

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

PROPERTY: 1200 Ocean Drive

FILE NO. PB 20-0345

IN RE: An application for a conditional use permit to add outdoor/open-air entertainment to an existing restaurant operation, pursuant to Chapter 118, Article IV, and Chapter 142, Article V, Division 6 of the City Code.

LEGAL DESCRIPTION: LOT 8, Block 17, of OCEAN BEACH FLA., ADDITION No. 2, according to the Plat thereof, as recorded in Plat book 2, at Page 56, of the Public Records of Miami-Dade County.

MEETING DATE: June 29, 2020

CONDITIONAL USE PERMIT

The applicant, PT OPCO, LLC, requested a Conditional Use Permit, pursuant to Chapter 118, Articles IV and V, for the addition of outdoor/open air entertainment, with a combined maximum occupant content of 199 persons, 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 MXE, Mixed-Use Entertainment 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

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. 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 for the addition of outdoor/open-air 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 PT OPCO, LLC, as owner/operator of Pink Taco for the addition to outdoor/open air entertainment, consisting of food service establishment with open air entertainment, and a maximum occupancy load of 199. 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.
3. 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 operation of the proposed 172 seat restaurant, plus a sidewalk café, subject to the criteria listed below:
 - i. The maximum occupancy load shall not exceed 199 or such lesser number as determined by the Fire Marshal.
 - ii. The restaurant may operate until 5:00 AM daily as proposed.
 - iii. Entertainment, as defined in City Code Section 114-1, including but not limited to a live show, live performance, or a DJ, shall be strictly prohibited on the outdoor porch and/or the sidewalk café area at the front of the building. All such entertainment shall be located only within the interior of the building. Exterior doors/windows may remain open, provided, however, that that sound levels along the abutting sidewalks shall not exceed a level that would interfere with normal conversation (i.e. shall not exceed an ambient volume

- level).
- iv. Notwithstanding Section 3.a.iii above, all sliding glass doors shall be closed by 11:00 PM nightly. Ingress and egress for patrons and staff shall be limited to the existing swing doors.
 - v. All sliding glass doors shall be closed at all times that sound levels in the interior exceed a level that would interfere with normal conversation.
 - vi. A sound field test shall be performed before commencement of business operations, with staff present, to demonstrate that the anticipated sound levels proposed by the applicant, with the doors of the venue open and the music played at the proposed volume levels, shall not interfere with normal conversation (i.e. shall not exceed an ambient volume level) along the exterior public sidewalks abutting the property.
 - vii. 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. 60 days after opening, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed.
 - viii. The restaurant shall comply with the Ocean Drive requirements, per section 142-546 (b) of the City Code, which regulate the requirements for both indoor and outdoor speakers.
 - ix. A full menu shall be made available during all hours of operation.
 - x. The venue shall not become a stand-alone bar or stand-alone entertainment establishment.
 - 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 4:00 PM, daily.
 - c. Delivery trucks shall only be permitted to load and unload from Ocean Court and in the designated loading zones along 12th Street.
 - 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.
 - 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 premises 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 may only be permitted for fire or life safety purposes, and/or for background music played at a volume that does not interfere with normal conversation (i.e. at an ambient volume level).
 - l. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - m. An off-duty police officer (subject to availability), shall be hired to monitor the operations during 'high impact weekends', as defined in the City Code and as may be designated by the City Manager and/or City Commission.
 - n. The applicant shall dedicate at least one staff person to monitor security, patron circulation, queuing and crowd control/occupancy levels in order to adjust crowds according to occupant loads.
 - o. Patrons shall not be allowed to queue on any public rights-of-way or on the exterior of the premises. At least one security staff shall be required to be onsite during hours of operation to monitor the crowds to ensure that they do not interfere with the free flow of pedestrians on the public sidewalk.
 - p. 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.
4. The Applicant shall coordinate with the Transportation Department to submit a comprehensive Transportation Demand Management (TDM) Plan to the Transportation

- Department for review and approval prior to receiving a new BTR with the inclusion of outdoor/open air entertainment.
5. The Applicant shall assign personnel to manage loading operations to reduce potential conflicts with pedestrians in crosswalks.
 6. 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.
 7. The applicant shall address the following Concurrency and Parking requirements, as applicable:
 - a. 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.
 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. 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. 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 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 _____ day of 7/17/2020 | 2:29 PM EDT, 2020.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

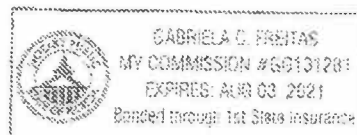
BY: Michael Belush
Michael Belush, AICP
Chief of Planning and Zoning
for Chairman

STATE _____ OF _____ FLORIDA
)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 17 day of July, 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.

[NOTARIAL SEAL]



Gabriela Freitas
Notary
Print Name: Gabriela Freitas
Notary Public, State of Florida
My Commission Expires: Aug 3, 2021
Commission Number: 60131201

Approved As To Form: Legal Department (7/13/2020 | 2:48 PM EDT)

Filed with the Clerk of the Planning Board on Jessica G. Long 7/21/20