

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

PROPERTY: 2038 Collins Avenue (202-218 21st Street)

FILE NO. 2277

IN RE:

The applicant, Bagatelle Miami, LLC., requested Conditional Use approval for an entertainment establishment, pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) which requires that any additional entertainment establishments be reviewed by the Planning Board, regardless of occupant load, and pursuant Section 118, Article IV and Section 142, Article V. .

LEGAL

DESCRIPTION: Lots 1, 2, 3, 4, 6 and 8 of Block C of Amended map of Ocean Front property of Miami Beach Improvement Company Subdivision as recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: December 15, 2015

CONDITIONAL USE PERMIT

The applicant, Bagatelle Miami, LLC, filed an application with the Planning Director pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) which requires that any additional entertainment establishments be reviewed by the Planning Board, regardless of occupant load, and pursuant Section 118, Article IV and Section 142, Article V. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the CD-3 - Commercial, High Intensity 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.

MB

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 Business Tax Receipt (BTR). The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Bagatelle Miami, LLC, as operator of this Conditional Use Permit consisting of a restaurant, alcoholic beverage establishment, and entertainment establishment, with approximately 155 seats.
3. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. The applicant shall permit and install a folding door entrance vestibule, subject to Certificate of Appropriateness approval, prior to any certificate of completion (BCC), or a BTR approval for entertainment, whichever approval comes first.
6. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
 - a. The hours of operation shall be within the hours allowed in the Landlord's CUP: 10:00 AM to 3:00 AM for the interior dining area and 10:00 AM to 1:00 AM for the outdoor café.
 - b. A Disk Jockey (DJ) shall be the only form of entertainment allowed at the restaurant.
 - c. The vestibule shall be in place from 9:00 PM to 3:00 AM, Monday thru Saturday and 1:00 PM thru 3:00 AM on Sundays, or when entertainment is occurring.
 - d. The folding door vestibule shall be in place at all times the entertainment (DJ) is occurring.
 - e. The patron occupant content shall be a maximum of 155 persons, or as determined by the Fire Marshall, whichever is lower.

- f. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study. A final sound transmission test and report which includes the performance of sound systems and sound attenuation devices, shall be submitted for the reasonable review and approval of both Planning Department staff and the Boulton Condominium Association, prior to the issuance of a Certificate of Use or Business Tax Receipt.
- g. In the outdoor seating area, only pre-recorded background music played at a volume that does not interfere with normal conversation shall be allowed with a distributive sound system as designed by a sound engineer and controlled by the general manager. Entertainment shall be prohibited.
- h. Wall mounted speakers shall be strictly prohibited on the exterior walls.
- i. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
- j. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- k. Any queuing of patrons shall occur inside the restaurant only. Security staff shall monitor the crowds to ensure that there will not be any outdoor queuing.
- l. Security staff shall monitor patron circulation and occupancy levels.
- m. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
- n. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to historic preservation staff review and approval.
- o. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- p. Delivery trucks shall not idle in the loading zone.
- q. Air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
- r. Garbage dumpster covers shall be closed at all times except when in active use.
- s. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another

building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.

7. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a BTR to operate this entertainment establishment.
8. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise.
9. 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.
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. Within a reasonable time after applicant's receipt of this Conditional Use Permit as signed and issued by the Planning Director, the applicant shall record it in the Public Records of Miami-Dade County at applicant's expense and then return the recorded instrument to the Planning Department. No building permit 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.

Dated this 27th day of JANUARY, 2016.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, Planning and Zoning Manager
For Chairman

MB

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 27th day of January,
2016, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a
Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



{NOTARIAL SEAL}

Approved As To Form:
Legal Department

Jeffrey H. Smith 1/27/16

[Signature]
Notary:

Print Name

Notary Public, State of Florida

My Commission Expires:

Commission Number: 07-26-2017

Filed with the Clerk of the Planning Board on 2/11/2016 *[Signature]*