

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: December 14, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB20-0377. 1600 Alton Road – Outdoor Theater.**

An application has been filed requesting a conditional use permit for an Open Air Entertainment Establishment, an Outdoor Entertainment Establishment and a Neighborhood Impact Establishment, with an aggregate occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions

BACKGROUND

On May 24, 2016, the Planning Board approved a Conditional Use Permit (CUP) for the construction of a new 5-story mixed-use development exceeding 50,000 square feet. On July 5, 2016, the Design Review Board approved the proposal and related variances.

On September 16, 2020 the City Commission adopted an ordinance with amendments (Ordinance No. 2020-4358) that created a framework for outdoor movie theatres on the west side of Alton Road.

ZONING/SITE DATA

Legal Description:

Parcel 1: LOTS 1 AND 2, BLOCK 45, OF COMMERCIAL SUBDIVISION, ALTON BEACH REALTY COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY FLORIDA.

Parcel 2: LOTS 3, 4, 5, AND 7, BLOCK 45, OF COMMERCIAL SUBDIVISION, ALTON BEACH REALTY COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY FLORIDA.

Parcel 3: LOT 6, BLOCK 45, OF COMMERCIAL SUBDIVISION, ALTON BEACH REALTY COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY FLORIDA.

Zoning District:

CD-2 Commercial, Medium Intensity District

Future Land Use Designation: Medium Intensity Commercial Category (CD-2)

Surrounding Uses: See Zoning/Site map at the end of this report.

North:	Commercial Building
South:	Commercial Building
West:	Residential Multifamily
East:	Commercial Building

THE PROJECT

The applicant, ARRP 1600 Alton, LLC and 1212 Lincoln, LLC, has submitted plans entitled "Rooftop Cinema Club". The proposal is for an outdoor cinema with an accessory bar, to occupy the rooftop of the existing five-story commercial building located at 1600 Alton Road. Outdoor motion picture theaters with accessory outdoor bar counters are permissible as a conditional use on the Alton Road corridor, subject to specific criteria and restrictions.

Page A2.06 of the plans, prepared by Studio MC+G Architecture, provides the proposed floor plan for the rooftop. The plan indicates that there are 179 cinema seats, 85 seats in the concession area, and 31 seats on the roof deck, for a total of 295 seats.

Page A2.07 of the plans indicates that there is a projected occupant load of 574, including food and cinema areas, along with back of house and food preparation areas. An occupant content of more than 200 with entertainment constitutes a Neighborhood Impact Establishment (NIE).

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

- 1. The Use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

Consistent – The request is consistent with the permissible conditional uses in the Medium Intensity Commercial Category (CD-2) as designated on the Future Land Use Map within the Comprehensive Plan.

- 2. The intended Use or construction would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.**

Consistent – The proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

- 3. Structures and uses associated with the request are consistent with these Land Development Regulations.**

Consistent – The Outdoor Theater and Neighborhood Impact Establishments are permitted as conditional uses in this zoning district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Building Permit.

- 4. Public health, safety, morals and general welfare would not be adversely affected.**

Consistent – The proposed establishment may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. The facility would have to comply with all applicable laws and regulations for licensure.

5. Adequate off-street parking facilities would be provided.

Consistent – The existing building contains 372 parking spaces. The proposal will remove 35 surplus rooftop parking spaces which will be converted to the outdoor cinema. 337 parking spaces will remain. According to the plans submitted, the entire development only requires 297 spaces. Therefore, the development would continue to provide 40 surplus parking spaces.

6. Necessary safeguards would be provided for the protection of surrounding property, persons, and neighborhood values.

Consistent – In addition to the requirements of section 142-310, staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

7. The concentration of similar types of uses would not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.

Consistent – This would be the only outdoor movie theater in the vicinity so a concentration of similar types of uses would not occur.

NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for an outdoor entertainment establishment, open air entertainment establishment or a neighborhood impact establishment, the Planning Board shall apply the following supplemental review guidelines criteria in addition to the standard review guidelines for conditional uses pursuant to chapter 118, article IV:

1. An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.

The operational plan was submitted with the application including details of hours for deliveries, hours of operation, number of employees, crowd control, noise attenuation, valet parking, and other procedures.

2. A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, self-park, shared parking, after-hour metered spaces and the manner in which it is to be managed.

Parking for the use will be within the building's existing parking structure. Valet parking will be provided through the building's unified valet parking system that was approved under the original CUP for the building (PB File No. 2325).

3. An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises would be controlled.

The operations plan indicates procedures for crowd control. It is indicated that queues are not anticipated and that the site has sufficient room to accommodate anticipated crowds. Staff is proposing conditions to mitigate any potential issues with crowd control and queuing in the outdoor areas and sidewalk.

4. A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.

The operations plan indicates that security will be provided through the building's unified security system which includes 24/7 monitoring of the property and on-property security patrols.

5. A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.

A traffic analysis was provided.

6. A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.

The use will utilize the building's unified trash room. Staff has included recommended conditions to mitigate any potential issues related sanitation operations.

7. A noise attenuation plan which addresses how noise would be controlled to meet the requirements of the noise ordinance.

A sound study prepared by Keane Acoustics, Inc. As required by Section 142-310, the movie playback will only be via headphones. There will be a distributed sound system that will primarily be used for the concession and seating areas. A four-foot (4') glass parapet extension will be provided to provide additional noise shielding.

8. Proximity of proposed establishment to residential uses.

The use is adjacent to residential uses to the west. The sound study has indicated that measures will be provided to ensure that the residences are not negatively impacted by the proposed use.

9. Cumulative effect of proposed establishment and adjacent pre-existing uses.

No cumulative effect is expected from the proposed use and adjacent pre-existing uses.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

1. A recycling or salvage plan for partial or total demolition shall be provided.

Not applicable – Existing Building

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

Not applicable – Existing Building and outdoor use.

3. **Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.**

Not applicable – Existing Building and outdoor use.

4. **Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.**

Not applicable – Existing Building.

5. **Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.**

Satisfied.

6. **The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.**

Not applicable – Existing Building.

7. **Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.**

Not applicable – Existing Building.

8. **Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.**

Not applicable – Existing Building.

9. **When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.**

Not applicable – Existing Building.

10. **Where feasible and appropriate, water retention systems shall be provided.**

Not applicable – Existing Building and outdoor use.

11. **Cool pavement materials or porous pavement materials shall be utilized.**

Not applicable – Existing Building.

12. **The design of each project shall minimize the potential for heat island effects on-site.**

Not applicable – Existing Building.

ANALYSIS

Project Description and Operations

Pursuant to the recently adopted amendment to Section 142-310 (a)(8), outdoor motion picture theaters with accessory outdoor bar counters are permissible as a conditional use on the subject parcel, subject to specific criteria and restrictions as follows:

- a. The outdoor motion picture theater use shall front on Alton Road.
- b. No television, radio, and/or recorded background music may exceed an ambient volume level (i.e. a volume that does not interfere with normal conversation). On rooftops, audio from motion picture presentations shall only be delivered to patrons through individually worn headphones.
- c. Movie projectors and related equipment, as well as all theater screens or displays, shall be oriented away from immediately neighboring residential areas, and projections may not be substantially visible from the right-of-way. The projection system shall be designed so as not to negatively impact adjacent residential areas.
- d. Outdoor motion picture theaters shall be limited to no more than one (1) screen or display per establishment.
- e. Outdoor motion picture theaters shall commence operations no earlier than 4:30 p.m., and shall cease operations no later than 12:00 a.m. on weekdays and 1:00 a.m. on weekends. Any accessory bar counter shall commence operations no earlier than 4:30 p.m., and shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends. The accessory bar counter may be open and operational only during times when the theater use is operational.
- f. Outdoor motion picture theaters shall have no more than three (3) movie showings per night.
- g. Any outdoor bar counter shall be located away from immediately neighboring residential areas and shall not be substantially visible from the right-of-way.
- h. The area surrounding any bar counter in which alcoholic beverages may be served shall be segregated to comply with the applicable requirements of chapter 6 of this Code. Additionally, this bar area, as well as any area that allows for the congregation of non-seated patrons, shall incorporate sound attenuation devices in order to reduce the level of noise. Such sound attenuation devices must be submitted as part of a sound study prepared by a licensed acoustical engineer, peer reviewed, and presented to the planning board as part of the review of the CUP application. The sound study shall include methods of absorbing and or re-directing sound and noise generated by ambient music and patron conversation.
- i. Theater seats shall be required at all times and shall not be removed from the movie viewing areas during all times the business is open. This shall not preclude the temporary removal of seats for cleaning and maintenance purposes.

A copy of the full ordinance is attached, for informational purposes. The applicant has indicated in the letter of intent that they will abide by the requirements of the ordinance.

Noise Attenuation

A sound study prepared by Keane Acoustics, Inc. As required by Section 142-310, the movie playback will only be via headphones. The only audible sound from the use will be from a distributed sound system that will primarily be used for the concession and seating areas. Per the requirements of section 142-310, the sound can only be played at ambient levels, therefore minimal impacts are expected to surrounding properties. The only other sound source would be people conversing while eating at the concession area. In order to minimize the potential for sound generated by the use, a sound shielding four-foot (4') glass parapet extension will be provided along the western edge of the use, in compliance with the requirements for the use.

Deliveries and Sanitation

The operations plan indicates that all deliveries will be consistent with those required in the conditional use permit approved for the 5-story building.

Parking and Access

The existing building contains 372 parking spaces. The proposal will remove 35 surplus rooftop parking spaces which will be converted to the outdoor cinema. 337 parking spaces will remain. According to the plans submitted, the entire development only requires 297 spaces. Therefore, the development would continue to provide 40 surplus parking spaces.

Patrons will have the option of using self-park or valet parking. Valet parking will be provided through the building's unified valet parking ramp on Alton Road that was approved as part of the building's conditional use permit. It is not expected that the use will generate additional parking and access impacts beyond what was considered in the original CUP for the building.

Security and Crowd Control

The operations plan indicates that security will be provided through the building's unified security system which includes 24/7 monitoring of the property and on-property security patrols. The security systems were initially approved as part of the original CUP for the building.

The operations plan also includes procedures for crowd control. The applicant has indicated that queues are not anticipated and that the site has sufficient room to accommodate anticipated crowds. Staff is proposing conditions to mitigate any potential issues with crowd control and queuing in the outdoor areas and sidewalk.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be approved subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP



CD-2 Alton Road Outdoor Movie Theaters

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY AMENDING CHAPTER 6, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-4, ENTITLED "LOCATION AND USE RESTRICTIONS," IN ORDER TO PERMIT OUTDOOR MOTION PICTURE THEATERS FRONTING ON ALTON ROAD TO SELL AND/OR OFFER ALCOHOLIC BEVERAGES FOR CONSUMPTION; BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-305, "PROHIBITED USES," AND SECTION 142-310, ENTITLED "SPECIAL REGULATIONS FOR ALCOHOL BEVERAGE ESTABLISHMENTS," TO PROVIDE REGULATIONS FOR OUTDOOR MOTION PICTURE THEATERS AND ACCESSORY OUTDOOR BAR COUNTERS; BY AMENDING ARTICLE IV, DIVISION 3, SECTION 142-1109, ENTITLED "ACCESSORY OUTDOOR BAR COUNTERS," TO PERMIT OUTDOOR BAR COUNTERS AS AN ACCESSORY USE TO OUTDOOR MOTION PICTURE THEATERS; AND BY AMENDING DIVISION 5, "HEIGHT REGULATIONS," SECTION 142-1161, ENTITLED "HEIGHT REGULATION EXCEPTIONS," TO AMEND THE LIST OF HEIGHT EXCEPTIONS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Commission desire to encourage innovative and compatible redevelopment in the Alton Road Corridor; and

WHEREAS, outdoor motion picture theater uses are an innovative entertainment use that will help encourage the commercial success of the Alton Road area; and

WHEREAS, the operational conditions set forth in this Ordinance will promote compatibility, and mitigate impacts to the neighborhood associated with outdoor motion picture theaters.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter of 6 the City Code, entitled "Alcoholic Beverages," is hereby amended as follows:

**CHAPTER 6
ALCOHOLIC BEVERAGES**

ARTICLE I. – IN GENERAL

* * *

Sec. 6-4. - Location and use restrictions.

(a) *Generally.* The following location and use restrictions are applicable for facilities selling or offering alcohol beverages for consumption:

(1) *Educational facilities.* No alcohol beverage shall be sold or offered for consumption in a commercial use within 300 feet of any property used as a public or private school operated for the instruction of minors in the common branches of learning. Except for uses in the civic and convention center (CCC) district, hospital (HD) district or within 300 feet of a marina.

(2) *Places of worship.* No alcohol beverage shall be sold or offered for consumption in an alcoholic beverage establishment, including bottle clubs, within 300 feet of any property used as a place of worship, except in restaurants operating with full kitchens and serving full meals for consumption on the premises.

(3) *Retail stores for off-premises consumption.* The minimum distance separation between retail stores primarily selling alcoholic beverages for consumption off the premises as a main permitted use shall be 1,500 feet. A retail store primarily selling alcoholic beverages may obtain conditional use approval from the planning board to operate at a lesser distance from an existing store, but in no event shall such a store open at a distance less than 700 feet from an existing store. There shall be no variances from this distance separation requirement.

(4) *Motion picture theaters.* No alcohol beverages shall be sold or offered for consumption in any motion picture theater, or in any room opening directly or indirectly into or in connection with any motion picture theater, except alcohol beverages may be served in motion picture theaters (i) of at least 15,000 square feet in total floor area, (ii) containing at least 300 permanent auditorium seats, and (iii) which are located in CD-3 commercial, high intensity districts. Additionally, alcohol beverages may be sold or offered for consumption in outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310, and article IV, division 2 of this chapter. Notwithstanding chapter 142, article 5, division 6 of the city Code, ~~a~~ an indoor motion picture theater in which the sale and consumption of alcohol beverages is permitted shall not be considered a neighborhood impact establishment. Motion picture theaters shall not be permitted to operate between the hours of 3:00 a.m. and 8:00 a.m., except that motion picture theaters may apply for up to three special event permits from the city per calendar year to operate during such hours. This section shall not relieve any person, entity or establishment from the restrictions contained in chapter 6, article II or the land development regulations of the city Code.

Any approval granted pursuant to this section shall also be subject to the following restrictions:

i. The sale of alcohol beverages for consumption off the premises is strictly prohibited.

ii. A minor control plan, setting forth conditions regarding hours of operation and alcohol sales, alcohol service and monitoring procedures, food service, and staff

training, must be approved by the city manager or designee prior to the issuance of a license for alcohol sales or consumption.

iii. Designated alcohol beverage consumption areas, including concession and cafe areas, and those specific auditoriums in which alcohol beverages may be served and consumed, must be clearly designated as such and separated from the remainder of the theater by a barrier or other physical demarcation. All alcohol beverages must be served from within the designated alcohol beverage consumption areas, and no alcohol beverages may be consumed or carried beyond the boundary limits of the designated alcohol beverage consumption areas. Access to the designated alcohol beverage consumption areas is restricted to patrons who can present a valid identification for inspection demonstrating they are 21 years of age or older. The restrictions in this paragraph shall not apply to outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310, and article IV, division 2 of this chapter.

iv. There may be special customer promotions that combine purchase of a motion picture theater ticket with purchase of food and an alcohol beverage. No "happy hour" type of reduced price alcohol beverage promotion shall be allowed.

v. Motion picture theaters selling alcohol beverages, shall obtain the requisite state license for sales and consumption of such beverages.

vi. Motion picture theaters selling alcoholic beverages as defined in section 102-306 shall collect and remit resort taxes to the city for alcohol sales as required under section 102-306.

(5) *Filling station.* No liquor as defined by F.S. § 568.01, shall be sold or offered for consumption on or off the premises of any filling station.

(6) *Curb service sales.* No alcohol beverages shall be sold or served to persons in a vehicle of any kind or from an exterior counter or any type of walk-up window. All sales are to be from the interior of the structure.

(7) *Off-premises consumption.* All sales of alcohol beverages for consumption off the premises shall be in a sealed container.

(8) *Bottle clubs.* There shall be no bottle clubs within 300 feet of any property used as a public or private school operated for the instruction of minors in the common branches of learning or place of worship.

(9) *Dance halls.* The minimum distance separation between dance halls licensed to sell alcohol beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet.

(10) *Entertainment establishments.* The minimum distance separation between entertainment establishments licensed to sell alcohol beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet. The provisions of this paragraph shall not apply to outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310.

(b) *Determination of minimum distance separation.*

(1) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit in which the use associated with alcohol beverages occurs to the nearest point of the property used for a public or private school. In cases where a minimum distance is required between two uses associated with the alcohol beverages for consumption on or off the premises other than a public or private school, the minimum requirement shall be determined by measuring a straight line between the principal means of entrance of each use.

(2) When a distance separation is required, a scaled survey drawn by a registered land surveyor shall be submitted attesting to the separation of the uses in question. This requirement may be waived upon the written certification by the planning director that the minimum distance separation has been met.

(c) *Variances.* Variances to the provisions of this section may be granted pursuant to the procedure in section 118-351 et seq., except that no variances may be granted on the provisions of [subsection] 6-4(a)(4) concerning the sale or consumption of alcohol beverages in motion picture theaters.

SECTION 2. Chapter 142 of the City Code, entitled "Zoning districts and regulations," Article II, "District regulations," Division 5, "CD-2 Commercial, medium intensity district," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 5. – CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT

* * *

Sec. 142-305. – Prohibited uses.

The prohibited uses in the CD-2 commercial, medium intensity district are accessory outdoor bar counters, except as provided in section 142-310, or in article IV, division 2 of this chapter and in chapter 6. Except as otherwise provided in these land development regulations, prohibited uses in the CD-2 commercial medium intensity district in the Sunset Harbour Neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard, also include hostels, outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, bars, dance halls, and entertainment establishments (as defined in section 114-1 of this Code).

* * *

Sec. 142-310. - Special regulations for alcohol beverage establishments.

(a) *Alton Road corridor.* The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located on the west side of Alton Road and east of Alton Court, between 5th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road:

- (1) Operations shall cease no later than 2:00 a.m.
- (2) Establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served in the restaurant, shall cease sidewalk cafe operations at 12:00 a.m., and shall not be permitted to have outdoor speakers.
- (3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.
- (4) Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.
- (5) Outdoor bar counters shall be prohibited.
- (6) No special event permits shall be issued.
- (7) This subsection (a) above shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2015; or (ii) issued prior to May 21, 2015; or (iii) to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to May 21, 2015. Any increase to the approved hours of operation shall meet the requirements of this subsection (a).
- (8) Notwithstanding the foregoing, outdoor motion picture theaters with accessory outdoor bar counters may be permitted, including on rooftops, subject to conditional use approval pursuant to chapter 118, article IV, and subject to the following operational limitations:
 - a. The outdoor motion picture theater use shall front on Alton Road.
 - b. No television, radio, and/or recorded background music may exceed an ambient volume level (i.e. a volume that does not interfere with normal conversation). On rooftops, audio from motion picture presentations shall only be delivered to patrons through individually-worn headphones.
 - c. Movie projectors and related equipment, as well as all theater screens or displays, shall be oriented away from immediately neighboring residential

areas, and projections may not be substantially visible from the right-of-way. The projection system shall be designed so as not to negatively impact adjacent residential areas.

- d. Outdoor motion picture theaters shall be limited to no more than one (1) screen or display per establishment.
- e. Outdoor motion picture theaters shall commence operations no earlier than 4:30 p.m., and shall cease operations no later than 12:00 a.m. on weekdays and 1:00 a.m. on weekends. Any accessory bar counter shall commence operations no earlier than 4:30 p.m., and shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends. The accessory bar counter may be open and operational only during times when the theater use is operational.
- f. Outdoor motion picture theaters shall have no more than three (3) movie showings per night.
- g. Any outdoor bar counter shall be located away from immediately neighboring residential areas and shall not be substantially visible from the right-of-way.
- h. The area surrounding any bar counter in which alcoholic beverages may be served shall be segregated to comply with the applicable requirements of chapter 6 of this Code. Additionally, this bar area, as well as any area that allows for the congregation of non-seated patrons, shall incorporate sound attenuation devices in order to reduce the level of noise. Such sound attenuation devices must be submitted as part of a sound study prepared by a licensed acoustical engineer, peer reviewed, and presented to the planning board as part of the review of the CUP application. The sound study shall include methods of absorbing and or re-directing sound and noise generated by ambient music and patron conversation.
- i. Theater seats shall be required at all times and shall not be removed from the movie viewing areas during all times the business is open. This shall not preclude the temporary removal of seats for cleaning and maintenance purposes.

* * *

SECTION 3. Chapter 142 of the City Code, entitled "Zoning districts and regulations," Article IV, "Supplementary district regulations," Division 3, "Supplementary use regulations," is hereby amended as follows:

ARTICLE IV. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

DIVISION 3. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

Sec. 142-1109. – Accessory outdoor bar counters.

Accessory outdoor bar counters shall be prohibited as a main permitted use and shall only be permitted as an accessory use to an outdoor motion picture theater fronting on Alton Road as provided in section 142-310, an outdoor cafe with a minimum of 30 chairs, or as an accessory use to a hotel pool deck. Accessory counters shall not be visible from any point along the property line adjacent to a public right-of-way.

SECTION 4. Chapter 142 of the City Code, Article IV, "Supplementary district regulations," Division 5, "Height regulations," is hereby amended as follows:

DIVISION 5. – HEIGHT REGULATIONS

Sec. 142-1161. – Height regulation exceptions.

For all districts, except RS-1, 2, 3 and 4 (single-family residential districts).

(a) The height regulations as prescribed in these land development regulations shall not apply to the following when located on the roof of a structure or attached to the main structure. For exceptions to the single-family residential districts, see subsection 142-105(e).

- (1) Air conditioning, ventilation, electrical, plumbing equipment or equipment rooms.
- (2) Chimneys and air vents.
- (3) Decks, not to exceed three feet above the main roofline and not exceeding a combined deck area of 50 percent of the enclosed floor area immediately one floor below.
- (4) Decorative structures used only for ornamental or aesthetic purposes such as spires, domes, belfries, not intended for habitation or to extend interior habitable space. Such structures shall not exceed a combined area of 20 percent of the enclosed floor area immediately one floor below.
- (5) Elevator bulkheads or elevator mechanical rooms.
- (6) Flagpoles subject to the provisions of section 138-72.
- (7) Parapet walls, not to exceed three and one-half feet above the main roofline unless otherwise approved by the design review board up to a maximum of 25 feet in height.
- (8) Planters, not to exceed three feet in height above the main roofline.
- (9) Radio, television, and cellular telephone towers or antennas, and rooftop wind turbines.
- (10) Stairwell bulkheads.
- (11) Skylights, not to exceed five feet above the main roofline.
- (12) Stage towers or scenery lofts for theaters.
- (13) Swimming pools, whirlpools or similar structures, which shall have a four-foot wide walkway surrounding such structures, not to exceed five feet above the main roofline.
- (14) Trellis, pergolas or similar structures that have an open roof of cross rafters or latticework.
- (15) Water towers.
- (16) Bathrooms required by the Florida Building Code, not to exceed the minimum size dimensions required under the Building Code, provided such bathrooms are not visible when viewed at eye level (five feet, six inches from grade) from the opposite

side of the adjacent right-of-way; for corner properties. Such bathrooms shall also not be visible when viewed at eye level (five feet, six inches from grade) from the diagonal corner at the opposite side of the right-of-way and from the opposite side of the side street right-of-way.

- (17) Solar panels.
- (18) Wind turbines on oceanfront properties.
- (19) Sustainable roofing systems.
- (20) Display or screen structures, projection devices, lobby, concession space, and sound attenuation and screening devices, any of which serve an outdoor movie theater fronting on Alton Road as provided in section 142-310 of this chapter.

(b) The height of all allowable items in subsection (a) of this section, unless otherwise specified, shall not exceed 25 feet above the height of the roofline of the main structure. With the exception of items described in subsection (a)(17) and (a)(18) of this section, when any of the above items are freestanding, they shall follow the height limitations of the underlying zoning district (except flagpoles which are subject to section 138-72).

(c) Notwithstanding other provisions of these regulations, the height of all structures and natural growth shall be limited by the requirements of the Federal Aviation Agency and any airport zoning regulations applicable to structure and natural growth.

SECTION 5. CODIFICATION. It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 6. REPEALER. All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 7. SEVERABILITY. If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____, 20__.

Dan Gelber
Mayor


ATTEST:

Rafael E. Granado
City Clerk

First Reading: July 29, 2020
Second Reading: September 16, 2020

Verified by: _____
Thomas Mooney, AICP
Planning Director

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION



City Attorney NK 10-6-2
Date

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

PROPERTY: 1600 Alton Road – Outdoor theater

FILE NO. PB20-0377

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

LEGAL DESCRIPTION: Parcel 1: LOTS 1 AND 2, BLOCK 45, OF COMMERCIAL SUBDIVISION, ALTON BEACH REALTY COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY FLORIDA.

Parcel 2: LOTS 3, 4, 5, AND 7, BLOCK 45, OF COMMERCIAL SUBDIVISION, ALTON BEACH REALTY COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY FLORIDA.

Parcel 3: LOT 6, BLOCK 45, OF COMMERCIAL SUBDIVISION, ALTON BEACH REALTY COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY FLORIDA.

MEETING DATE: December 14, 2020

CONDITIONAL USE PERMIT

The applicant, ARRP 1600 Alton, LLC and 1212 Lincoln, LLC, requested approval for a Conditional Use Permit, pursuant to Chapter 118, Articles IV and V, and an Open Air Entertainment Establishment, an Outdoor Entertainment Establishment and a Neighborhood Impact Establishment, with an aggregate occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV and Chapter 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-2 Commercial, Medium 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

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 ARRP 1600 Alton, LLC and 1212 Lincoln, LLC, as owner/operator of the subject Outdoor Motion Picture Theater with an Open Air Entertainment Establishment, an Outdoor Entertainment Establishment and a Neighborhood Impact Establishment, with an aggregate occupant content in excess of 200 persons. 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. The outdoor motion picture theater use shall front on Alton Road.
 - b. No television, radio, and/or recorded background music may exceed an ambient volume level (i.e. a volume that does not interfere with normal conversation).
 - c. Audio from motion picture presentations shall only be delivered to patrons through individually worn headphones.
 - d. Movie projectors and related equipment, as well as all theater screens or displays, shall be oriented away from immediately neighboring residential areas, and

- projections may not be substantially visible from the right-of-way. The projection system shall be designed so as not to negatively impact adjacent residential areas.
- e. Outdoor motion picture theaters shall be limited to no more than one (1) screen or display per establishment.
 - f. Outdoor motion picture theater operations shall commence no earlier than 4:30 p.m. and shall cease operations no later than 12:00 a.m. on Sunday through Thursday, and no later than 1:00 a.m. on Friday and Saturday.
 - g. The accessory bar counter shall commence operations no earlier than 4:30 p.m., and shall cease operations no later than 11:00 p.m. on Sunday through Thursday, and no later than 12:00 a.m. on Friday and Saturday.
 - h. The accessory bar counter may be open and operational only during times when the theater use is operational.
 - i. The outdoor motion picture theater shall have no more than three (3) movie showings per night.
 - j. Any outdoor bar counter shall be located away from immediately neighboring residential areas and shall not be substantially visible from the right-of-way.
 - k. The area surrounding any bar counter in which alcoholic beverages may be served shall be segregated to comply with the applicable requirements of chapter 6 of this Code.
 - l. A four-foot (4') glass parapet extension shall be provided on the western edge of the use, in a manner to be reviewed and approved by the Planning Department.
 - m. Theater seats shall be required at all times and shall not be removed from the movie viewing areas during all times the business is open. This shall not preclude the temporary removal of seats for cleaning and maintenance purposes.
 - n. Patrons shall not be allowed to queue on any public rights-of-way or on the exterior of the premises. Staff shall monitor any crowds to ensure that they do not interfere with the free flow of pedestrians on the public sidewalk.
3. 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.
 4. The applicant shall address the following Transportation, Mobility, 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.

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- b. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.
 - c. 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.
 5. 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.
 6. 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 outdoor theater. Details of noise, light, and other impacts shall be submitted for review as part of this progress report. 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).
 7. 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.
 8. 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.
 9. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
 10. 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.
 11. 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.
 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.
14. 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 _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Chief of Planning and Zoning
for Chairman

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio A. Madan, Chief of Community Planning & Sustainability for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

Notary:
Print Name:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department _____ ()

Filed with the Clerk of the Planning Board on _____ ()