

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation Historic Preservation Board

TO: Chairperson and Members
 Historic Preservation Board

DATE: June 14, 2022

FROM: Thomas R. Mooney, AICP
 Planning Director



SUBJECT: HPB21-0486, **411 Michigan Avenue, 419 Michigan Avenue & 944 5th Street.**

An application has been filed 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, variances from the open court requirement ~~and minimum drive aisle width~~ and one or more waivers.

STAFF RECOMMENDATION

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

BACKGROUND

411 Michigan Avenue

On September 11, 2012, the Board reviewed and approved a Certificate of Appropriateness (HPB 7323) 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. A full building permit was not issued for this project within the required timeframe and the COA expired.

419 Michigan Avenue & 944 5th Street

On September 9, 2014, the Board reviewed and approved a Certificate of Appropriateness (HPB 7459) for the total demolition of two existing non-contributing structures and the construction of a new 4-story hotel. Although a full building permit was issued, and construction commenced, the project was not completed.

411 & 419 Michigan Avenue and 944 5th Street

On January 25, 2022, the Planning Board reviewed and approved a request for a conditional use 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.

On February 9, 2022, the City Commission adopted an Ordinance amendment permitting a maximum height of 75'-0" for office use within the CPS-2 zoning district on the south side of 5th Street west of Jefferson Avenue.

On February 8, 2022, the Historic Preservation Board continued the application to the March 8, 2022 meeting at the applicant's request. On March 8, 2022, the Board continued the application to the April 12, 2022 meeting at the applicant's request. On April 12, 2022 the Board continued the application to a date certain of June 14, 2022.

EXISTING STRUCTURES

Local Historic District: Ocean Beach

Rear garage

Classification: Contributing
Construction Date: 1933
Architect: Owner

Center house

Classification: Contributing
Construction Date: 1934
Architect: Owner

ZONING / SITE DATA

Legal Description: 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.

Zoning: C-PS2, Commercial performance standard district, general mixed use

Future Land Use Designation: C-PS2, Commercial performance standard district, general mixed use

Lot Size: 21,000 S.F. / 2.0 FAR for mixed use
Existing FAR: Not provided
Proposed FAR: 41,583 S.F. / 1.98 FAR, as represented by the architect
Existing Height: Not provided
Proposed Height: 75'-0"
Existing Use/Condition: Not provided
Proposed Use: Mixed-use office and commercial

THE PROJECT

The applicant has submitted plans entitled "Michigan & 5th", as prepared by CUBE 3, LLC, dated May 16, 2022.

COMPLIANCE WITH ZONING CODE

A preliminary review of the project indicates that the application appears to be inconsistent with the City Code, in addition to the variance requested herein.

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

CONSISTENCY WITH 2040 COMPREHENSIVE PLAN

A preliminary review of the project indicates that the proposed **mixed-use office and commercial** is **consistent** with the Future Land Use Map of the Comprehensive Plan.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.
Not Satisfied
A recycling or salvage plan has not been submitted.
- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.
Satisfied
- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.
Satisfied
- (4) Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 126 of the City Code.
Satisfied
- (5) The project applicant shall consider the 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. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.
Satisfied
The first finished floor of the mixed-use building is proposed to be located at 9.00' NGVD. Additionally, the applicant is proposing to relocate and elevate the Contributing center building to a base flood elevation of 9.00' NGVD.
- (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 and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to three (3) additional feet in height.
Satisfied
- (7) In all new projects, all critical mechanical and electrical systems shall be located above base flood elevation. Due to flooding concerns, all redevelopment projects shall, whenever practicable, and economically reasonable, move all critical mechanical and electrical systems to a location above base flood elevation.
Satisfied
- (8) Existing buildings shall be, where reasonably feasible and economically appropriate, elevated up to base flood elevation, plus City of Miami Beach Freeboard.

Satisfied

The Contributing center building is proposed to be elevation to a base flood elevation of 9.00' NGVD.

- (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.

Not Applicable

- (10) In all new projects, water retention systems shall be provided.

Satisfied

Additional information shall be provided at the time of building permit review.

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

Satisfied

Additional information shall be provided at the time of building permit review.

- (12) The project design shall minimize the potential for a project causing a heat island effect on site.

Satisfied

COMPLIANCE WITH CERTIFICATE OF APPROPRIATENESS CRITERIA

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

- I. Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable, compliance with the following criteria pursuant to Section 118-564(a)(1) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):

a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time.

Satisfied

b. Other guidelines/policies/plans adopted or approved by Resolution or Ordinance by the City Commission.

Satisfied

- II. In determining whether a particular application is compatible with surrounding properties, the Board shall consider the following criteria pursuant to Section 118-564(a)(2) of the Miami Beach Code (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):

a. Exterior architectural features.

Satisfied

b. General design, scale, massing and arrangement.

Satisfied

c. Texture and material and color.

Satisfied

- d. The relationship of a, b, c, above, to other structures and features of the district.

Satisfied

- e. The purpose for which the district was created.

Satisfied

- f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.

Satisfied

- g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.

Satisfied

- h. The original architectural design or any subsequent modifications that have acquired significance.

Not Applicable

- III. The examination of architectural drawings for consistency with the criteria pursuant to Section 118-564(a)(3) of the Miami Beach Code and stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community. The criteria referenced above are as follows (it is recommended that the listed criteria be found Satisfied, Not Satisfied or Not Applicable, as so noted):

- a. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.

Satisfied

- b. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.

Not Satisfied

See Compliance with Zoning Code

- c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the city identified in section 118-503.

Satisfied

- d. The proposed structure, and/or additions to an existing structure is appropriate to and compatible with the environment and adjacent structures, and enhances the

appearance of the surrounding properties, or the purposes for which the district was created.

Satisfied

- e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

Satisfied

- f. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

Satisfied

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

Satisfied

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

Satisfied

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

Satisfied

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

Satisfied

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

appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.

Satisfied

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

Satisfied

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

Satisfied

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

Not Satisfied

The solid masonry guardrails and raised terrace of the elevated and relocated 1934 building give the appearance of an over 7'-0" tall wall, resulting in an adverse impact on the pedestrian experience.

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

Satisfied

CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION EVALUATION CRITERIA

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

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

Satisfied

The existing structures located at 411 Michigan Avenue are designated as Contributing within the Ocean Beach Local Historic District.

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

Partially Satisfied

The center building located at 411 Michigan Avenue is of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense.

- c. The Building, Structure, Improvement, or Site is one of the last remaining examples of its kind in the neighborhood, the country, or the region, or is a distinctive example of an architectural or design style which contributes to the character of the district.
Satisfied
The existing buildings located at 411 Michigan Avenue are one of the last remaining examples of their kind in the neighborhood.
- d. The building, structure, improvement, or site is a contributing building, structure, improvement, site or landscape feature rather than a noncontributing building, structure, improvement, site or landscape feature in a historic district as defined in section 114-1, or is an architecturally significant feature of a public area of the interior of a historic or contributing building.
Not Satisfied
The existing structure located at 411 Michigan Avenue are classified as Contributing buildings in the Miami Beach Historic Properties Database.
- e. Retention of the Building, Structure, Improvement, Landscape Feature or Site promotes the general welfare of the City by providing an opportunity for study of local history, architecture and design or by developing an understanding of the importance and value of a particular culture and heritage.
Not Satisfied
The retention of the center building located at 411 Michigan Avenue is critical to developing an understanding of an important Miami Beach architectural style.
- f. If the proposed demolition is for the purpose of constructing a parking garage, the Board shall consider it if the parking garage is designed in a manner that is consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, U.S. Department of the Interior (1983), as amended, and/or the design review guidelines for that particular district.
Satisfied
The applicant has provided plans for a parking garage as part of this application.
- g. In the event an applicant or property owner proposes the total demolition of a contributing structure, historic structure or architecturally significant feature, there shall be definite plans presented to the board for the reuse of the property if the proposed demolition is approved and carried out.
Satisfied
The applicant has provided plans for the re-use of the site as part of this application.
- h. The Miami-Dade County Unsafe Structures Board has ordered the demolition of a Structure without option.
Not Applicable
The Miami-Dade County Unsafe Structures Board has not ordered the demolition of the structure.

STAFF ANALYSIS

Staff would preface this analysis by noting that the subject site has remained vacant for some time, notwithstanding the two separately approved development projects noted in the Background section of this report. The site is comprised of three lots, the northern two of which are part of a

previously proposed hotel development that was never completed. However, the foundation and basement levels for this project were built, and are currently located on these two lots.

The southern lot contains two Contributing buildings: i. a 2-story multi-family building located at the center of the lot; and ii. a 1-story rear accessory building located along the alley. The applicant is currently requesting approval for the construction of a new office building and parking garage, the total demolition of the rear 1-story accessory building and the relocation, elevation and restoration of the 2-story center building.

Update

On April 12, 2022, the Board reviewed and continued the subject application in order to give the applicant additional time to address concerns expressed by the Board. Since the April meeting, the applicant has submitted revised plans in response to the Board's concerns including the following modifications:

- The 1-story garage structure is proposed to be retained and relocated between the existing 2-story multi-family building and the 3-level parking lift enclosure. The relocated garage structure is proposed to be adaptively reused as an open-air dining area.
- The new mechanical parking structure has been shifted 4'-0" to the east and reduced in width by three parking bays in order to accommodate the relocated garage.
- The office building has been reduced by 2'-0" in the north-south direction and increased by 2'-0" in the east-west direction. As a result, the drive aisle width variance request has been withdrawn.
- The depth of the south facing balconies has been reduced by approximately 1'-0".

Off-street loading waiver

The applicant is requesting a waiver of the off-street loading space requirements outlined in Section 130-101 of the City Code. The project is required to provide three off-street loading spaces. As currently proposed, the applicant is not providing any off-street loading spaces. The Historic Preservation Board may waive the requirements for off-street loading spaces for properties containing a Contributing structure, provided that a detailed plan delineating on-street loading is approved by the Parking Department. Staff would note that while technically the applicant is not providing any loading spaces on site, there may be opportunities when the internal driveway could be used for off-street loading. The applicant has preliminarily met with the Parking Department and will submit an on-street loading plan as required. Consequently, staff does not object to the granting of this waiver.

Staff believes that the applicant has substantially addressed the concerns expressed by the Board. In summary, staff is staff remains supportive of the proposed project and recommends approval as noted below.

VARIANCE ANALYSIS

The drive aisle width variance request has been withdrawn by the applicant. Additionally, the applicant is requesting the following variance:

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. Variance requested from:

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

(c) For lots greater than 100 feet in width the front setback shall be extended to include at least one open court with a minimum area of three square feet for every linear foot of lot frontage, except for those properties located in the C-PS1 district described in section 142-698(a).

For zoning purposes, the front of the lot is located along Michigan Avenue and the open court area is required to be provided within the front setback. The purpose of the open court requirement is to break up long uninterrupted building mass and reflecting the historical development pattern of this portion of the city. Staff would note that in this instance, the proposed office building would occupy approximately 70% of the width of the site and the remaining width is dedicated to the relocated 2-story Contributing building and the internal driveway. Staff believes that the location of the driveway and 2-story Contributing building along Michigan Avenue effectively serve the purpose of the open court requirement. As such, staff finds that the unique site conditions including the retention of the Contributing building justify the granting of the variance.

RECOMMENDATION

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

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: June 14, 2022

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

FILE NO: HPB21-0486

APPLICANT: 411 Michigan SOFI Owner LLC

IN RE: An application has been filed 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.

ORDER

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

I. Certificate of Appropriateness

- A. The subject site is located within the Ocean Beach Local Historic District.
- B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted:
 1. Is 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. Final details of the proposed relocated 1-story garage structure 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. 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. 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.

- f. 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.
 - g. 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.
 - h. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and elevation drawings and shall be screened from view, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
2. 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 May 16, 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 _____ ())