

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 411, 419 Michigan Avenue and 944 5 Street

FILE NO. PB21-0469

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 WHITTHAM'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;

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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 shall 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.

January 25, 2022

PB21-0469. 411, 419 Michigan Avenue and 944 5 Street

Page 3 of 6

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- 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, tenants, 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 twenty-five (25) bicycle parking spaces.

January 25, 2022

PB21-0469. 411, 419 Michigan Avenue and 944 5 Street

Page 4 of 6

- f. The garage shall be in operation 24 hours per day, seven days a week, as proposed by the applicant.
- g. Parking spaces with mechanical lifts shall only be operated by a valet parking operator. Valet parking shall be provided 24 hours per day, seven days a week.
- h. 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.
- i. The facility shall maintain adequate backup generators sufficient to power the vehicle lifts. The generators shall be maintained in working condition at all times. The generators shall be installed in accordance with Code requirements regarding minimum flood plain criteria.
- j. Vehicles shall not be permitted to reverse or back into or out of the site .
- k. 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.
- l. Commercial deliveries and trash collection shall take place only in the designated area proposed by the applicant as shown in the plans.
- m. The applicant shall work with the City to designate one or two loading spaces on Michigan Avenue.
- n. Scheduled trash pick-up and commercial deliveries shall only be permitted on-property between 9:30 AM and 4:00 PM. Commercial deliveries outside those hours shall only be permitted in designated loading zones on Michigan Avenue, as per the hours specified by the City for the loading zone.
- o. There shall be no queuing of delivery, garbage, or moving trucks in the public right of way.
- p. Delivery trucks shall not be allowed to idle in loading areas or driveways.
- q. Warning signs prohibiting horn honking, tire-screeching, or car alarm sounding shall be posted prominently by the applicant in the parking area.
- r. The applicant will work with the Transportation and Mobility Department Staff on an updated study converting the alley, Jerusalem Street, from one-way configuration to a two-way configuration between 4th and 5th Streets.
- s. Both car elevators shall be able to accommodate the standard AASTHO passenger vehicle size requirements.
- t. A signage and marking plan shall be submitted during the plans review cycle for Transportation and Mobility Department staff.

January 25, 2022

PB21-0469. 411, 419 Michigan Avenue and 944 5 Street

Page 5 of 6

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- u. Bicycle parking and shower locations will be identified at the time of building permit issuance.
 - v. Parking for uses not located on-site shall not be permitted.
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, tenant(s), operator(s) and/or owner(s), 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

January 25, 2022

PB21-0469. 411, 419 Michigan Avenue and 944 5 Street
Page 6 of 6

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.

3/29/2022 | 5:54 PM EDT

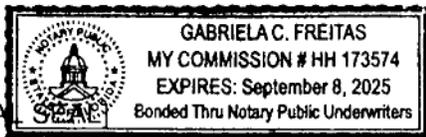
Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
Rogelio Madan
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 29th day of March, 2022, 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.



[NOTARIAL

Gabriela C. Freitas
Notary:
Print Name: Gabriela C. Freitas
Notary Public, State of Florida
My Commission Expires: Sept. 8, 2025
Commission Number: HH 173 574

Approved As To Form:
Legal Department

DocuSigned by:

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Filed with the Clerk of the Planning Board on _____

DocuSigned by:
Jessica Gonzalez (3/30/2022 | 9:18 AM EDT

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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.

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Page 2 of 7
HPB21-0486
Meeting Date: June 14, 2022

- 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 2-story contributing 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. Awnings consistent with historical documentation shall be introduced on the front (Michigan Av) façade 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.
 - iv. 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 1-story contributing building proposed to be relocated shall comply with the requirements of the Florida Building Code for exterior construction including the area containing open-air seating.
 - d. 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.

Page 3 of 7

HPB21-0486

Meeting Date: June 14, 2022

- e. 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.
 - 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, and a second plaque or historic display shall be introduced within the open seating area of the 1-story contributing building proposed to be relocated 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.

Page 4 of 7
HPB21-0486
Meeting Date: June 14, 2022

- 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.

Page 5 of 7
HPB21-0486
Meeting Date: June 14, 2022

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.

Page 6 of 7
HPB21-0486
Meeting Date: June 14, 2022

- 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.

