

RESOLUTION NO. R2022-169

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE SITE PLAN MODIFICATION FOR THE CONSTRUCTION OF A 18,000 GROSS SQUARE FEET, THREE-STORY COMMERCIAL BUILDING AND APPROVING A CONDITIONAL USE APPLICATION FOR A SIX-STORY 68,200 GROSS SQUARE FEET PARKING GARAGE STRUCTURE WITH 248 SPACES ON A 3.49-ACRE PARCEL LOCATED AT 15801, 15805, 15807 BISCAYNE BOULEVARD; PROVIDING FOR FINDINGS OF FACT; CONFIRMING EXPIRATION AND LIMITATION OF APPROVAL; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on February 15, 2000, the City Commission approved a resolution R2000-11 granting site plan approval to construct an approximately 8,000 square foot, two (2) story bank with drive-thru located at 15801 Biscayne Boulevard; and

WHEREAS, on September 20, 2011, the City Commission approved resolution R2011-50, granting a site plan approval for the construction of three two-story office buildings totaling 45,258 square feet, which included granting a variance to Section 24-97 to reduce the parking from 165 spaces required to 135 spaces provided and granting a variance to 24-97 to reduce the number of required loading spaces from two spaces to one space, which was subsequently not built; and

WHEREAS, on July 14, 2014, the City Commission approved resolution R2014-26, granting a site plan modification to resolution R2011-50, to allow one two-story building and one-three story building, in lieu of the previously approved three two-story buildings; and

WHEREAS, on June 20, 2017, the City Commission approved and accepted an easement (resolution R2017-49) for the Biscayne 18 Development for water and sewer facilities; and

WHEREAS, the site currently has three buildings constructed; and

WHEREAS, the City of North Miami Beach (“City”) Code of Ordinances, Chapter 24, “Zoning and Land Development Code” (the “ZLDC”), Article XV, “Other Development Review Procedures,” Section 24-172, “Site Plan Review” provides that site plan approval is required for new developments, any significant shift in the type of land use that involves major interior alteration, and any change in required parking or other similar impact determined to be significant by the Community Development Director; and

WHEREAS, Ben J. Fernandez of Bercow Radell Fernandez Larkin + Tapanes Law (the Agent), on behalf of Biscayne 18 Development, LLC (the “Applicant”), requests site plan approval and conditional use approval to construct a 3-story commercial building which will be comprised of a new restaurant area of approximately 1,500, new retail of approximately 4,500 square feet, new office space of approximately 12,000 square feet, and a six-story parking garage structure of approximately 68,200 square on a 3.49-acre parcel located at 15801, 15805, 15807 Biscayne Blvd; and

WHEREAS, after a duly noticed public hearing held on November 28, 2022, the Planning and Zoning Board by a vote of 5 to 0, recommended approval of the site plan and conditional use, subject to the conditions set forth and included below in Section 2; and

WHEREAS, the City Commission conducted a duly noticed public hearing in accordance with the law; and

WHEREAS, the Mayor and City Commission find that the proposed Site Plan and Conditional Use application are consistent with the North Miami Beach Comprehensive Plan and is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof.

Section 2. Decision. Pursuant to Section 24-172 and Section 24-52 of the Zoning and Land Development Code, the following site plan attached and incorporated by reference as Exhibit “B,” and Conditional Use as specified herein and in the Application for the development of the proposed 18,000 square foot three-story office building composed of 1,500 square feet of restaurant space, 4,500 square feet of retail space, and 12,000 square feet of office space, and a 68,200 gross square foot six-story parking garage development on a 3.49-acre parcel, legally described in Exhibit “A,” are approved, subject to the following conditions:

Project Conditions:

1. Prior to Certificate of Occupancy, the Applicant is required to submit a valet parking agreement and plan to conduct the valet services on the site, subject to review and approval by Public Works and the Community Development Departments.

2. Prior to building permit issuance, revise photometric plan sheet PH-1 to show the average illumination intensity of one (1) foot candle equal to one (1) lumen per square foot for the surface parking lot in accordance with ZLDC Section 24-93 (G)(2)(a).
3. Prior to building permit issuance, revise sheet PH-2 to show an average illumination intensity of fifty (50) foot candles at the entrance, ten (10) foot candles in traffic lanes and five (5) foot candles in vehicle storage areas for the parking garage structure in accordance with ZLDC Section 24-93 (G)(2)(b).
4. Prior to building permit issuance, provide revised sheet A4.1 showing architectural screening of the vehicles on the east elevation on all floors to match all other building elevations.
5. Prior to building permit issuance, provide architectural screening of the vehicles on the 6th-floor roof deck of the parking garage on all sides of the building.
6. Prior to building permit issuance, provide the Light Reflectance Value (LRV) of the building elevation colors shown on sheet A2.2 in accordance with ZLDC Section 24-79 (A).

General conditions:

1. The conditions of approval for this Site Plan are binding on the Applicant, the property owners, operators, and all successors in interest and assigns. Prior to issuance of any Master Building Permit, Applicant shall execute a covenant running with the land, binding upon its heirs, successors and assigns, subject to the approval of the City Attorney, which shall be recorded in the public records of Miami-Dade County, Florida, at Applicant's sole expense, containing all of the conditions and provisions required by this Resolution. This recorded covenant may be amended from time to time and shall be re-recorded after each amendment at the Applicant's sole expense, subject to the approval of the City Attorney.
2. The proposed conditional use shall be in conformance with the following certified plans signed by the Community Development Director on file with the City of North Miami Beach Community Development Department Planning & Zoning Division with file number 21-19.
3. All representations proffered by the Applicant's representatives as a part of the application review at the Planning and Zoning Board and City Commission public hearings.
4. Substantial modifications to the plans submitted and approved as part of the application may require the Applicant to return to the Planning and Zoning Board and Mayor and City Commission for approval. Insubstantial changes shall include

proportionate reductions in residential units and parking spaces by less than 5% of the total proposed project, changes that do not alter the project more than 5% of lot coverage, setbacks, height, density and intensity calculations so long as the proposed amendment does not cause an increase in the number of average daily trips; does not alter the location of any points of ingress, egress, access and vehicular and pedestrian patterns to the site; and does not violate any condition placed upon the site plan as originally approved. Insubstantial changes may be administratively approved by the City Manager or designee. Any de minimis amendments to the plans or site plans which cannot be resolved administratively shall be returned to the Mayor and City Commission for a formal review. However, under no circumstances, may any plans, site plans, building, structure, or project be administratively altered by more than 5% lot coverage, setbacks, height limitations, as well as density or intensity calculations set forth in a previously approved site plan in accordance with ZLDC Section 24-172 (K).

5. Applicant shall remove all public hearing signage no later than 48 hours after the final public hearing by the City Commission for the development project.
6. No later than 90 days following the final City Commission approval, the Applicant shall enter into an agreement with the City to defend, indemnify and hold harmless (using legal counsel acceptable to the City) the City, its agents, servants and employees, from and against any loss, cost, expense, claim, demand or cause of action of whatever kind or nature arising out of or related to any act or omission related to the variances and for which the City, its agents, servants, or employees, are alleged to be liable or charged with such expense. The Applicant shall pay all costs and expenses related to any legal defense required by the City pursuant to the foregoing.
7. The Applicant shall comply with all applicable conditions and permit requirements of the Miami-Dade County Fire Department, the Water and Sewer Department, and Department of Regulatory and Economic Resources; and the Florida Department of Environmental Protection (FDEP), the Florida Department of Transportation (FDOT) and any other applicable regulatory agency.
8. The words "Aventura", "Miami Beach," and "Sunny Isles Beach" shall not be used by the applicant immediately preceding or following the Project name. The words "Aventura", "Miami Beach" and "Sunny Isles Beach" shall not be part of the website address for the Project. References in the marketing materials to nearby communities shall be limited to descriptions of entertainment, shopping or dining locations, or other landmarks; the Applicant shall identify the Project as being located in the City of North Miami Beach, Florida.

9. The Applicant shall post a sign on-site providing contact information in case of any complaint or concern during construction. The sign shall be removed upon the earlier of the City's issuance of a temporary or full Certificate of Occupancy.
10. Applicant must join the NMBPD Trespass After Warning Program, provide the NMBPD with access to the property at all times, and a safety plan; participate in the NMBPD Rapid Response Training Program; link the alarm systems directly to the NMBPD; and keep former employee information on file after termination of employment.
11. Prior to issuance of the Certificate of Occupancy, the Applicant shall have the registered landscape architect or arborist to certify the installed landscaping, tree removal and mitigation have been installed in accordance with the plans.
12. The Applicant, its successors and assigns shall comply with all City ordinances applicable to development and permit approvals at the time of adoption of the Resolution and in the event the Master Building Permit expires, all approvals and prior fees paid, shall be subject to forfeiture. This shall not be applied to City of North Miami Beach impact fees paid, which would not be refunded but would be credited to the property for any subsequent development.
13. The Applicant shall sealcoat and restripe the site's vehicular use areas in compliance with applicable City standards.
14. The Applicant shall obtain a certificate of occupancy and certificate of use from the City upon compliance with all terms and conditions. The certificate of use shall be subject to review upon violation of any of the conditions, in accordance with the law.

Section 3. Time for Building Permit. Pursuant to Section 24-172(I) of the Code of Ordinances of the City of North Miami Beach, an approved site plan shall remain valid for a period of 18 months from the date of approval with a master building permit issuance required. If a master building permit is not issued within an 18-month time period, the site plan approval, including any development right entitlements and any subsequent phasing, shall be considered null and void. If a site plan expires, a new submittal shall be required with board approvals. Minor site plan modifications which do not require board approvals would still be required to adhere to the original site plan approval expiration date. Major site plan modifications which require board approvals will receive a new 18-month period starting from the date of the modified final site plan approval. Site plan applications received prior to the effective date of this ordinance shall adhere to the previous expiration regulations. Additionally, if at any time a building permit lapses, the site plan, including all phases thereof, shall be considered null and void.

Section 4. Conditional Use Findings of Fact. The Mayor and City Commission make the following FINDINGS OF FACT based upon the substantial competent evidence provided:

The requested Conditional Use meets the applicable Conditional Use Review Standards provided for in Section 24-175(B) of the Code of Ordinances of the City of North Miami Beach. The requested conditional use is compatible with the existing natural environment and surrounding properties, does not create substantial detrimental effects on the neighborhood property values, can be accommodated by existing community facilities, has adequate provisions for vehicular and pedestrian traffic movement, has adequate drainage systems for the proposed use, complies with the required setbacks and buffering to control possible adverse effects, and the proposed use will be located on property which is sufficient, appropriate and adequate for any reasonably anticipated expansion thereof.

Section 5. Limitation of Approval. The issuance of this development permit does not in any way create a vested right(s) on the part of the Applicant to obtain a permit from a county, state or federal agency, and does not create any liability on the part of the municipality for issuance of the permit if the Applicant fails to obtain requisite approvals or does not fulfill the obligations imposed by a county, state or federal agency or undertakes actions that result in a violation of county, state, or federal law.

Section 6. Conflicts. All resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 7. Effective Date. This Resolution shall be in force and take effect immediately upon its passage and adoption.

[SIGNATURE PAGE TO FOLLOW]

APPROVED AND ADOPTED by the City Commission of the City of North Miami Beach, Florida at regular meeting assembled this **the day of** **2023.**

ATTEST:

 ANDRISE BERNARD
 CITY CLERK

 ANTHONY F. DEFILLIPO
 MAYOR

(CITY SEAL)

APPROVED AS TO FORM &
 LANGUAGE & FOR EXECUTION

 HANS OTTINOT
 CITY ATTORNEY

SPONSORED BY: Mayor and City Commission

	YES	NO	ABSTAIN	ABSENT
Commissioners				
Mayor Anthony DeFillipo				
Vice-Mayor Michael Joseph				
Commissioner Fortuna Smukler				
Commissioner Jay Chernoff				
Commissioner Daniela Jean				
Commissioner McKenzie Fleurimond				
Commissioner Phyllis Smith				

Exhibit "A"
LEGAL DESCRIPTION

TRACK "A", "GROVPAC SUBDIVISION", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 115, PAGE 90, OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA. LESS THE WESTERLY 24 FEET THEREOF, ACQUIRED BY THE DEPARTMENT OF TRANSPORTATION, STATE OF FLORIDA FOR RIGHT-OF-WAY FOR STATE ROAD NO. 5 (BISCAYNE BOULEVARD).

Exhibit "B" SITE PLAN

