

HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: December 13, 2016

FILE NO: HPB16-0059

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

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

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

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

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

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

ORDER

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

I. Certificate of Appropriateness

~~A. The subject site is located within the Ocean Beach Local Historic District.~~

B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted:

1. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
2. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code.
3. Is not consistent with Certificate of Appropriateness Criteria 'a', 'b', 'e' & 'f' in Section 118-564(a)(3) of the Miami Beach Code.

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4. Is not consistent with Certificate of Appropriateness Criteria 'a-e' for Demolition in Section 118-564(f)(4) of the Miami Beach Code.

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

1. Revised elevations, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
 - a. The design for the North elevation shall be consistent with the revised sheets 26, 49 and 50 submitted by the Applicant to the Board on December 13, 2016, entitled "BLVD at Lenox" as prepared by Zyscovich Architects, dated 12/09/16, 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 ground floor shall be setback a minimum of 12" from the Lenox Avenue property line in order to increase the Lenox Avenue sidewalk to a minimum of 10'-6" in width, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - c. 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.
 - 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. Lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding historic district.
 - e. The internal garage lighting shall be shielded to inhibit direct views of all internal light sources from either the street or adjacent properties, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- f. All kitchen venting and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- g. All building signage shall require a separate permit. A uniform sign plan for the new building shall be required. Signage shall consist of reverse channel, back-lit letters, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- h. 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

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vault rooms, and all other related devices and fixtures, shall not be provided within the interior of the building, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

- 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.
 - j. In the event that the City Commission renames or co-names 5th Street as "Miami Beach Boulevard", the Applicant shall provide a bronze plaque, which includes a brief biography of former City of Miami Beach Mayor John H. Levi, at the property, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
- a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - c. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed garage, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan.
 - d. Within 6 months of BTRs being issued for at least 75% of the retail areas, the applicant shall prepare a bicycle use analysis for the property to determine if additional bicycle racks are needed and, if warranted, install up to an additional 6 city-wide standard bicycle racks subject to the review and approval of staff.

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- e. Canopy shade street trees shall be required within the sidewalk along Lenox Avenue and 5th Street, spaced approximately 20'-0" on center if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.
- f. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
- g. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- h. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow prevention devices. Backflow prevention devices shall not be permitted within any required yard or any area fronting a street or sidewalk, unless otherwise permitted by the Land Development Regulations. The location of all backflow prevention devices, and how they are screened from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all post-indicator valves (PIV), fire department connections (FDC) and all other related devices and fixtures, which shall be clearly indicated on the site and landscape plans.

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

II. Variance(s)

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

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

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

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

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

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

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

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

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

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

1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.

2. All rooftop lighting fixtures shall be designed in manner to preclude light from spilling over to adjacent properties and the number and location of rooftop light poles great than 10'-0" in height shall be consistent with number and location light poles shown on sheets 26 and 27 of the plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects, dated 10-24-2016, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

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3. Approval from the public Works department shall be required in order to construct the canopy and building projections over the public right of way facing Lenox Avenue and the alley.

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

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

- A. Where one or more parcels are unified for a single development, the property owner shall execute and record an unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- B. Applicant agrees that in the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- C. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
 - A. The Final Order shall be recorded in the Public Records of Miami-Dade County, within 30 days of the Board approval.
 - B. Applicant shall submit revised plans pursuant to Board conditions no later than 60 days after Board approval, as required.
 - C. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
 - D. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
 - E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

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

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, ~~testimony and materials presented at the public hearing, which are part of the record for this matter,~~ and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the application is GRANTED, for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects, dated 10-24-2016 and plans entitled "BLVD at Lenox" as prepared by Zyscovich Architects, dated 12/09/16, and as modified and 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 15 day of December, 2016.

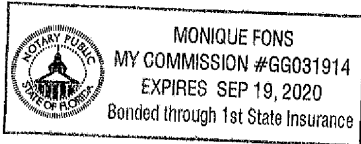
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BY: *Deborah Tackett*
DEBORAH TACKETT
CHIEF OF HISTORIC PRESERVATION
FOR THE CHAIR

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

The foregoing instrument was acknowledged before me this 15th day of December 2016 by Deborah Tackett, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



Monique Fons
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 9/19/2020

Approved As To Form
City Attorney's Office: *Just Bank* (12/14/16)

Filed with the Clerk of the Historic Preservation Board on *Jessica Gentry* (12/15/16)

[Handwritten mark]