% of the Required Parking	**2 Electric Vehicle Parking Spaces**	**5 Electric Vehicle Parking Spaces**	
Alternative Parking Incentives - Sec. 130-40	**Minimum off-street parking may be reduced as follows:**			
Bicycle Parking - Long-Term	off-street parking may be reduced by one off-street parking space for every five long-term bicycle parking spaces; not to exceed 15 percent of the off-street parking spaces that would otherwise be required		**25 Bicycle Parking - Long-Term**	**Reduction = 5 spaces**
Bicycle Parking - Short-Term	off-street parking may be reduced by one off-street parking space for every ten short-term bicycle parking spaces; not to exceed 15 percent of the off-street parking spaces that would otherwise be required		**10 Bicycle Parking - Short-Term**	**Reduction = 1 space**
Carpool/Vanpool Parking	off-street parking may be reduced by three off-street parking space for every one parking space reserved for carpool or vanpool vehicle registered with South Florida Commuter Services; not to exceed 10 percent of the off-street parking spaces that would otherwise be required		**3 Carpool/Vanpool Parking**	**Reduction = 9 spaces**
Drop-off and loading for transportation for compensation vehicles	Not Applicable		**0 Transportation Loading**	
Scooter, Moped and Motorcycle Parking	off-street parking may be reduced by one off-street parking space for every three scooter, moped or motorcyble parking space; not to exceed 15 percent of the off-street parking spaces that would otherwise be required		**9 Scooter, Moped and Motorcycle**	**Reduction = 3 space**
Showers	The minimum off-street parking requirements for noresidential uses that provide showers or changing facilities for bicyclists may be reduced by two off-street parking spaces for each separate shower facility up to a maximum of eight parking spaces.		**4 Showers**	**Reduction = 8 spaces**
				Total Reduction = 26 Spaces
Off-street parking space dimensions	**Minimum off-street parking may be reduced as follows:**			
Standard Space Dimensions	8'-6" x 18'--0"		**8'-6" x 18'-0"**	
Standard Parrallel Parking Space Dims.	8'-6" x 21'-0"			
Interior Drive Aisles	**Minimum off-street parking may be reduced as follows:**			
90 degree parking	22 feet, with columns parallel to the interior drive on each side of the required drive, set back an additional one foot six inches, measured from the edge of the required drive to the face of the columns			
45 degree parking	11'-0"			
60 degree parking	17'-0"			
Drives	**Minimum off-street parking may be reduced as follows:**			
	Drives shall have a minimum width of 22 feet for two-way traffic		**22'-0"**	

0' 20' 40' 80'

411 Michigan Avenue
Miami Beach, Florida

Parking Reductions Chart
Scale: 1" = 40'-0"

Final Submittal
16 May 2022

A2.2

Exhibit G

Commercial Height Limits for Office Uses – CPS-2 District

ORDINANCE NO. 2022-4471

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 18, ENTITLED "PS PERFORMANCE STANDARD DISTRICT," BY AMENDING SECTION 142-698, ENTITLED "COMMERCIAL PERFORMANCE STANDARD AREA REQUIREMENTS," TO MODIFY THE MAXIMUM BUILDING HEIGHT FOR OFFICE USES ON CERTAIN PROPERTIES; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, economic trends indicate that demand has increased for Class A office space within the City, as businesses relocate from other states to Miami Beach; and

WHEREAS, Class A office space tends to require higher floor-to-ceiling heights than other classes of office space; and

WHEREAS, the development of Class A office space will promote the growth, diversification, and resiliency of the City's economy; and

WHEREAS, the 5th Street corridor is an ideal area for the development of new Class A office space due to its accessibility to the regional transportation network; and

WHEREAS, the proposed changes below are necessary to promote the development of Class A office space within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter 142, "Zoning Districts and Regulations," at Article II, entitled "District Regulations," at Division 18, entitled "PS Performance Standard District" of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

CHAPTER 142
ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE II. DISTRICT REGULATIONS

* * *

DIVISION 18. PS PERFORMANCE STANDARD DISTRICT

* * *

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

* * *

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

	Commercial Subdistricts			
Performance Standard	C-PS1	C-PS2	C-PS3	C-PS4
Minimum lot area	6,000 square feet	6,000 square feet	6,000 square feet	6,000 square feet
Minimum lot width	50 feet	50 feet	50 feet	50 feet
Maximum building height	40 feet; 75 feet for the Block 51 Properties, the Block 51 Swap Property, Block 52 Properties, and Block 1 Properties	50 feet—East of Lenox Avenue 75 feet—West of Lenox Avenue	Non-oceanfront—80 feet Oceanfront—100 feet	150 Notwithstanding the above, the design review board or historic preservation board, in accordance with the applicable review criteria, may allow up to an additional five feet of height, as measured from the base flood elevation plus maximum freeboard, to the top of the second floor slab. This provision shall not apply to existing historic districts or existing overlay districts (existing as of 7/26/2017), or commercial buildings immediately adjacent to residential district not separated by a street. However, an applicant may seek

				approval from the historic preservation board or design review board, as may be applicable, to increase height in accordance with the foregoing within any historic district or overlay district created after 7/26/2017
Maximum floor area ratio	1.0; 1.5 for the Block 51 Properties and Block 52 Properties, and 2.0 for the Block 1 Properties	2.0	2.5	2.5
Residential and/or hotel development	Pursuant to all R-PS2 district regulations, except maximum building height for residential and mixed use buildings shall be 75 feet	Pursuant to all R-PS3 district regulations, except maximum building height for residential and mixed use buildings shall be 75 feet	Pursuant to all R-PS4 district regulations except maximum floor area ratio shall be 2.5; on the Goodman Terrace and Hinson Parcels, the FAR shall be that necessary to achieve 305,500 sq. ft. (estimated at 3.2 FAR), and 300 ft. height maximum for the Goodman Terrace and Hinson Parcels, and open space ratio 0.60 measured at or above grade	Pursuant to all R-PS4 district regulations, except maximum floor area ratio shall be 2.5, and open space ratio 0.60 measured at or above grade
Minimum apartment unit	New construction—	New construction—	New construction—	New construction—

size (square feet)	650 Rehabilitated buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	600 Rehabilitated buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	550 Rehabilitated buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	550 Rehabilitated buildings—400 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400
Average apartment unit size (square feet)	New construction—900 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	New construction—850 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400	New construction—800 Rehabilitated buildings—550 Non-elderly and elderly low and moderate housing—400 Workforce housing—400	New construction—800 Rehabilitated buildings—550 Non-elderly and elderly low and moderate housing—400 Workforce housing—400
Minimum floor area per hotel unit (square feet)	15% = 300—335 square feet; 85% = 335 + square feet in all districts.			
Minimum parking requirements	Pursuant to chapter 130 and section 142-702 requirement.			
Minimum off-street loading	Pursuant to chapter 130.			
Signs	Pursuant to chapter 138.			

(c) Notwithstanding the above height restrictions, existing structures within a local historic district are subject to section 142-1161.

(d) Notwithstanding the above floor area ratio limits, 75 spaces of required parking located on Block 51 for the Retail Parcel pursuant to a covenant under section 130-36, shall not be counted as permitted floor area. Further, the floor area on the Block 51 Properties and the Block 51 Swap Property may be distributed among such properties by covenant in lieu of unity of title; and the floor area on the Block 1 Properties may be distributed among such properties within the block by covenant in lieu of unity of title.

(e) Notwithstanding the building height regulations set forth above, for unified development sites in the CPS-2 district with a lot line on the south side of 5th Street, which are located west of Jefferson Avenue, the maximum building height for office buildings is 75 feet.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. CODIFICATION.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as

amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this 9 day of February 2022.

Dan Gelber, Mayor

ATTEST:

FEB 11 2022

Rafael E. Granado, City Clerk

APPROVED AS TO FORM AND LANGUAGE AND FOR EXECUTION

City Attorney NK 10-26-21 Date

First Reading: December 8, 2021
Second Reading: January 20, 2022

Verified by:
Thomas R. Mooney, AICP
Planning Director

MIAMI BEACH INCORPORATED MARCH 26 1915

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MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager
DATE: February 9, 2022

1:50 p.m. Second Reading Public Hearing

SUBJECT: COMMERCIAL HEIGHT LIMITS FOR OFFICE USES - CPS-2 DISTRICT
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 18, ENTITLED "PS PERFORMANCE STANDARD DISTRICT," BY AMENDING SECTION 142-698, ENTITLED "COMMERCIAL PERFORMANCE STANDARD AREA REQUIREMENTS," TO MODIFY THE MAXIMUM BUILDING HEIGHT FOR OFFICE USES ON CERTAIN PROPERTIES; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the City Commission adopt the subject Ordinance.

BACKGROUND/HISTORY

On July 28, 2021, at the request of former Commissioner Michael Gongora, the City Commission referred a discussion item to the Land Use and Sustainability Committee (LUSC) pertaining to Class A Office incentives in the CPS-2 district (item C4S). The LUSC discussed the item on September 14, 2021 and recommended that the City Commission refer the attached draft Ordinance to the Planning Board. Additionally, Commissioner Mark Samuelian became a co-sponsor of the item.

On October 13, 2021, the City Commission referred the proposed Ordinance to the Planning Board (item R9 AB).

ANALYSIS

PLANNING ANALYSIS

The property at 411-419 Michigan Avenue property is located within the C-PS2 zoning district and is within the boundaries of the Ocean Beach Local Historic District. The unified corner site contains an abandoned construction site on the lots fronting 5th Street and two contributing buildings on the lot fronting Michigan Avenue. The attached draft Ordinance was prepared by the representative of the owner of the property, who is seeking to develop a Class A office

development on the subject site.

The proposal includes a height increase for properties with a C-PS2 zoning designation on the south side of 5th Street, to the west of Jefferson Avenue, in order to incentivize office uses (see attached zoning and historic districts maps). While this area currently permits a maximum height of 75'-0" for hotel and residential development, office buildings are limited to a maximum height of 50'-0". The proposal would allow office buildings to be developed at the same 75'-0" height limit as residential and hotel developments. The area east of Michigan Avenue and two lots fronting Lennox Avenue are located within the Ocean Beach Historic District.

The proposed increase in height for office use buildings would allow for the expanded interior floor to ceiling space being sought by office users and office developers. From a practical standpoint, when parking and mixed-use pedestals are included, the current height limitations in the aforementioned areas limit the interior ceiling heights for all uses. This limits the viability for the development of Class A office space, which the City has been seeking to incentivize.

Staff believes that the subject Ordinance is good policy and will be an incentive that will help to diversify the City's economy. The proposal is also consistent with the concept of transit-oriented development (TOD), which is ideal for the 5th Street commercial corridor.

Given that residential and hotel uses are already permitted to be developed at 75 feet, this Ordinance does not result in an increase in the developable scale of buildings for the affected area, as the 75-foot height limit is compatible with the surrounding context. Additionally, the Design Review Board or the Historic Preservation Board, as applicable, will consider the design, massing and scale of any proposed new structure as part of their review.

The proposed Ordinance is also consistent with other recently adopted Code amendments in Sunset Harbour, Alton Road, and Terminal Island, which are intended to incentivize office uses. Since allowing for modest height increases in these areas earlier this year, the City's land use boards have approved two Class A office developments, with more expected in the coming year. The proposed Code amendment would be applicable to a proposed office development that is expected to be considered by the Planning Board and the Historic Preservation Board early next year. Given the existing built environment of this area, it is unlikely that this Ordinance would result in the development of more than one or two new office buildings.

PLANNING BOARD REVIEW

On November 30, 2021, the Planning Board held a public hearing and transmitted the Ordinance to the City Commission with a favorable recommendation (5-0).

UPDATE

On December 8, 2021, the subject Ordinance was approved at First Reading. As part of the approval at First Reading, the item proposer was requested to further study the setbacks of the proposal, including the manner in which the project engages the abutting sidewalks. On January 20, 2022, at the request of the item sponsor, Second Reading was opened and continued to February 9, 2022.

The developer for the project has provided a context rendering, as well as progress renderings and plans pertaining to the first level of the project. The revised plan and elevations do a much better job of engaging the abutting sidewalk. The developer will be further refining this portion of the project in advance of the Historic Preservation Board application.

Based upon the progress made regarding the first level, the Administration does not recommend any changes to the legislation regarding setbacks.

SUPPORTING SURVEY DATA

Encourage and Attract Class A Office Space

CONCLUSION

The Administration recommends that the City Commission adopt the subject Ordinance.

Applicable Area

South Beach

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?	**Does this item utilize G.O. Bond Funds?**
Yes	No

Legislative Tracking

Planning

Sponsor

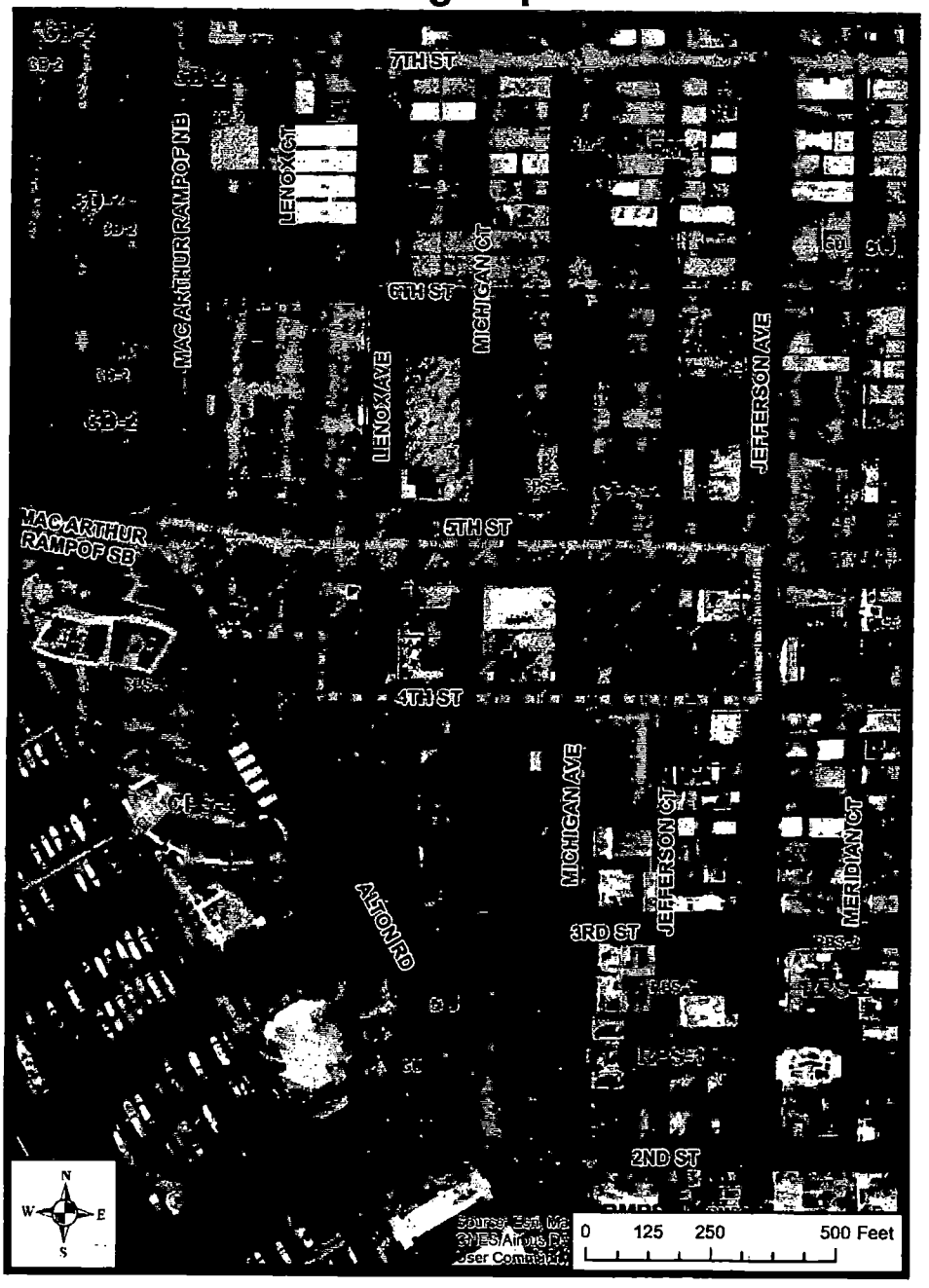
Commissioner Mark Samuelian

ATTACHMENTS:

Description

- Ordinance
- MAPS
- Additional Information
- Context Rendering
- Updated Perimeter Perspectives and Plans

Zoning Map


7TH ST
LENOX CT
MACARTHUR RAMP OF NB
6TH ST
MICHIGAN CT
LENOX AVE
JEFFERSON AVE
MACARTHUR RAMP OF SB
5TH ST
4TH ST
MICHIGAN AVE
JEFFERSON CT
MERIDIAN CT
3RD ST
ALTON RD
2ND ST
N
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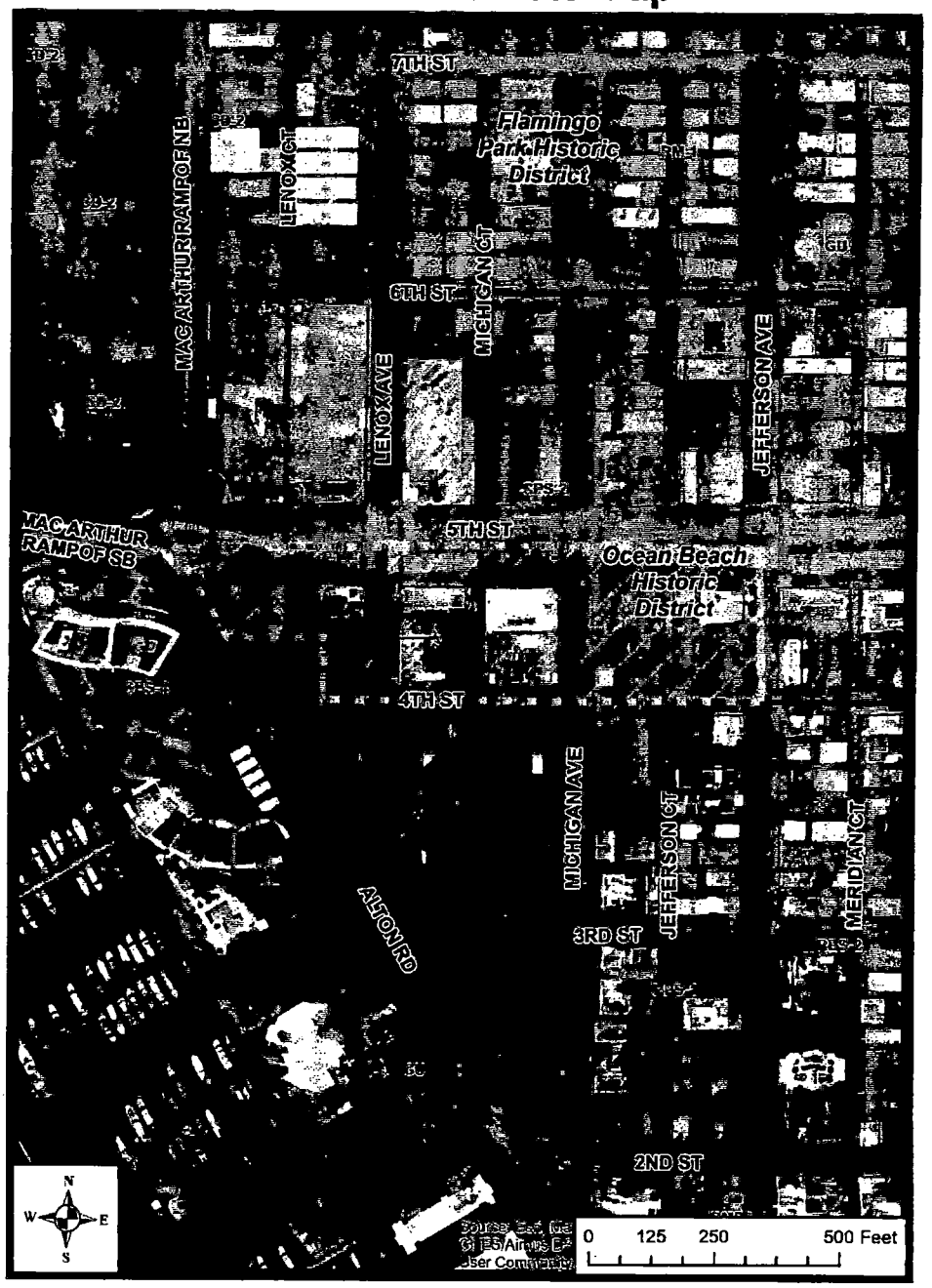
S
0 125 250 500 Feet

Historic Districts Map



July 28, 2021

Mayor and City Commissioners
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Re: **Consent Item C4S – CPS-2 Height Amendment to Attract Class A Office**
- LETTER OF SUPPORT

Dear Mayor and Commissioners:

On behalf of the South of Fifth Neighborhood Association Inc. (SOFNA), we support the CPS-2 height amendment to allow Class A office use at 75 feet on the south side of 5th Street at Michigan Avenue. There is a scarcity of quality office uses and this is the right location for such use, especially as residential and hotel uses are already allowed at 75 feet. Class A requires higher floor to ceiling heights to be successful, and we need to attract office development for the continued stability and prosperity of the neighborhood and the City. The developers of a Class A office building at 411 Michigan Avenue presented the proposed amendment and a beautifully-designed office building at SOFNA Board of Directors and general SOFNA membership meetings. The plan shows how the added height is fully compatible along this major commercial corridor in our City.

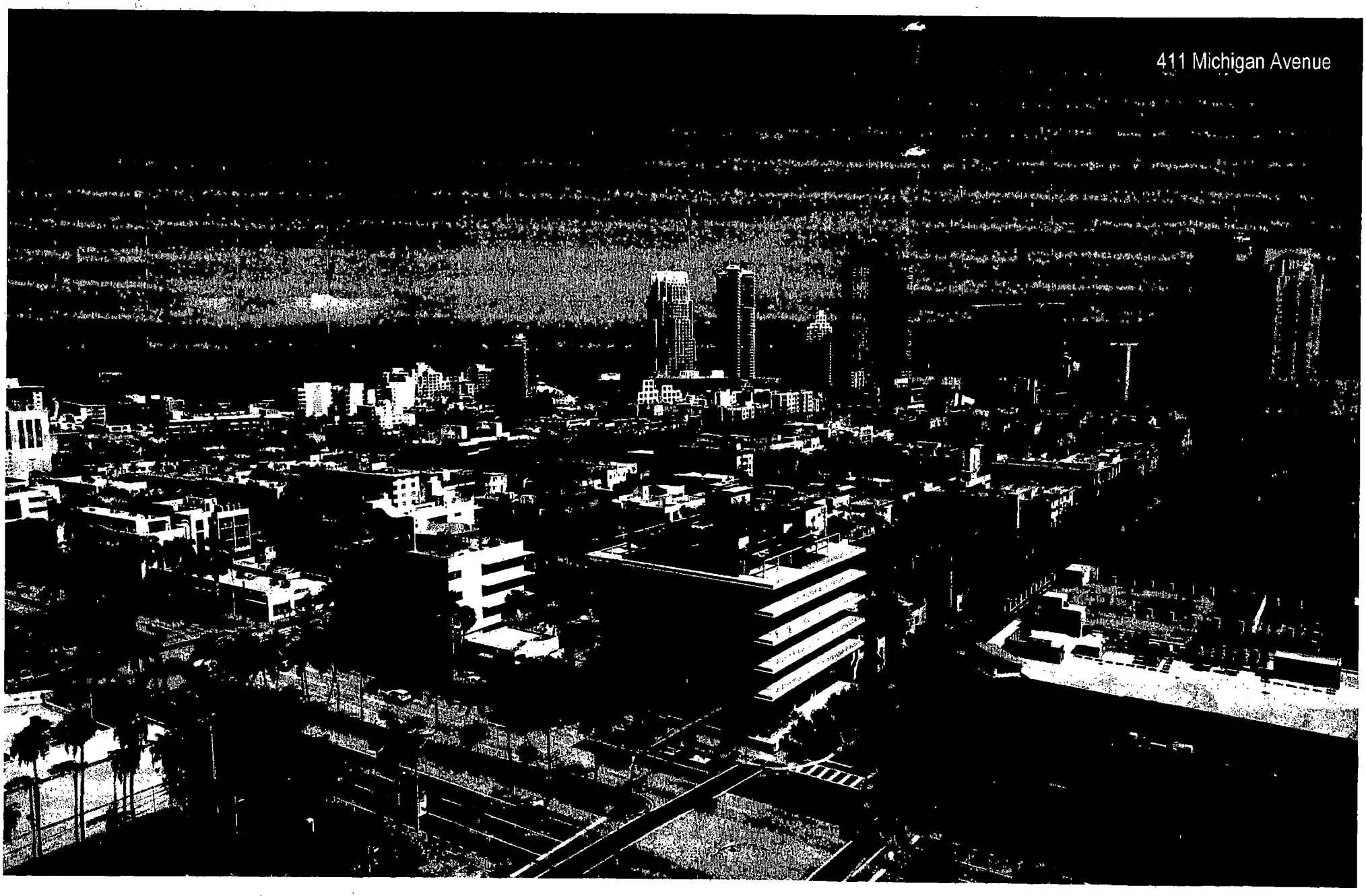
We fully support item C4S and urge you to refer the Code Amendment to the Land Use and Sustainability Committee.

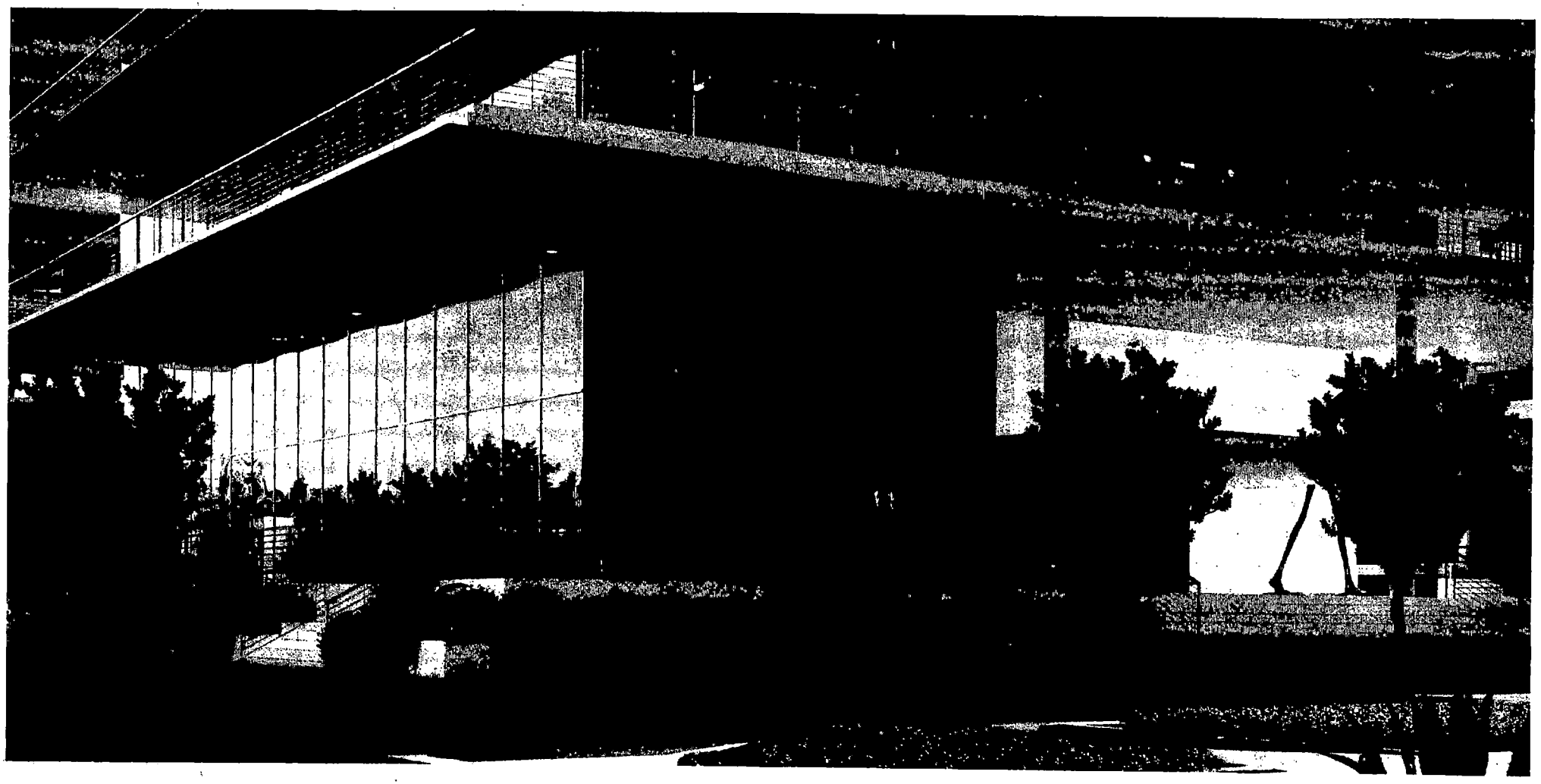
Sincerely,

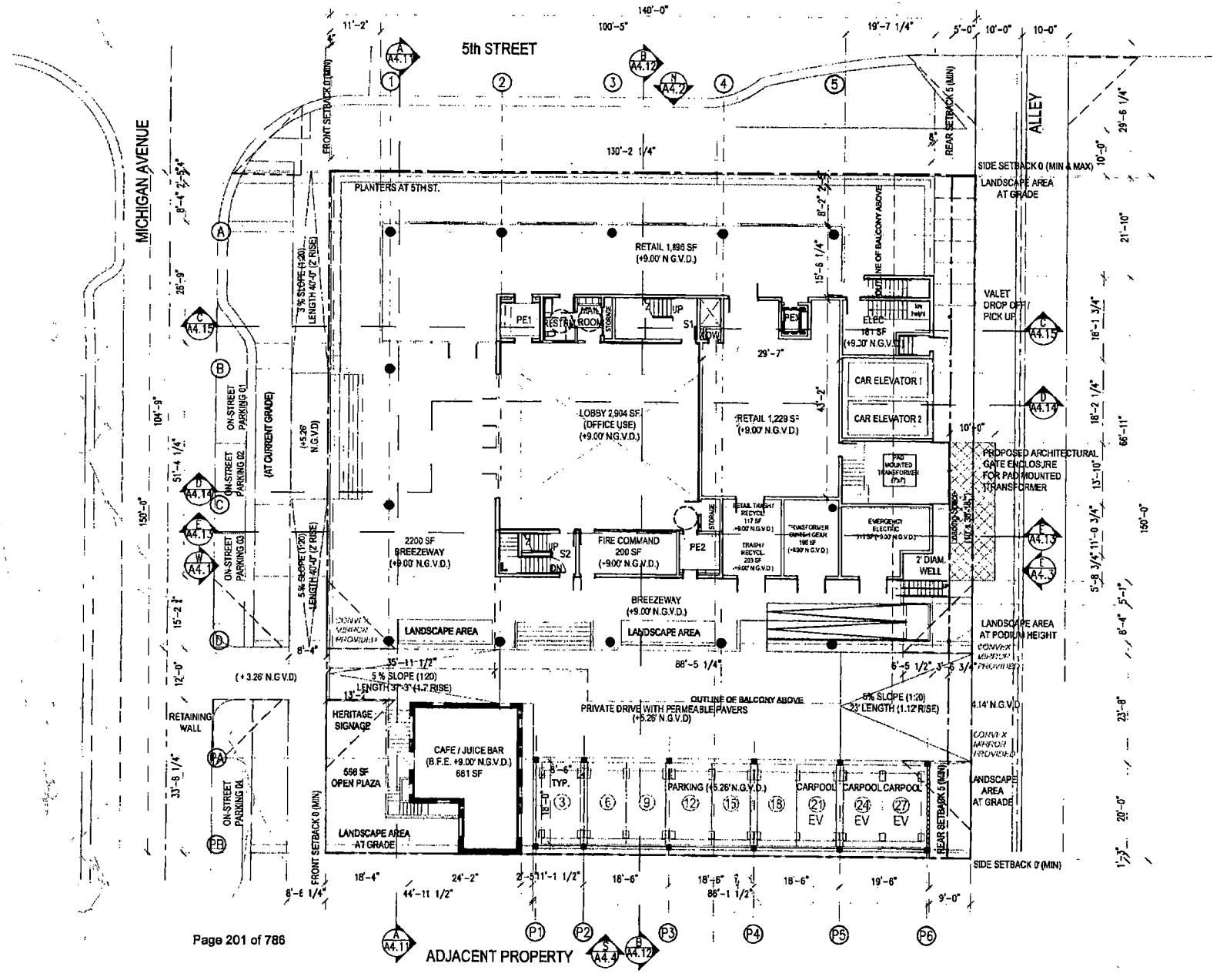
alyson herman (Jul 28, 2021 09:32 EDT)

Alyson Herman, President
South of Fifth Neighborhood Association Inc.

cc: Alina T. Hudak, City Manger
Thomas Mooney, Planning Director


411 Michigan Avenue





CUBE 3

CUBE 3, LLC
111 SW 3rd Street, Floor 4
Miami, Florida 33133
License No. L15000276579

Jonathan W. Cardello, AIA

FL License No. AR93391

Digitally signed by Jonathan Cardello
Date: 2021.12.03 13:57:22 -05'00'

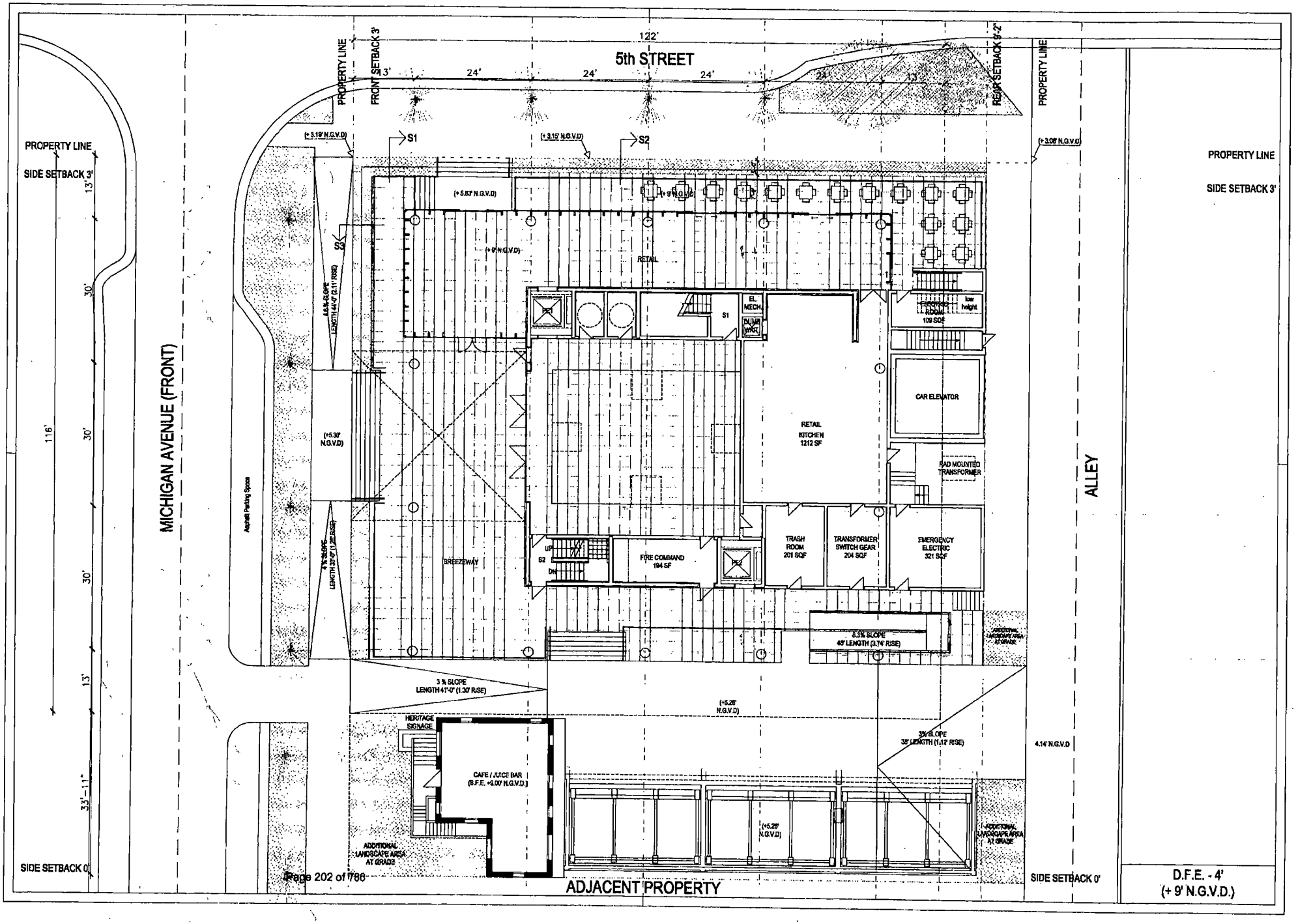
0' 10' 20' 40'

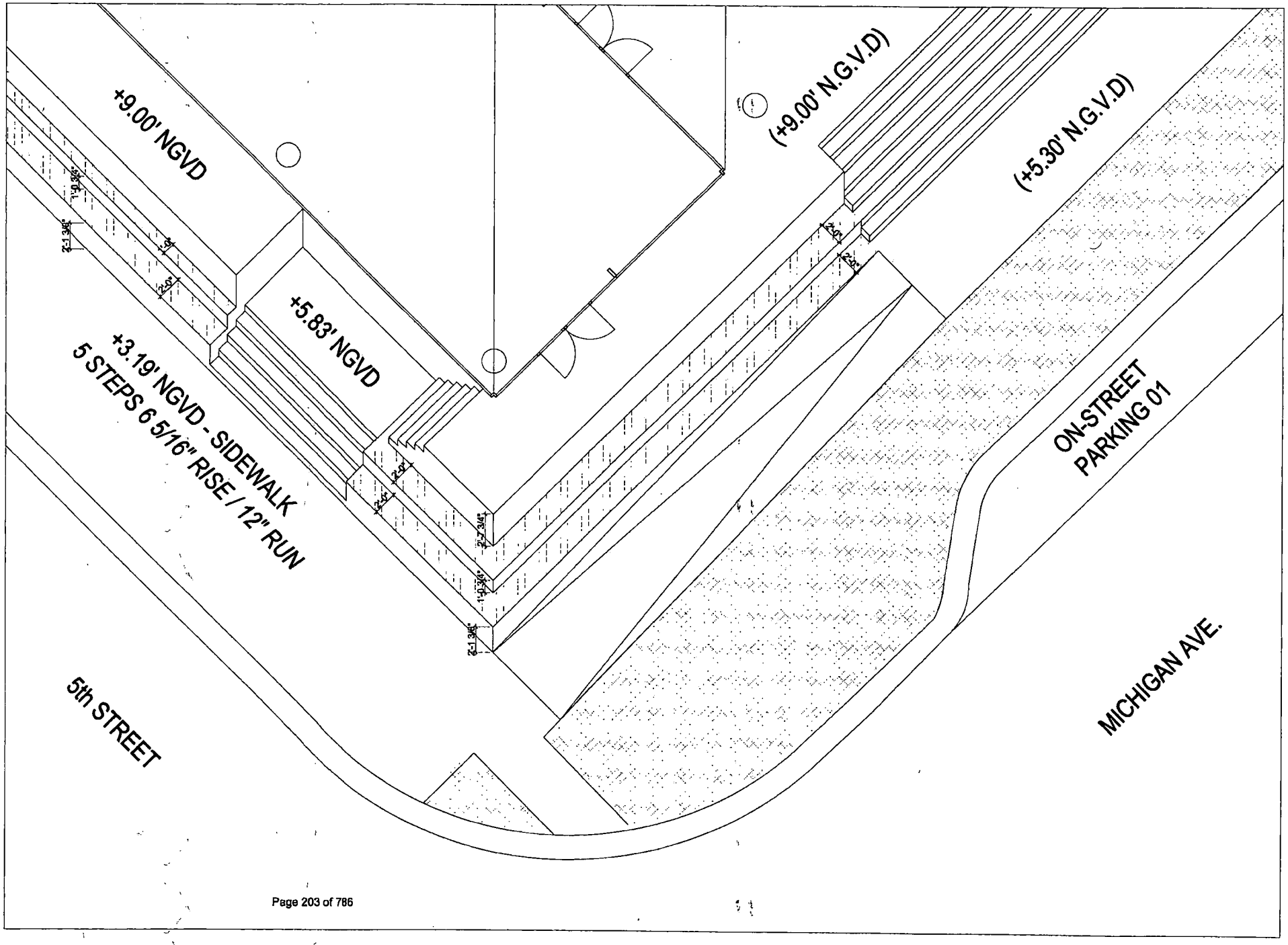
411 Michigan Avenue
Miami Beach, Florida

Ground Level Plan
Scale: 1" = 20'-0"

Final Submittal
6 December 2021

A3.3


5th STREET
122'
PROPERTY LINE
FRONT SETBACK 3'
REAR SETBACK 9'-2"
PROPERTY LINE
SIDE SETBACK 3'
MICHIGAN AVENUE (FRONT)
ALLEY
PROPERTY LINE
SIDE SETBACK 3'
SIDE SETBACK 0'
SIDE SETBACK 0'
ADJACENT PROPERTY
S1
S2
S3
RETAIL
RETAIL KITCHEN 1212 SF
CAR ELEVATOR
ELECTRICAL ROOM 109 SQF
EL. MECH.
DUMB WAIT
RAD MOUNTED TRANSFORMER
TRASH ROOM 201 SQF
TRANSFORMER SWITCH GEAR 204 SQF
EMERGENCY ELECTRIC 321 SQF
FIRE COMMAND 194 SF
BREEZEWAY
CAFE / JUICE BAR (B.F.E. +4.00' N.G.V.D.)
HERITAGE SIGNAGE
ADDITIONAL LANDSCAPE AREA AT GRADE
Asphalt Parking Spaces
8.3% SLOPE 49' LENGTH (3.74' RISE)
3 % SLOPE LENGTH 41'-0" (1.20' RISE)
3% SLOPE 39' LENGTH (1.17' RISE)
4.14' N.G.V.D
D.F.E. - 4'
(+ 9' N.G.V.D.)


+9.00' NGVD
(+9.00' N.G.V.D)
(+5.30' N.G.V.D)
+5.83' NGVD
+3.19' NGVD - SIDEWALK
5 STEPS 6 5/16" RISE / 12" RUN
ON-STREET
PARKING 01
5th STREET
MICHIGAN AVE.

CUnited Unions, Inc. v. District of Columbia Bd. of Zoning Adjustment
D.C.,1989.

District of Columbia Court of Appeals.
UNITED UNIONS, INCORPORATED, Petitioner,
v.
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent.
Board of Trustees of the Corcoran Gallery of Art, Intervenor.
No. 88-598.

Argued Dec. 16, 1988.
Decided Feb. 10, 1989.

Owner of a structure adjacent to a public art gallery appealed from a decision of the District of Columbia Board of Zoning Adjustment allowing a proposed addition to the gallery and granting special exception and variances to permit construction according to the submitted design. The Court of Appeals, Mack, J., held that: (1) Board of Zoning Adjustment's findings and conclusions were supported by substantial evidence; (2) historic landmark status of building was an exceptional situation justifying variances; and (3) proposed parking facility within addition would not violate zoning requirements.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 535

414 Zoning and Planning
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k535 k. Evidence in General. Most Cited Cases
Traffic expert who evaluated adverse impact on local traffic patterns of proposed addition to art gallery, for which special exception and variances were sought, had adequate basis for his opinions; expert indicated he had done physical counts of traffic flow through intersection many times and that reading of traffic flow on particular date was only the most recent measurement, expert was properly concerned with effect of traffic flow during peak hours, rather than off-peak hours, and his reliance on figures which were latest available at the time of his testimony was appropriate, particularly absent evidence that conditions had changed sufficiently to undermine those findings during short intervening period.

[2] Zoning and Planning 414 544

414 Zoning and Planning
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k544 k. Findings and Reasons for Decision. Most Cited Cases
Board of Zoning Adjustment's finding that proposed addition to art gallery for which variances and special exceptions were sought would not significantly affect traffic flow in the area were supported by substantial evidence presented by applicant's expert, and it was not required to explain why it favored that evidence over contrary evidence; findings articulated in clear, certain and express terms the Board's basis for decision and there was obvious rational connection between findings and decision.

[3] Zoning and Planning 414 435

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(C) Proceedings to Procure
414k435 k. Evidence and Fact Questions. Most Cited Cases
Board of Zoning Adjustment did not breach substantial evidence requirement in failing to obtain written review of proposed development from department of public works where, although office of planning received no report from department of public works, it did independently evaluate proposal and consult with department by telephone, which, when considered with its primary reliance on findings of traffic expert, satisfied substantial evidence requirement for approving planned development.

[4] Zoning and Planning 414 503

414 Zoning and Planning

414IX Variances or Exceptions
414IX(A) In General
414k502 Particular Structures or Uses
414k503 k. Architectural or Structural Designs in General. Most Cited Cases
Special status of gallery's original structure as a registered historic landmark requiring an addition consistent with the original plan constituted a "special circumstance" justifying a special exception and variances for additions to the building.

[5] Zoning and Planning 414 ⚿509

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k502 Particular Structures or Uses
414k509 k. Garages and Parking Lots. Most Cited Cases
A proposed parking facility within an addition to a gallery for which a special exception and variances were granted did not violate local zoning regulation requiring that the maximum number of parking spaces provided equal the minimum number required, which did not apply where the proposed principal use and parking facilities occupied the same lot and the same structure as the principle special purpose use.

***314** Benny L. Kass, with whom Catherine Haley Rost, Washington, D.C., was on the brief, for petitioner.
Frederick D. Cooke, Jr., Corp. Counsel, and Charles L. Reischel, Deputy Corp. Counsel, Washington, D.C., filed a Statement in Lieu of Brief, for respondent.
Christopher H. Collins, with whom Whayne S. Quin, C. Francis Murphy, and Edward L. Donohue, Washington, D.C., were on the brief, for intervenor.

Before ROGERS, Chief Judge, and MACK and TERRY, Associate Judges.

MACK, Associate Judge:
Petitioner United Unions, Inc., the owner of a structure adjacent to the Corcoran Gallery of Art, appeals from a decision of the District of Columbia Board of Zoning Adjustment ("The Board" or "BZA") allowing intervenor's proposed addition to the Gallery and granting a special exception and variances to permit construction according to the submitted design.[FN1] On appeal, petitioner principally argues that a proposed parking facility within the addition was not properly considered by the Board and would violate zoning ordinances. Petitioner contends that the entrance to the proposed parking facility would be too narrow to allow ingress and egress without requiring repeated interruptions of entering traffic, and that, together with the additional traffic the project would generate, this condition would exacerbate existing traffic snarls impeding access to petitioner's own adjacent driveway.

FN1. The real party in interest, the Trustees of the Corcoran Gallery of Art, briefed the case and appeared for oral argument in lieu of the Board, which filed a Statement in Lieu of Brief relying on its decision below and on intervenor's defense thereof.

More particularly, petitioner contends that the Board's findings of fact and conclusions of law were unsupported by substantial evidence in the record; the Board failed to comply with its own procedural rules by not obtaining the review of the Department of Public Works; the application was not supported by a showing of some practical difficulty or exceptional situation inherent in the property to justify the variances; and the BZA erroneously denied a motion to remand the application to the Zoning Administrator. After briefly discussing the facts, we address each of these contentions below. Finding them all to be without merit, we affirm.

I

The Corcoran Gallery of Art, an elaborate Beaux Arts structure by the celebrated architect Ernest Flagg, houses a substantial collection of American art and an art school, and is one of Washington's principal architectural landmarks. Located on the block bounded by E Street, Seventeenth Street, New York Avenue, and Eighteenth Street, Northwest, it shares a single square in an SP-2 zone with the office building owned and occupied by United Unions.[FN2] The square also includes land currently unimproved with construction, owned by the Trustees of the Corcoran Gallery, and adjacent to both buildings. To augment revenues for the operation of the Corcoran Gallery, the Trustees sought to improve this vacant land with a seven-story office addition to the original Corcoran building, executed in the same style and including features consistent with the overall design of the

original structure. The addition would include rental offices for professional tenants and a below-surface parking facility for 142 vehicles. After hearing the arguments of all interested parties, including the petitioner and intervenor here, as well as expert testimony and statistical evidence, the BZA approved the Trustees' plan and granted the necessary zoning exceptions. This appeal followed.

> FN2. The regulations permit, among other uses, offices for international and nonprofit organizations, labor unions, and certain professional persons in an SP-2 (special purpose) zone. 11 DCMR § 508.1 (1987).

II

Petitioner argues that the BZA's findings were unsupported by substantial evidence in the record, and therefore were arbitrary ***315** and capricious. Under the substantial evidence test, the BZA's decision will be upheld if it has articulated findings on each contested issue of fact,[FN3] the conclusion rationally flowed from the facts,[FN4] and there was sufficient evidence supporting each finding. *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 640 (D.C.1985). Petitioner specifically argues that while 11 D.C.M.R. § 508.4 requires that the proposed use of property in an SP district "shall not create dangerous or otherwise objectionable traffic conditions," the applicant's only evidence to that effect was insufficient to establish under this test that this condition was met.

> FN3. The BZA's findings of fact must state the basis for its decision expressly, clearly, and in certain terms. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 390 A.2d 1009, 1101 (D.C.1978).

> FN4. There must be some rational connection between the findings of fact and the decision based upon them. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, 293 A.2d 470, 473 (D.C.1972) (citing *Goldberg v. Kelly*, 397 U.S. 254, 271, 90 S.Ct. 1011, 1022, 25 L.Ed.2d 287 (1970)).

The Corcoran's principal evidence was presented by its traffic expert, Robert L. Morris, who testified that, based on his evaluation of traffic data published by the Washington Metropolitan Council of Governments and on his personal observation and measurements of existing conditions, the proposed project would have no significant adverse impact on local traffic patterns. The Council of Governments statistics showed a traffic flow of 17,400 cars per day through the adjacent intersection, to which the proposed development would add 65 cars per hour during peak hours-about one car per minute. The observations and measurements personally conducted by Mr. Morris were generally made during peak traffic periods in the morning, from 8:00 to 9:00 a.m.

[1] Petitioner argues that these measurements were not extensive enough to support Mr. Morris' conclusions, which the BZA accepted. Specifically, it argues that Mr. Morris conducted measurements on only one morning, December 1, 1987, from 8:00 to 9:00 a.m. This is a misreading of the record. In his testimony before the BZA, Mr. Morris indicated that he had done physical counts of the traffic flow through the intersection near the Corcoran (although no count of traffic flow past the Corcoran) "many times," and that the December 1, 1987 reading of traffic flow was only the most recent measurement he had made.

In like vein, petitioner contends that Mr. Morris never measured traffic conditions over a twenty-four hour period. However, Mr. Morris properly limited his counts to the peak periods of traffic flow through the area, rather than averaging the traffic flow figures through the area over a twenty-four hour period. Thus, the method adopted by Mr. Morris actually presented the "worst-case" statistics most favorable to petitioner. Mr. Morris had no reason to be interested in the traffic conditions existing during off-peak hours; his concern was determining the effect of the proposed development on traffic flow during peak hours.

Finally, petitioner argues that Mr. Morris relied on outdated Council of Governments statistics published in 1985. We find, however, that Mr. Morris' reliance on Council of Governments figures from 1985 was not improper in December 1987. These were, as he testified, the latest figures available at that time, and there is no evidence that, during the short intervening

period, conditions had changed sufficiently to undermine findings informed by those records. We emphasize, of course, the relatively short period intervening between the publication of the statistics relied upon and their use, as well as the fact that these statistics were only used in conjunction with Mr. Morris' own observations and measurements.

[2] Essentially, petitioner argues that the BZA could not have reached the result that it did in the face of conflicting evidence that the proposed structure would have disastrous effects on E Street traffic. However, an agency, as a finder of fact, ***316** may credit the evidence upon which it relies to the detriment of conflicting evidence, and need not explain why it favored the evidence on one side over that on the other.[FN5] *Gunty v. Department of Employment Services,* 524 A.2d 1192, 1198-99 (D.C.1987); *Monaco v. District of Columbia Board of Zoning Adjustment,* 409 A.2d 1067, 1070 (D.C.1979). The BZA chose to accept the data presented by the applicant's expert. This data was sufficient to support the BZA's finding that the proposed use would not significantly affect traffic flow past United Unions and the Corcoran. The findings articulate in clear, certain, and express terms the basis for the BZA's decision, and there is an obvious rational connection between those findings and that decision. It therefore appears that the applicant presented substantial evidence upon which the BZA could, in properly exercising its discretion, conclude that the proposed development would not create dangerous or objectionable traffic conditions.

> FN5. Of course, an agency does not have unbridled discretion in resolving a conflict of evidence, and must sometimes specifically explain its decision to credit the witnesses and evidence on one side rather than those on the other. As we have noted elsewhere,
>
> > [i]t is conceivable, though not the case here, that the evidence in support of the finding could be so weak, in contrast with the evidence to the contrary, that an agency-to avoid a remand-would have to give persuasive reasons for its reliance on particular testimony; otherwise, the evidence could not be deemed "reliable, probative, and substantial."
>
> *Citizens Ass'n v. District of Columbia Zoning Comm'n,* 402 A.2d 36, 47 n. 19 (D.C.1979) (quoting D.C.Code § 1-1509(e) (1981)); *see also Shav v. District of Columbia Bd. of Zoning Adjustment,* 334 A.2d 175, 178 n. 10 (D.C.1975) (agency findings must indicate "reasons for rejecting the expert testimony in favor of that of lay witnesses ... if judicial review is to be meaningful").

III

[3] The regulations provide that, on receiving an application for approval of a planned development of the type proposed, the BZA "shall submit the application to the Director of the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District departments and agencies, including the Department of Public Works...." 11 DCMR § 500.6. Petitioner argues that, while the BZA did submit the application to the Office of Planning, that office failed to obtain the written review of the Department of Public Works. While petitioner concedes that the Department of Public Works is not required to make a report for every application and that the BZA may proceed without a written review from the Department of Public Works if that department is unable to make a timely response to the Office of Planning's inquiry, *see*11 DCMR § 3318.6, petitioner argues that the BZA actually purported to rely on the recommendations of both offices in its findings. Thus, petitioner argues, the BZA relied on incomplete or nonexistent facts, and thereby breached the substantial evidence requirement.

However, we do not read the record to suggest that the BZA purported to rely significantly on a finding by the Department of Public Works. In its findings, the BZA recounted the testimony of Mr. Morris, an expert in transportation planning and traffic engineering, regarding the minimal impact of the proposed parking facility on the flow of traffic, and the BZA indicated that it concurred in his evaluation of the proposal. Board of Zoning Adjustment, Findings of Fact, Application No. 14703 of the Board of Trustees of the Corcoran Gallery of Art, Jan. 6, 1988, ¶ 14. Later, at paragraph nineteen (19) of the same document, the Board reinforced its finding by

reference to an opinion of the Office of Planning, which, the BZA stated, had reviewed the application in consultation with the Department of Public Works, and had found that "the proposal [would] not create dangerous or other objectionable traffic conditions." Although the Office of Planning received no report from the Department of Public Works, it did independently evaluate the proposal and it did consult the Department of Public Works by telephone, with the results described in the Board's findings. Given this independent evaluation, and the Board's primary reliance***317** on Mr. Morris' findings, it cannot be said that the Board breached the substantial evidence requirement. To this extent, the degree of written participation by the Department of Public Works was immaterial.

IV

[4] We likewise reject petitioner's argument that the applicant failed to meet the regulatory requirement of demonstrating an exceptional condition inherent in the property to justify the variances granted by the BZA. Because the original Corcoran Gallery is a registered historic landmark of exceptional design, the applicant was required to comply with landmark preservation laws in the construction of the connected building, and presented a plan that would replicate the style, materials, and workmanship of the original Corcoran building. The applicant urges that the special status of its original structure as a landmark requiring an addition consistent with the original plan constituted a "special circumstance" justifying the special exception and variances. Pursuant to the applicant's request, the BZA granted a special exception under 11 DCMR § 508 to allow the addition of an office building with accessory parking to an existing art gallery, and variance relief from the floor area ratio requirements of 11 DCMR § 531.1, the requirements of a court niche under 11 DCMR § 536.8, and the width and area requirements of a closed court under 11 DCMR § 536.1.

Petitioner, however, contends that other plans consistent with the original design would not have required the special exception and variances, and that mere landmark status, in and of itself, does not qualify as a "special condition" within the meaning of the zoning laws. It points out that, in order to qualify for a variance, an applicant must show "difficulties or hardships ... due to unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood." *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 539 (D.C.1972) (citations omitted). Moreover, petitioner says, the mere inclusion of a property within an historic district does not qualify as a special circumstance, because it does not uniquely affect the property at issue. *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939, 942 (D.C.1987).[FN6] Petitioner observes that a number of buildings in the vicinity of the Corcoran Gallery are historic landmarks, and the Gallery's circumstances can hardly be called "unique" in context.

> FN6. In *Capitol Hill*, we held, "If this fact [inclusion in an historic district] were sufficient to justify a finding of uniqueness, then each and every parcel of land within [an historic district] would be entitled to a variance on this basis." *Id.*

At the outset, we emphasize that *Capitol Hill* controls landmark districts, not landmark buildings. While the status of inclusion within a landmark district is a characteristic shared by all buildings within that district, the landmark status of a single building is legally predicated on the unique attributes of that building.[FN7] Further, the fact that there are other landmarks in the vicinity does not transform the neighborhood into an historic district.

> FN7. *See* 16 U.S.C. § 470a (1982 & Supp. IV 1986) (authorizing Secretary of Interior to establish criteria for designation of National Historic Landmarks); 36 C.F.R. § 65.4(a)(4) (1988) ("The quality of national significance is ascribed to ... buildings ... [t]hat embody the distinguishing characteristics of an architectural type or specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction ..."); D.C.Code § 5-1003 (1988) (establishing local historic preservation review board to carry out purposes of 16 U.S.C. § 470*et seq.*).

The Corcoran's designation as an historic landmark reflects characteristics of exceptional design

requiring special treatment in the planning of contiguous structures and additions. The application specified needs of particular design imposed by the special qualities of the original Corcoran building and the space on which it was erected, particularly the need to conceal rooftop elevator equipment within the building (thereby adding to its floor area ratio) and to construct the building in an odd-shaped ***318** space in a manner consistent with the original. These are special conditions simply not shared by the other buildings in the area, and they justify the BZA's discretionary judgment that the variances were warranted.

Petitioner's related argument, that appellant has failed to demonstrate that failure to grant the variance would cause the owner "peculiar and exceptional practical difficulties" related to unique characteristics of the property, *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1235 (D.C.1979), is met in similar fashion. Petitioner, pointing out that financial difficulties do not constitute "practical difficulties" for the purposes of this requirement, *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 398 A.2d 13, 16 (D.C.1979) (unnumbered footnote); *Barbour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 327 (D.C.1976), argues that the only practical difficulties suggested by the applicant were the financial needs that led it to apply to build office space. However, neither the applicant nor the BZA made any statement or finding to suggest that this was the case; rather, the peculiar difficulties of adding onto the original Corcoran building seem to comprise the practical difficulties that the variances were designed to surmount.

V

[5] Finally, petitioner contends that the BZA improperly denied its motion to remand the application to the Zoning Administrator to consider petitioner's argument that the proposed below-surface parking facility would violate local zoning regulations. Petitioner urges that 11 D.C.M.R. § 510.3 requires that "[t]he total number of parking spaces provided for the principal use shall not exceed the minimum number of spaces required for the principal use," and that in the applicant's case, the minimum number required is 66.[FN8] The application calls for 142 parking spaces, exceeding the putative maximum by 76 spaces. Petitioner argues that the excess parking cannot be "accessory parking" within the meaning of the regulations, *see*11 DCMR § 2101.1, and the facility must therefore be an all-day parking garage for commuters. It argues that a special exception must be obtained for an all-day commuter parking facility under 11 DCMR § 506, and therefore a remand to the Zoning Administrator was required.

> FN8. Under 11 DCMR § 2101.1, there must be a minimum of one parking space for every 1800 square feet of gross floor area in excess of 2000 square feet in an SP-2 office building. Since the proposed building would contain 120,449 square feet, the minimum number of parking spaces required would be 66.

However, this contention assumes that 11 DCMR § 510.3, requiring that the maximum number of parking spaces provided equal the minimum number required, is applicable where the proposed principal use and parking facilities occupy the same lot. In fact, this regulation is inapplicable in such instances, including the current application. As a matter of statutory construction, the general words used in this subsection should be read as restricted by the specific subject matter and language of their context.[FN9] Moreover, we should defer to an agency in its interpretation of its own regulations unless it is plainly erroneous or inconsistent with the plain meaning of the regulations. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 286 (D.C.1974); ***319***Taylor v. District of Columbia Board of Zoning Ad*http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=162&FindType=Y&ReferencePositionType=S&SerialNum=1973101859&ReferencePosition=232*justment*, 308 A.2d 230, 232 (D.C.1973).[FN10] As the BZA found, section 510.3 is a subsection of section 510 of the Zoning Regulations, which governs accessory parking spaces elsewhere than on the lot on which the principal SP use is located.[FN11] Nothing in section 510.3 suggests that it is intended to govern parking facilities other than on those governed by section 510 as a whole. Thus, section 510.3 governs only accessory parking elsewhere than the same lot accommodating the principal use. This is also a sensible reading of section 510.3, since it would prevent an applicant from building parking facilities

that would involve excessive "spillover" from the office facility being served, but allow the applicant to use space entirely within a facility to accommodate vehicles that might otherwise crowd external traffic. Of course, the use of such space remains subject to other regulations controlling space usage within the principal use structure. Here, the applicant sought only to build parking on the same lot-and indeed, within the same structure-as the principal SP use. Thus, the proposal was not barred by section 510.3.

FN9.*See United States v. Stever*, 222 U.S. 167, 174, 32 S.Ct. 51, 53, 56 L.Ed. 145 (1911) (generic statutory language appearing amid more particular language "should be construed as applicable to cases or matters of like kind with those described by the particular words"); *Woods v. Spoturno*, 37 Del. 295, 183 A. 319, 325, 327 (1936) (meaning of general terms explained by particular terms by which they are surrounded); *Hodgerney v. Baker*, 324 Mass. 703, 88 N.E.2d 625, 627 (1949) (generic terms must be understood in context of more particular terms of provision); *State ex rel. Utilities Comm'n v. Union Elec. Membership Corp.*, 3 N.C.App. 309, 164 S.E.2d 889, 892 (1968) (provision governing subject encompassed by broader language of other provisions controls with respect to more specific scope of its own subject).

FN10. We have held this to be true even where, as here, the agency itself is not responsible for their promulgation. *Wallick v. District of Columbia Bd. of Zoning Adjustment*, 486 A.2d 1183, 1184 & n. 3 (D.C.1985) (rules promulgated separately by Zoning Commissioner); *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 411 A.2d 959, 961 & n. 5 (D.C.1979).

FN11.*See*11 DCMR § 510.1 ("Accessory parking spaces elsewhere than on the same lot or part of the same lot on which any principal SP use is permitted ... shall be permitted in an SP district if approved by the Board of Zoning Adjustment ..."). Nothing in 11 DCMR § 510.2 and ensuing subsections suggests a change in the intended subject of the regulation.

VI

For the foregoing reasons, the decision of the District of Columbia Board of Zoning Adjustment is

AFFIRMED.

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