

MIAMI BEACH  
PLANNING DEPARTMENT  
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: June 22, 2021

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB21-0441, a.k.a. File No. 2277. 2038 Collins Avenue (202-218 21st Street). Raspoutine**

An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment and Entertainment Establishment (CUP 2277). Specifically, the applicant is requesting modifications to the ownership, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

**RECOMMENDATION**

Approval with conditions.

**BACKGROUND/HISTORY**

- February 27, 2001* Just Around the Corner, LLC was granted a Conditional Use Permit (CUP), File No. 1493, for a multi-level parking garage with retail on the ground floor. This approval included a condition that states: "Nightclubs, dance halls, bars or any kind of neighborhood impact establishment shall not be permitted."
- April 30, 2003* Just Around the Corner, LLC and POP Development, LLC requested a substantial amendment to the existing CUP (File no. 1493) with a new File No. 1609 which was approved by the Board (File No. 1609 superseded the previous order). The substantial amendment consisted of an extension of the valet parking garage to the east along 20<sup>th</sup> Street and introducing a residential component above ground level commercial spaces facing Collins Avenue and 21<sup>st</sup> Streets.
- June 22, 2004* Just Around the Corner, LLC and POP Development, LLC applied for a Modified CUP (MCUP) File No. 1609 and were approved. The modification included the following language: Condition # 3 "*Dance halls, bars or any kind of neighborhood impact establishment shall only be permitted along Collins Avenue. Any entertainment establishment that may be proposed for this property, regardless of occupant load shall be reviewed by the Planning Board for conditional use approval as agreed by the applicant.*"
- July 24, 2007* A new applicant, Park Place Development, LLC requested a modification to the MCUP to among other things create two new restaurant spaces, which was approved by the Board.

- February 28, 2012** Park Place Development, LLC requested a modification to the MCUP to add a lounge use on 20<sup>th</sup> Street. There was a long discussion that included the intensity of the restaurants (number of seats), traffic, parking and the location of the various venues. The MCUP retained the previous condition, but reworded and moved to condition #11 *"Any additional dance hall, bar, or entertainment establishment that may be proposed for this property, regardless of occupant load shall be reviewed by the Planning Board for conditional use approval as agreed by the applicant, and shall only be permitted, if permitted, along Collins Avenue or 20<sup>th</sup> Street."*
- August 28, 2012** Park Place Development, LLC was granted a modification to the MCUP to add a restaurant and reconfigure the previously approved restaurant spaces. In order to streamline the process, and allow for future reconfigurations without returning to the Planning Board every time there is a change of floor plan, the Board approved the following condition # 12. *"Notwithstanding Condition No. 11 above, Parc Place Development, LLC, as owner of the property, shall be enabled to allocate, divide or sub-divide the commercial spaces within the property for different uses to either retail, eating and drinking establishments, or other commercial spaces such as a spa, gym, or similar, and re-allocate parking spaces according to need without having to amend the Permit every time one of these re-allocations, divisions or sub-divisions of spaces takes place, as long as it is not one of the uses specified in the Permit that require Planning Board approval. Any re-allocation, division or subdivision of the commercial spaces shall be limited to the number of parking spaces provided within the garage and shall be submitted to Planning Department staff for review and re-certification that enough parking spaces remain available for all uses within the building."*
- March 4, 2015** The applicant opened a restaurant located on the first floor at the southwest corner of Collins Avenue and 21<sup>st</sup> Street, with a 153 seats approved on the Building Certificate of Use (BCU) and an occupant content for 155 persons approved by the Fire Department.
- December 15, 2015** Bagatelle Miami, LLC was granted a CUP by the Planning Board for an entertainment establishment, pursuant to the requirements of the Master Conditional Use Permit for the property (PB No.1609). The CUP was approved with conditions.

#### **STAFF ANALYSIS**

The applicant is requesting a modification to the existing Conditional Use Permit (CUP) in order to change the name of the ownership and management. The business will now be owned and operated by Raspoutine Miami, LLC. The current owner, Bagatelle Miami LCC, is a 50% owner of Raspoutine, and per the Letter of Intent submitted by the applicant, besides the name change, there is no anticipated change in operation.

Should this request be approved, Condition 2 and 3 would be amended as follows:

2. This Modified Conditional Use Permit is issued to Raspoutine Miami, LLC, ~~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 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 Certificate of Use/Business Tax Receipt. A progress report to the Planning Board shall be scheduled within 60 days of the submission of the affidavit. ~~review and approval by the Planning Board as a modification to this Conditional Use Permit.~~

In order to be consistent with recent CUP approvals, staff is recommending the following additional conditions:

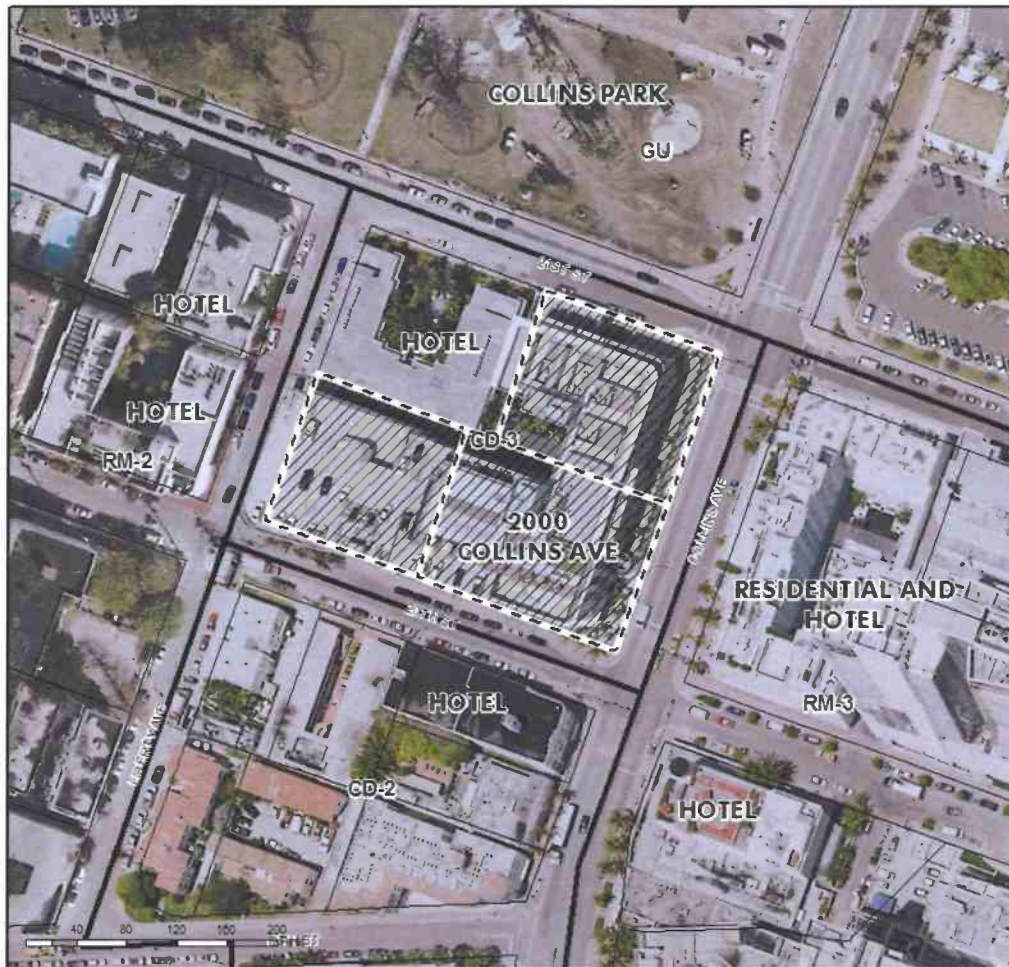
- A. That the requirement for change of ownership be modified to allow any future change of ownership to take place with the submittal of an affidavit to the Planning Department where the applicant acknowledges and accepts all of the conditions in the MCUP. A progress report to the Planning Board shall be scheduled within 60 days of the submission of the affidavit.
- B. That 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.

The rest of the conditions in the MCUP (see attached) would remain the same.

#### **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



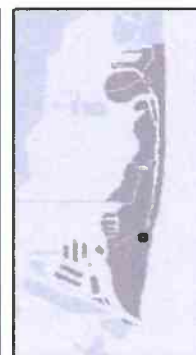
City of Miami Beach Planning Board  
File No. 2277  
2038 Collins Avenue (202-218 21st Street)



The applicant, Bagatelle Miami, LLC, is requesting 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 establishment be reviewed by the Planning Board, regardless of occupant load, and pursuant Section 118, Article IV and Section 142, Article V.

**MIAMI BEACH**  
PLANNING DEPARTMENT

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

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

**FILE NO.** PB21-0441, a.k.a. PB 2277

**IN RE:** The applicant, Raspoutine Miami, LCC, requested modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment and Entertainment Establishment (CUP 2277). Specifically, the applicant is requesting modifications to the ownership, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

**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, June 22, 2021

**MODIFIED CONDITIONAL USE PERMIT**

The applicant Raspoutine Miami, LLC, ~~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.



**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 Raspoutine Miami, LLC, ~~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 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 Certificate of Use/Business Tax Receipt. A progress report to the Planning Board shall be scheduled 60 days followed by the submission of the affidavit. 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 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.
  - 13. 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.
  - 14. 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 \_\_\_\_\_, 2021.

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
 Rogelio Madan, AICP  
 Chief of Chief of Community Planning & Sustainability  
 FOR THE CHAIRMAN

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Rogelio 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.

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

{NOTARIAL SEAL}

Approved As To Form:  
Legal Department ( )

Filed with the Clerk of the Planning Board on \_\_\_\_\_ ( )