

MIAMI BEACH
PLANNING DEPARTMENT
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: July 27, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB21-0448, a.k.a. PB File No. 1764. 235 23rd Street.**

An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment with Entertainment. Specifically, the applicant is requesting modifications to the ownership/operator and to relinquish the previously approved outdoor café, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions

BACKGROUND/HISTORY

June 27, 2006 The Planning Board approved a Conditional Use Permit for a Neighborhood Impact Establishment with entertainment.

November 17, 2009 The Planning Board approved a modification to the previously approved Conditional Use Permit for a change of ownership and operator.

July 27, 2010 The Planning Board approved a modification to the previously approved Conditional Use Permit to allow an outdoor café without entertainment and without dancing in the adjacent existing surface parking lot.

STAFF ANALYSIS

The applicant is requesting a modification to the existing Modified Conditional Use Permit (MCUP) in order to change the ownership/operator and to relinquish the previously approved outdoor café located in the adjacent surface parking lot.

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

This Modified Conditional Use Permit is issued to Miami Loud Holdings, LLC, ~~Mokai Lounge, LLC~~ as operator of this Neighborhood Impact Establishment, ~~including Mokai Lounge and Mokai Café~~. Subsequent owners and operators shall be required to appear before the Board, , within 90 days of the change of ownership or operator to affirm their understanding of the conditions listed herein and to obtain a Modification to this Modified Conditional Use Permit.

All the conditions that refer to the previously approved outdoor café will also be deleted (~~striketrough~~) from the Order.

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 require that *any change of operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new operator or 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 shall be scheduled within 60 days followed by the submission and acceptance 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.

These proposed new conditions have been incorporated into a revised MCUP (see attached). The rest of the conditions 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



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

PROPERTY: 235 23rd Street.
Neighborhood Impact Establishment

FILE NO: PB21-0448 a.k.a. File No 1764

IN RE: An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment with Entertainment. Specifically, the applicant is requesting modifications to the ownership/operator and to relinquish the previously approved outdoor Cafe, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code..

LEGAL DESCRIPTION: The west 10 feet of Lot 2, and all of Lots 4, 5, & 6 Block 3 of Ocean Front Property of Miami Beach Improvement Co., according to the Plat thereof, as recorded in Plat Book 5, Page 7 of the public records of Miami-Dade County, Florida.

MEETING DATE: July 27, 2021 ~~July 27, 2010~~

MODIFIED CONDITIONAL USE PERMIT

The applicant, Mokai Lounge, LLC, filed an application with the Planning Director for a modification to a previously approved Conditional Use Permit ~~to allow an outdoor café without entertainment and without dancing in the adjacent existing surface parking lot.~~ Notice of the request for Conditional Use 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 record for this matter:

That the property in question is located in the CD-3, Commercial High Intensity Zoning District;

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 Ordinance;

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 if the following conditions are met.

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 recommendation, that the modification to the previously approved Conditional Use Permit as requested and set forth above be **GRANTED**, subject to the modified conditions listed below indicated by underlining (new language) and ~~striketrough~~ (deleted language):

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The Board reserves the right to modify this Modified 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 Modified Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Modified Conditional Use Permit is issued to Miami Loud Holdings, LLC, Mokai Lounge, LLC as operator of this Neighborhood Impact Establishment, ~~including Mokai Lounge and Mokai Café. Subsequent owners and operators shall be required to appear before the Board, , within 90 days of the change of ownership or operator to affirm their understanding of the conditions listed herein and to obtain a Modification to this Modified Conditional Use Permit. Any change of operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new operator or 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 shall be scheduled within 60 days followed by the submission and acceptance of the affidavit.~~
3. The occupancy load shall be as proposed by the applicant, 171 persons with 151 seats, or as determined by the Fire Marshall.
4. The conditions of approval for this Modified Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. The applicant shall provide staff documents verifying the service of a valet parking operator which also specifies the locations where vehicles will be stored. The applicant shall also be required to provide and maintain evidence of valet storage facilities. These documents shall be submitted to and approved by staff prior to the approval of a Certificate of Use /Business Tax Receipt.
6. The hours of operation shall be as proposed by the applicant, 10:00 p.m. until 5:00 a.m. 7 days a week, ~~for Mokai Lounge indoors ; and close at 2:00 a.m. 7 days a week for Mokai Café outdoors.~~
7. All entertainment shall be limited to the interior of the establishment; no outdoor entertainment shall be permitted.
8. ~~Entertainment, live music, and dancing shall be prohibited in the Mokai Outdoor Café. Only ambient background music at a level that does not interfere with normal conversation shall be permitted. Small speakers shall be distributed throughout the whole café.~~

9. The installation plan for the sound system for Mokai Cafe, including the location of all the speakers and sound system controls, shall be submitted to staff for review and approval prior to obtaining a building permit.
10. When the sound system is completely installed, but before the Modified Certificate of Use/Business Tax Receipt has been approved, it shall be tested under the supervision of an acoustical consultant acceptable to staff to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. A final report issued by said acoustical consultant shall be submitted to staff for review and approval.
11. Business identification signs shall be submitted to Design Review staff for review and approval before installation.
12. The applicant shall have patrons queue up inside the property. No queuing shall occur on the sidewalk or any public right-of-way.
13. Break-away tension stanchions shall be placed to control crowds and allow for the free-flow of pedestrian on public sidewalks and manned by the establishment's security personnel. The placement of the stanchions shall be provided on the modified site plan and submitted to staff for review and approval.
14. All deliveries and trash removal shall be undertaken from Liberty Avenue via the parking lot to the northwest of the site, adjacent to the trash room, not from 23 Street. The applicant shall submit to staff documents that verify the contract with a waste removal company.
15. 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.
16. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
17. A final certificate of completion or certificate of occupancy, whichever may apply, including an occupant load certificate for the space, shall be obtained before an application is made for a Certificate of Use/Business Tax Receipt.
18. The Planning Board shall retain jurisdiction to call the operators back before them and impose new conditions, modify the hours of operation, other noise conditions, or the occupant load should there be issuance of written warnings and/or notices of violation (as determined by Code Compliance) about loud, excessive, unnecessary or unusual noise.
19. The receipt of a written warning or a notice of violation of section 46-158, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may

in the future be renumbered, 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.

20. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") or Section 46-152, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.
21. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the approval of an occupational license a Modified Certificate of Use/Business Tax Receipt to operate a Neighborhood Impact Establishment.
22. 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.
23. This Modified Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a modified certificate of use.
24. 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.
25. The establishment and operation of this Modified 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.
26. 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.

BY: _____

Filed with the clerk of the Planning Board on _____, 2021

