

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: May 25, 2021

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **Discussion on how to strengthen enforcement mechanisms for Conditional Use Permits.**

### **RECOMMENDATION**

Discuss the item and provide recommendations to the City Commission, if applicable.

### **HISTORY**

On April 27, 2021, the Planning Board discussed a progress report related to 928 Ocean Drive – Voodoo Lounge (File No. PB18-0252). The progress report was continued to the June 22, 2021 meeting. As part of the motion for a continuance, it was requested that a discussion item be set for the May 25, 2021 meeting regarding how to strengthen enforcement mechanisms for Conditional Use Permits (CUPs).

### **BACKGROUND**

Conditional uses are those that require special review because they generally are of a public or semi-public character and are essential and desirable for the general convenience and welfare of the community. Additionally the nature of the uses and their potential impact on neighboring properties, requires the exercise of planning judgment as to location and site plan. Each zoning district has a list of uses which are allowed only as a conditional use. Conditional uses are authorized through Conditional Use Permits (CUPs).

CUPs are issued by the Planning Board through the procedures outlined in Chapter 118, Article IV, of the Land Development Regulations (LDRs). The procedures contain standard review guidelines which the Planning Board must consider in making its decisions on whether or not to grant CUPs. As part of the CUP process, the Planning Board is able to impose conditions on the use which must be followed; however, the conditions must be germane to the use and the review guidelines. Certain uses have supplemental guidelines which must be considered, including new structures over 50,000 SF; religious institutions; neighborhood impact establishments (NIEs); and mechanical lift parking. There is also criteria which relates to resiliency and sustainability. Per section 118-192 of the LDRs, the standard review criteria are as follows:

- (1) *The Use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists*

*for the area in which the property is located.*

- (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*
- (3) Structures and uses associated with the request are consistent with these Land Development Regulations.*
- (4) Public health, safety, morals and general welfare would not be adversely affected.*
- (5) Adequate off-street parking facilities would be provided.*
- (6) Necessary safeguards would be provided for the protection of surrounding property, persons, and neighborhood values.*
- (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.*
- (8) The structure and site comply with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.*

Since NIEs often consist of entertainment establishments, which if not regulated and managed properly, have the ability to create nuisances for a community, the discussion at hand seems primarily to pertain particularly to NIEs. Per section 142-1361, NIEs are defined as:

- (1) An alcoholic beverage establishment or restaurant, not also operating as an entertainment establishment or dance hall (as defined in section 114-1), with an occupant content of 300 or more persons as determined by the chief fire marshal; or*
- (2) An alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall (as defined in section 114-1), with an occupant content of 200 or more persons as determined by the chief fire marshal.*

In addition to the standard CUP review guidelines, NIE's have the following review guidelines per section 142-1362 of the LDRs:

- 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.*
- 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.*
- 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.*

4. *A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.*
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.*
6. *A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.*
7. *A noise attenuation plan which addresses how noise would be controlled to meet the requirements of the noise ordinance.*
8. *Proximity of proposed establishment to residential uses.*
9. *Cumulative effect of proposed establishment and adjacent pre-existing uses.*

When CUP's are considered by the Planning Board, staff provides a draft board order with conditions for the Planning Board to consider. Some previously approved board orders for NIE's are attached for reference.

Section 118-194 of the LDRs has procedures to ensure compliance with the conditions in CUPs. These procedures involve the issuance of violations by the Code Enforcement Department, the issuance of a cure letter by the Planning Department when it is apparent that there is a pattern of violations requesting that the applicant appear before the Planning Board for a progress report, and the Planning Board potentially scheduling revocation/modification hearings for the CUP. While it is not often, NIEs with entertainment do have the tendency to be the use most likely to be called back to the Planning Board to ensure compliance with the conditions of their CUP.

#### **ANALYSIS**

Staff believes that the CUP process is sound and generally leads to better behavior by establishments than uses that are permitted as of right, especially when entertainment and consumption of alcoholic beverages is involved. When approved conditional uses are non-compliant with the approved operation, including the conditions of the Order, and create nuisances for the community, the procedures contained in the LDRs provide a good venue to ensure compliance, modify the use, or potentially suspend the use.

That being said, there may be room for improvement in terms of the conditions incorporated into board orders and the review guidelines that the board must consider. Staff recommends that the Planning Board review the existing guidelines (mentioned above), previously approved orders (attached) and provide feedback and recommendations. Any recommendations by the Planning Board requiring an amendment to the LDRs will be transmitted to the City Commission via a Letter to Commission (LTC).

#### **RECOMMENDATION**

Staff recommends that the Planning Board discuss the item and provide recommendations as applicable.

**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 12<sup>th</sup> 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.

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- 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.

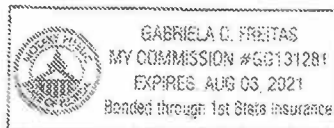
Dated this 7/17/2020 day of July, 2020.

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: 99131281

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

Filed with the Clerk of the Planning Board on Jessica Galvez 7/21/20

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

**PROPERTY:** 940 Ocean Drive — Havana 57  
**FILE NO.** PB 19-0285

**IN RE:** An application for Conditional Use Approval for a Neighborhood Impact Establishment, open-air entertainment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V, Division 6 of the City Code.

**LEGAL DESCRIPTION:** Lots 3 and 4, 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:** September 24, 2019

**CONDITIONAL USE PERMIT**

The applicant, 940 Ocean Drive LLC, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment and Outdoor Entertainment Establishment pursuant to Chapter 118, Article IV, and Chapter 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

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record for this matter, and 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 BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, including modification to the hours of operation, 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 940 Ocean Drive LLC, any changes in ownership of 50% (fifty percent) or more stock ownership, or the equivalent, shall require the new owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.
3. 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.
4. 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.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. Prior to the issuance of any approval for uses approved herein, including but not limited to, applicable certificates of occupancy, certificates of use, and a business tax receipt, the applicant shall either obtain administrative approval or apply to the historic preservation board for a certificate of appropriateness for all modifications made to the lobby, courtyard and porch, or remove all such modifications, in a manner satisfactory to historic preservation staff.
7. The Applicant agrees to the following operational conditions for the entire facility:
  - a. The CUP shall have the following maximum occupant content (including within the interior and exterior portion located on private property) for the Courtyard, interior, restaurant and ocean terrace: Maximum of 220 persons, or any lesser such occupant content as determined by the Fire Marshal.
  - b. The indoor restaurant and bar may remain open:  
Monday through Sunday from 8:00 a.m. to 5:00 a.m. and indoor entertainment shall be allowed.
  - c. The courtyard may remain open with outdoor entertainment:  
Monday through Sunday from 8:00 a.m. to 3:00 a.m.

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Entertainment within the courtyard shall not exceed a volume that would interfere with normal conversation.

The doors on the west side of the restaurant leading to the courtyard shall remain closed at all times except when patrons and staff need to use them for access.

- d. The restaurant operations at the front porch may remain open as follows:

Monday through Sunday from 8:00 a.m. to 5:00 a.m. with no entertainment.

Any music or sound played by a DJ located in the interior may be played through speakers installed on the exterior, provided the volume of sound emitted from the exterior speakers does not exceed a level that interferes with normal conversation.

The anticipated audio levels proposed by the applicant to be played in the interior shall not interfere with normal conversation at the exterior of the premises, at the public sidewalk abutting the property, with the front doors open.

- e. At all times that entertainment is taking place anywhere on the subject property, a restaurant shall be open with food service, a full menu, and operating kitchen.
- f. The house sound system shall be installed and configured in such a manner as to limit the acoustical output of the system, and shall have password-protected security on all controls at all times.

Subwoofers shall not be utilized or installed in the courtyard, the front porch, or anywhere on the exterior of the premises.

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. Within 60 days of this approval, the sound system 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. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.

No third party sound system shall be allowed; only the house sound system shall be utilized.

- j. Television(s) may be permitted subject to a Certificate of Appropriateness and historic preservation board approval, if required. The volume level of the televisions in the courtyard shall comply with the audio volume limitations stated in this order.
- k. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- l. Delivery trucks shall not be allowed to idle in loading zones.
- m. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.



- n. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 AM.
  - o. Loading and deliveries from the alley shall at no time block the passage of any other vehicles along the alley.
  - p. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
  - q. Adequate trash room space that is 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.
  - r. An air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one garbage pick-up per day will be necessary.
  - s. Garbage dumpster covers shall be closed at all times except when in active use.
  - t. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
  - u. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day.
  - v. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
  - w. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
  - x. The host/hostess stand, podium and menu board shall be prohibited in the public right of way, and shall be placed on private property, except as may be permitted under the sidewalk café permit to be reviewed and approved by the Public Works department.
8. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.

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9. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department within 90 days, prior to the issuance of a BTR for the addition of entertainment and include the following:
  - a. The applicant shall identify locations, acceptable to the Transportation Department, for bicycle racks to be installed in the public right-of-way and within the proposed development. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.
  - b. The applicant shall coordinate with the South Florida Commuter Services in participating in the transit subsidy program.
  - c. The applicant shall provide an analysis proposing for a drop-off and pick-up area shared with the valet drop-off and pick-up spaces.
  - d. The Developer shall conduct an updated valet utilization study incorporating the rideshare demand 60 days after opening of the proposed development with entertainment. The updated analysis shall include weekday peak hour and weekend peak hour analysis. Prior to commencement of the post-opening valet/ride-share analysis, the Developers' Traffic Engineer shall coordinate with the Transportation Department.
10. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license with entertainment.
11. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
12. The Planning Board shall retain the right to call the owner or operator back before the Board and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
13. 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.
14. 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.
15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.



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- 16. 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.
- 17. The applicant agrees and shall be required to provide access to areas subject to this CUP (not including private residences) 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.
- 18. 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.
- 19. The applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.

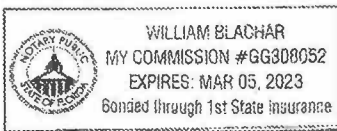
Dated this 30<sup>th</sup> day of OCTOBER, 2019.

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 30<sup>th</sup> day of October, 2019, by Michael Belush, AICP, 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.



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

[NOTARIAL SEAL]

Approved As To Form:  
Legal Department Nick Kallegis (10/29/19)

Filed with the Clerk of the Planning Board on Jessica Gualuz (10/30/19)

MB

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

**PROPERTY:** 1234-1260 Washington Avenue

**FILE NO.** PB 19-0325, PB 20-0343.

**IN RE:** A conditional use permit for an open-air 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, and including a conditional use permit for a new 7-story mixed-use development exceeding 50,000 gross square feet, pursuant to Chapter 118, Article IV and Chapter 142, Article II and Chapter 118, Article II, Division 5 of the City Code.

**LEGAL DESCRIPTION:** LOTS 1, 2, 3, 4 AND THE NORTH ½ OF LOT 5, IN BLOCK 22 OF OCEAN BEACH ADDITION NO. THREE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 81, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

**MEETING DATE:** February 25, 2020, June 29, 2020

**CONSOLIDATED CONDITIONAL USE PERMIT**

The applicant, Urbin Miami Beach Partners, LLC, filed an application with the Planning Director 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, and including a conditional use permit for a new 7-story mixed-use development exceeding 50,000 gross square feet, pursuant to Chapter 118, Article IV and Chapter 142, Article II and Chapter 118, Article II, Division 5 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 CD-2 Commercial, Medium Intensity 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;

The applicant has submitted a hold-harmless letter, acknowledging the non-compliance with the Land Development Regulations and the need for amendments to the City Code, in order to construct the project as submitted;



June 29, 2020

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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 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 BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, including modification to the hours of operation, 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 Urban Miami Beach Partners, LLC, any changes in ownership or 50% (fifty percent) or more stock ownership, or the equivalent, shall require the new owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.
3. 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.
4. 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.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for the entire facility:
  - a. The Conditional Use Permit (CUP) shall have a maximum occupant content for the following venues: ground floor open-air entertainment establishment (ground floor bar), rooftop establishment (pool area), and rooftop bar of less than 453 persons or any lesser such occupant content as determined by the Fire Marshal.
  - b. The ground floor open-air entertainment establishment (which includes the ground floor bar) may remain open:

Monday through Sunday from 11:00 a.m. to 5:00 a.m.  
(with the exception of the bar which shall close by 12:00 a.m. nightly).

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- After 11:00 p.m., entertainment shall only be permitted at a volume that does not interfere with normal conversation.
- c. The rooftop establishment (pool area) may remain open:  
Sunday through Wednesday from 7:00 a.m. to 9:00 p.m.  
Thursday to Saturday from 7:00 a.m. to 11:00 p.m.  
Entertainment shall not be permitted at any time.
- d. The outdoor rooftop bar may remain open:  
Sunday to Wednesday 11:00 a.m. to 9:00 p.m.  
Thursday to Saturday 11:00 a.m. to 11:00 p.m.  
Entertainment shall not be permitted at any time.
- e. 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. Only venue management shall have access to raise the volume. 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. Within 60 days of this approval, the sound system 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. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.
- f. All amplified entertainment shall only utilize the house sound system.
- g. Audio from the subject property, including low-frequency vibrations, shall not be plainly audible or felt, within the interior of the apartment units (with the windows and doors closed) of the residential buildings to the west of the site, at any time.
- h. Any televisions, if allowed by the City Code, shall not be visible from any point along a right of way.
- i. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- j. Delivery trucks shall not be allowed to idle in the loading zone.
- k. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- l. Deliveries and waste collections may occur daily between 8:00 AM and 4:00 PM Monday to Friday and 9:00 AM and 4:00 PM Saturday and Sunday.
- m. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.

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- n. 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.
  - o. An air-conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one garbage pickup of per day will be necessary.
  - p. Garbage dumpster covers shall be closed at all times except when in active use.
  - q. Restaurant, bar, and building security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
  - r. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
  - s. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day.
  - t. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
  - u. Special Events may occur in the interior of the building or the exterior of the ground floor of the premises only, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.  
  
Special Events shall not be permitted on the roof-top at any time.
  - v. The host/hostess stand, podium and menu board shall be prohibited in the public right of way and shall be placed on private property.
  - w. The applicant shall not request sidewalk café permits from the Public Works Department.
7. The building's rooftop shall incorporate a parapet wall on the north and western exposures with a minimum height of seven (7) feet, and shall include sound attenuating materials to minimize the impact of sound on residents to the west, subject to the review and approval of staff, in consultation with the City's acoustic peer reviewer.
8. The ground floor open corridor that connects the front of the building with the rear of the building shall have a solid roll down door, including sound attenuating materials, in a

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- manner to be reviewed and approved by staff, in consultation with the City's acoustic peer reviewer. The door shall be closed after 11 pm if there is entertainment taking place.
9. The applicant shall provide on-site bicycle parking facilities to accommodate ten (10) short-term and ten (10) long-term bicycle parking spaces, subject to the review and approval of staff.
  10. 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.
  11. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department within 90 days, prior to the issuance of a BTR for the addition of entertainment and include the following:
    - a. The applicant shall identify locations, acceptable to the Transportation Department, for bicycle racks to be installed in the public right-of-way and within the proposed development. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.
    - b. The applicant shall coordinate with the South Florida Commuter Services in participating in the transit subsidy program.
    - c. The applicant shall provide an analysis proposing for a drop-off and pick-up area shared with the valet drop-off and pick-up spaces.
    - d. The Developer shall conduct an updated valet utilization study incorporating the rideshare demand 60 days after opening of the proposed development. The updated analysis shall include weekday peak hour and weekend peak hour analysis. Prior to commencement of the post-opening valet/ride-share analysis, the Developers' Traffic Engineer shall coordinate with the Transportation Department.
  12. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license with entertainment.
  13. The applicant shall obtain a full building permit within 18 months from the February 25, 2020 meeting date, ~~date of the meeting~~, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
  14. The Planning Board shall retain the right to call the owner or operator back before the Board and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
  15. 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.

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- 16. 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.
- 17. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
- 18. 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.
- 19. The applicant agrees and shall be required to provide access to areas subject to this CUP (not including private residences) 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.
- 20. 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.

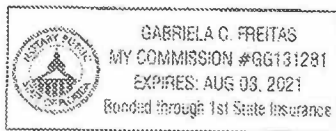
Dated this \_\_\_\_\_ day of 7/17/2020 | 2:29 PM EDT, 2020.

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 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}

Gabriela Freitas  
Notary:  
Print Name Gabriela Freitas  
Notary Public, State of Florida  
My Commission Expires: Aug. 3, 2021  
Commission Number: gg131281

