

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

PROPERTY: 455 Lincoln Road

FILE NO. PB 19-0330

IN RE: An application for a conditional use permit for a Neighborhood Impact Establishment with Entertainment with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: LOT 1, Block 3, of "Lincoln Road Subdivision", according to the Plat thereof as recorded in Plat book 34, at Page 66, of the Public Records of Miami-Dade County.

MEETING DATE: January 28, 2020

CONDITIONAL USE PERMIT

The applicant, Opereta Ciudad Del Sol, LLC, requested a Conditional Use Permit, pursuant to Chapter 118, Articles IV and V, for a Neighborhood Impact Establishment (NIE) with a combined maximum occupant content in excess of 200 persons with entertainment, pursuant to Section 142, Article V. 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 CD-3, Commercial High Intensity District zoning district; and

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

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

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

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 the staff report and analysis, which is adopted herein, including the staff recommendations, as approved by the Planning Board, and accepted by the applicant, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions:

1. This Conditional Use Permit is issued to Opereta Ciudad Del Sol, LLC, as owner/operator of Andres Carne De Res for a Neighborhood Impact Establishment, consisting of an over 200 seat food service establishment with entertainment. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Business Tax Receipt.
2. The Board hereby imposes and the Applicant agrees to the following operational conditions for all permitted and accessory uses, and the applicant shall bind itself, lessees, permittees, concessionaires, renters, guests, users, 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. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 288 seat restaurant, plus a sidewalk café, with the criteria listed below:
 - i. The outdoor roof top may operate until 4:00 AM daily. The rooftop bar shall not be utilized or operated after 12:00 AM, unless a variance for extended hours is granted.
 - ii. Up to 223 seats may be located in the indoor area, as proposed.
 - iii. Up to 65 seats may be located in the outdoor bar area on the roof top, as proposed.
 - iv. Background music played at a volume that does not interfere with normal conversation may be permitted in the outdoor areas including the ground level and the rooftop. Entertainment shall not be permitted in the outdoor areas.
 - v. The restaurant shall comply with the Lincoln Road Requirements, per section 142-336 of the City Code, which regulate the requirements for both indoors and outdoor speakers.
 - vi. A DJ or live performance may play music in the indoor portions of the

- restaurant only. The music may start at 10:00 AM and shall not operate past 4:00 AM.
- vii. Full meals shall be available during all hours that entertainment is occurring.
 - viii. Speakers, except for life-safety purposes, may not be installed within twenty (20') feet of the main entrance, within the interior of the premises.
 - ix. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Before entertainment is approved and added to the Business Tax Receipt (BTR), a field visit with the applicants and Planning staff shall be required to verify the sound system operations.
 - x. All operable windows shall be closed at all times that entertainment is occurring.
 - xi. Televisions, and projectors shall not be located anywhere in the exterior areas of the property.
 - xii. After normal operating hours the establishment shall remain closed and no patrons or other persons, other than those employed by the establishment, shall remain therein between the establishment's closing time and 7:00 AM.
- b. Deliveries may only occur between 8:00 AM and 5:00 PM, daily.
 - c. Delivery trucks shall only be permitted to load and unload in the designated loading zones along Lincoln Lane.
 - d. Delivery trucks shall not be allowed to idle in loading zones.
 - e. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - f. Trash collections may occur daily between 8:00 AM and 5:00 PM.
 - g. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
 - h. 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.
 - i. Garbage dumpster covers shall be closed at all times except when in active use.

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- j. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors shall be contained within the premises. Owner agrees to install an exhaust system, if required by code, for the kitchens on the premise that will substantially reduce grease and smoke that would otherwise escape to the surrounding area. This may include the installation of a fan in connection with kitchen exhaust systems within the interior of the building in order to reduce noise levels at the exhaust outlet substantially in compliance with the plans as approved or in the alternative any such exhaust system shall be located along the west side of the property not directly adjacent to the southernmost or northernmost property lines.
 - k. Exterior speakers for fire and life safety purposes, and background ambient music played at a volume that does not interfere with normal conversation may be permitted.
 - l. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - m. As proposed by the applicant, ushers/security staff shall be onsite between 5:00 PM and 4:00 AM. Security staff shall monitor patron circulation and occupancy levels in order to adjust crowds according to occupant loads.
 - n. Patrons shall not be allowed to queue on any public rights-of-way or on the exterior of the premises. Security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrians on the public sidewalk.
 - o. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
3. The Applicant shall coordinate with the Parking Department to submit a comprehensive Transportation Demand Management (TDM) Plan to the Transportation Department for review and approval prior to receiving a Temporary Certificate of Occupancy
 4. The Applicant shall assign personnel to manage loading operations to reduce potential conflicts with pedestrians in crosswalks.
 5. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about valet operations and loud, excessive, unnecessary, or unusual noise.
 6. The applicant shall address the following Concurrency and Parking requirements, as applicable:
 - a. A Method of Transportation (MOT) shall be submitted to Public Works 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.
 - b. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed

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- necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.
- c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - d. Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of Occupancy or Business Tax Receipt, whichever comes first. If required, a one-time fee in lieu of providing the required parking on site, as determined by staff, shall be paid prior to the issuance of the Certificate of Occupancy.
7. 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.
 8. 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 BTR. 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).
 9. 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.
 10. 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.
 11. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
 12. 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.
 13. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
 14. 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

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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.

- 15. 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.
- 16. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit (not private residences or hotel rooms) for inspection by the City (i.e. Planning Department, Code Compliance 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.

Dated this 12th day of FEBRUARY, 2020

PLANNING BOARD OF THE CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, AICP
Chief of Planning and Zoning for Chairman

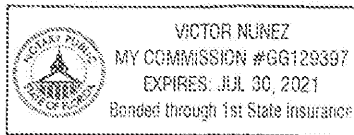
STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 12th day of February, 2020, by Michael Belush, Chief of Planning & Zoning for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

Victor Nunez

[NOTARIAL SEAL]



Notary:
Print Name:
Notary Public, State of Florida
My Commission Expires: July 30, 2021
Commission Number: 66129397

Approved As To Form: Nickallego (2/11/2020)
Legal Department

Filed with the Clerk of the Planning Board on Jessie Guly (2/12/2020)

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