

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

Historic Preservation Board

TO: Chairperson and Members  
Historic Preservation Board

DATE: November 10, 2015

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: HPB File No. 7513, **1035 Lincoln Road – Nike.**

The applicant, Playa Retail Investments, LLC, is requesting modifications to a previously issued Certificate of Appropriateness for the total demolition of the existing building, classified as 'Non-Contributing', and the construction of a new 2-story commercial building, including a variance to not provide the minimum required parking for off-street loading. Specifically, the applicant is requesting to change the name of the owner from 1035 Lincoln Road, LTD., to Playa Retail Investments, LLC.

### **STAFF RECOMMENDATION**

Approval with conditions.

### **BACKGROUND:**

The application was approved by the Board on April 14, 2015. The applicant is seeking to modify the previous approved conditions in order to transfer the approval to the new owner Playa Retail Investments, LLC.

### **EXISTING STRUCTURE**

Local Historic District:	Flamingo Park
Construction Date:	1999
Architect:	Hawrylewicz Robertson Architects

### **ZONING / SITE DATA**

Legal Description:	Lots 1 and 2, Block 38, Commercial Subdivision, According to the Plat Thereof, as Recorded in Plat Book 6, Page 5, of the Public Records of Miami-Dade County, Florida.
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Zoning:	CD-3, Commercial, high intensity
Future Land Use Designation:	CD-3, Commercial, high intensity
Lot Size:	15,000 S.F. / 2.25 Max FAR
Existing FAR:	~14,320 SF*./~0.95 FAR
Proposed FAR:	31,500 S.F. / 2.10 FAR, as represented by the architect
Existing Height:	not provided
Proposed Height:	39'-0" to the top of the roof deck / 2-stories + mezzanine

Existing Use/Condition: Retail  
Proposed Use: Retail

**REQUEST:**

The applicant requests to modify Condition II C 3 of the April 14, 2015 Final Order No. 7513, which granted the approval of the variance(s) to the previous applicant to permit the transfer of approval to Playa Retail Investments, LLC. as follows:

3. This approval is granted to ~~4035 Lincoln Road, LTD.~~ Playa Retail Investments, LLC only and tenant Nike retail store. Any change of operator, or ownership by fifty (50) percent or more of stock ownership, partnership interest, or the equivalent, shall require review and approval by the Board as a modification to this Order and a new a traffic study showing delivery schedules and details of the loading operation for the entire building shall be presented if the retail operation is increased. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the conditions of approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address problems and to determine the timing and need for future progress reports.

**STAFF ANALYSIS:**

The new retail building to replace the existing structure was approved by the Board on April 14, 2015. The final Order requires that if there are any changes in ownership or operator by 50% or more, the new owner or operator is required to return to the Board and seek a modification to the final Order transferring approval to the new owner or operator. The ownership of the property has been restructured including a change of ownership of more than 50%. The applicant as new owner is requesting modifications to a previously approved condition as noted above. The original retail operation of the business has not changed or increased.

Staff is supportive of the application and recommends that the modifications be APPROVED.

**RECOMMENDATION**

In view of the foregoing, staff recommends the requested modification to change the name of the owner 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: November 10, 2015

FILE NO: 7513

PROPERTY: 1035 Lincoln Road

APPLICANT: Playa Retail Investments, LLC

LEGAL: Lots 1 and 2, Block 38, Commercial Subdivision, According to the Plat Thereof, as Recorded in Plat Book 6, Page 5, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for modifications to a previously issued Certificate of Appropriateness for the total demolition of the existing building, classified as 'Non-Contributing', and the construction of a new 2-story commercial building, including a variance to not provide the minimum required parking for off-street loading. Specifically, the applicant is requesting to change the name of the owner from 1035 Lincoln Road, LTD., to Playa Retail Investments, LLC.

**MODIFIED ORDER**

The applicant filed an application with the City of Miami Beach Planning Department for a modification to a previously issued Certificate of Appropriateness including a variance to not provide the minimum required parking for off-street loading. The applicant requests to modify Condition II C 3 of the April 14, 2015 Final Order No. 7513 which granted the approval of the variance to the previous applicant and operator to permit the transfer of approval to Playa Retail Investments, LLC. as follows:

3. This approval is granted to ~~1035 Lincoln Road, LTD.~~ Playa Retail Investments, LLC only and tenant Nike retail store. Any change of operator, or ownership by fifty (50) percent or more of stock ownership, partnership interest, or the equivalent, shall require review and approval by the Board as a modification to this Order and a new a traffic study showing delivery schedules and details of the loading operation for the entire building shall be presented if the retail operation is increased. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board

reserves the right to modify the conditions of approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address problems and to determine the timing and need for future progress reports.

The City of Miami Beach's Historic Preservation Board makes the following FINDING 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 structure is classified as a 'Non-Contributing' structure in the Miami Beach Historic Properties Database, and is located within the Flamingo Park 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 not consistent with Certificate of Appropriateness Criteria 'a-c' in Section 118-564(a)(2) of the Miami Beach Code.
  - 3. Is not consistent with Certificate of Appropriateness Criteria 'b', 'c', 'f', 'n' & 'o' in Section 118-564(a)(3) of the Miami Beach Code.
  - 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 elevation, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
    - a. The design for the proposed brise soleil screen shall be further detailed and shall be reduced in height by 7'-0", in a manner to be reviewed and approved by the Board. Revised plans shall be submitted for review and verification of the Planning Department within 30 days of the April 14, 2015 meeting. Failure to comply with this condition within the specified time shall result in notice and a hearing before the Board for a modification of this condition
    - b. The first level of the Lenox Avenue elevation shall not be permitted as proposed, and shall be substantially redesigned in a manner that incorporates approximately 66% clear glass within 10' in height of the Lenox Avenue elevation, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board. Revised plans shall be submitted for review and verification of the Planning

Department within 30 days of the April 14, 2015 meeting. Failure to comply with this condition within the specified time shall result in notice and a hearing before the Board for a modification of this condition.

- c. The basketball court shown at the roof level as shown on Sheet A3.02 shall not be permitted.
- d. Final details of all exterior surface finishes and materials shall be required, including the precast concrete screen element, terrazzo wall cladding and architectural concrete wall finishes, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- e. Final details of all proposed storefront systems, associated details and finishes shall be provided, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- f. All interior fixtures, including, but not limited to, shelving, partitions, and checkout counters, shall be setback a minimum of ten (10') feet from any portion of an exterior wall containing floor to ceiling storefront glazing, 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 shall not prohibit substantially transparent fixtures for display purposes only.
- g. The final design and details of all exterior and interior 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. Interior lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding historic district. The projecting lighting fixtures located along the bottom of the screen element shall be eliminated and any lighting system proposed shall be fully integrated into the screen element. No florescent or intensive 'white' lighting (or similar intensive lighting) visible from the adjacent public rights of way or adjacent properties shall be permitted.
- h. All building signage shall require a separate permit. A uniform sign plan for the new building shall be required. Signage shall consist of natural aluminum color 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.
- i. A fully enclosed air conditioned trash room that is sufficiently sized to handle the entire trash load of the building at all times shall be required, located within the envelope of the building, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- j. 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.

- k. The existing plaque, located at the northwest corner of the building, shall be retained or replaced with a new plaque with similar language, which continues the history of the evolution of the site, shall be submitted, prior to the issuance of a Certificate of Occupancy in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board; said plaques shall be displayed prominently in a location to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
  - l. The applicant agrees to display an artistic piece by a local artist setback a minimum of 10'-0" from the transparent storefront within the retail store, in a manner to be 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. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the final revised landscape plan.
    - b. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.

**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):
  1. A variance to waive all three (3) required off street loading spaces in order to construct a commercial building with more than 20,000 s.f. and less than 40,000 s.f. of area without providing three (3) loading spaces on the premises.
- 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 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 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.
1. Vehicles providing loading services shall not exceed 7'-9" in width, except for trash pick-ups vehicles.
2. The Historic Preservation Board shall maintain jurisdiction of this file. Within ninety (90) days after obtaining the Occupational License for at least 50% of the tenants, the owner shall make a progress report to the Board including a traffic study showing delivery schedules and details of the loading operation for the entire building. The Board reserves the right to modify the conditions of this approval at the time of a progress report, in a non-substantive manner, including modifications to the delivery

schedule, trash pickups, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports.

3. This approval is granted to ~~1035 Lincoln Road, LTD. Playa Retail Investments, LLC~~ only and tenant Nike retail store. Any change of operator, or ownership by fifty (50) percent or more of stock ownership, partnership interest, or the equivalent, shall require review and approval by the Board as a modification to this Order and a new a traffic study showing delivery schedules and details of the loading operation for the entire building shall be presented if the retail operation is increased. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the conditions of approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address problems and to determine the timing and need for future progress reports.

**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. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
- B. 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.
- C. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- D. 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.
- E. 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.
- F. 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.

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

H. 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 modifications 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 approved by the Historic Preservation Board, as determined by staff, entitled "Nike" as prepared by Touzet Studio Design & Architecture, dated January 9, 2015.

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 Section 118-561 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this **Modified Order** shall subject the application to Section 118-564, 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  
PRESERVATION AND DESIGN MANAGER  
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, Preservation and Design Manager, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

\_\_\_\_\_  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: \_\_\_\_\_

Approved As To Form:  
City Attorney's Office: \_\_\_\_\_ (                    ) )

Filed with the Clerk of the Historic Preservation Board on \_\_\_\_\_ (                    ) )