

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

PROPERTY: 928 Ocean Drive

FILE NO. PB18-0252

IN RE: An application for Conditional Use approval for a Neighborhood Impact Establishment (NIE) with entertainment and an occupant content in excess of 200 persons and an open air entertainment establishment, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: Lot 5, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

MEETING DATE: April 30, 2019

CONDITIONAL USE PERMIT

An application was filed with the Planning Director pursuant Section 118, Article IV and Section 142, Article V 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:

That the property in question is located in the MXE- Mixed Use Entertainment Zoning District;

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

That 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;

That structures and uses associated with the request are consistent with the Land Development Regulations;

That the public health, safety, morals, and general welfare will not be adversely affected;

That 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



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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 applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the Business Tax Receipt (BTR) with entertainment. 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 Decowalk Hotel + Golf Club, LLC, as operator of this Conditional Use Permit consisting of a restaurant, alcoholic beverage establishment, and including open-air entertainment at the ground level only, with approximately 110 seats. The establishment shall always be licensed as a restaurant/bar, and shall not become a stand-alone bar or stand-alone entertainment establishment.
3. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
 - a. The hours of operation shall be within the hours of 11:00 AM to 5:00 AM. At all times the establishment is open, food service with a full menu and operating kitchen shall be required.
 - b. The patron occupant content shall be a maximum of 448 persons, or as determined by the Fire Marshall, whichever is lower.
 - c. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study. A final sound transmission report which includes the performance of sound systems and sound attenuation devices shall be submitted to staff for review and approval prior to a Business Tax Receipt approval for the entertainment portion.
 - d. The establishment's four access doors, located facing Ocean Drive, shall be closed between 10pm and 11am, except for the actual ingress and egress of patrons and staff. Doors shall not be propped open during these hours.
 - e. Entertainment shall be prohibited on the roof top at all times.
 - f. Exterior speakers, except those required to address Building and Life Safety Codes shall be strictly prohibited on the exterior of the building on the ground floor.

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- g. Exterior speakers, except those required to address Building and Life Safety Codes and those associated with a distributed sound system for ambient, background music only, which does not interfere with normal conversation, shall not be permitted at the roof deck. An acoustic plan certified by an acoustic engineer for the proposed distributed sound system 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 Historic Preservation Board and Planning Board.
- h. Live entertainment or a DJ shall only be permitted within the interior of the establishment on the ground floor. Live entertainment outside, including along the outdoor front terrace or roof top, shall be prohibited at all times.
- i. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
- j. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- k. Any queuing of patrons shall occur within the property or inside the restaurant only. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
- l. Security staff shall monitor patron circulation and occupancy levels.
- m. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
- n. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to historic preservation staff review and approval.
- o. Delivery trucks shall only be permitted to make deliveries from 7:00 AM to 10:00 AM.
- p. Delivery trucks shall only be permitted to make deliveries from the designated loading zones approved by the Parking Department.
- q. Delivery trucks shall not idle in the loading zone.
- r. Air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
- s. Garbage dumpster covers shall be closed at all times except when in active use.
- t. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.

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6. 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 BTR to operate this entertainment establishment.
7. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise.
8. 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, Code of the City of Miami Beach, Florida.
9. 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.
10. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
11. The applicant agrees and shall be required to provide access to areas subject to this CUP (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 terms and conditions of this CUP.
12. 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.
13. 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.

Dated this 17th day of MAY, 2019.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush

Michael Belush, Chief of Planning and Zoning
For Chairman

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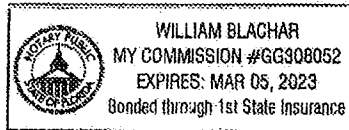
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STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 17th day of May, 2019, by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



{NOTARIAL SEAL}

William Blachar
Notary:
Print Name
Notary Public, State of Florida
My Commission Expires: March 5th, 2023
Commission Number:

Approved As To Form: (Nickallegio) 5/16/2019
Legal Department

Filed with the Clerk of the Planning Board on Jessie Gurling (5/17/19)

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