

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: **PB21-0449, a.k.a. PB0616-0036 a.k.a. PB File No. 2139. 404 Washington Avenue.**

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, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions

BACKGROUND/HISTORY

November 19, 2013 The Planning Board Granted a Conditional Use Permit for a Neighborhood Impact Establishment to The Italian Job Miami, LLC - Siena Tavern, who was the previous owner/operator of this establishment.

August 23, 2016 The change of owner/operator was approved by the Board on August 23, 2016. The proposal for outdoor speakers was continued to a date certain of September 27, 2016

September 27, 2016 The Planning Board approved the outdoor speakers limited to one speaker per 500 square feet with a maximum of two on the premises, playing only ambient background music at a level that would not interfere with normal conversation.

STAFF ANALYSIS

The applicant is requesting a modification to the existing Modified Conditional Use Permit (MCUP) in order to change the ownership/operator.

Should this request be approved, Condition 1 would be amended as follows:

4. This Modified Conditional Use Permit is issued to 404 SB, LLC, 404 Washington Major restaurant, LLC, as operator of this Neighborhood Impact Establishment consisting of a restaurant and alcoholic beverage establishment, with occupant content over 300 persons, and no entertainment. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and

operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.

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

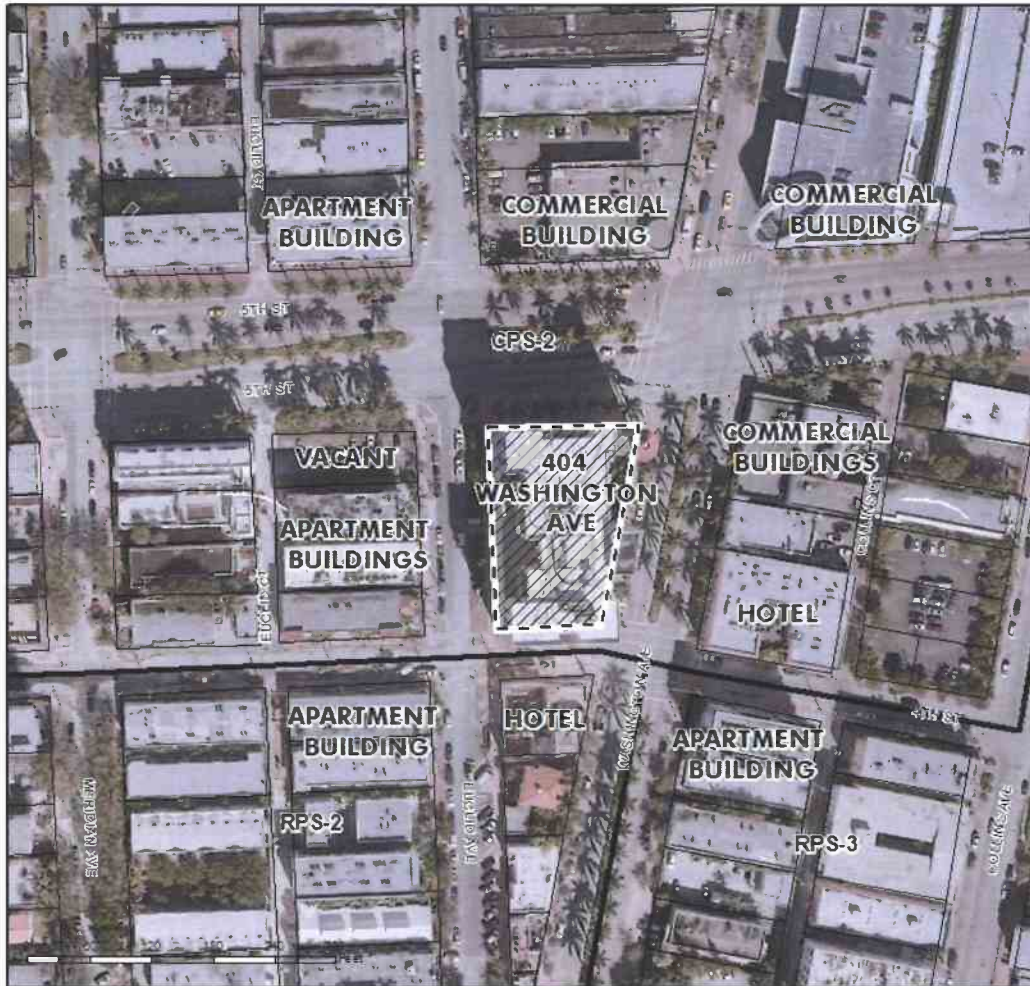
- A. That the requirement for change of ownership be modified to require that *any change of operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval 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



City of Miami Beach Planning Board
404 Washington Ave



MIAMI BEACH
PLANNING DEPARTMENT
1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139 P 305.673.7550 www.miamibeachfl.gov



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

PROPERTY: 404 Washington Avenue

FILE NO. PB21-0449 a.k.a., PB0616-0036 f.k.a., PB 2139

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, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: Lots 3, 4, and 5, Block 49, OCEAN BEACH, FLA. ADDITION NO. 3, according to the Plat thereof, as recorded in Plat Book 2, at Page 81 of the Public Records of Miami-Dade County Florida.

MEETING DATE: July 27, 2021 ~~September 27, 2016~~

MODIFIED CONDITIONAL USE PERMIT

The applicant, 404 SB, LLC., filed an application with the Planning Director to modify a previously approved Conditional Use Permit pursuant to Chapter 118, Articles IV and V of the Miami Beach 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 CPS-2, Commercial Performance Standard, General Mixed Use 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 recommendation, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed: Underlining denotes new language and ~~strikethrough~~ denotes stricken language from the previous Order.

1. This Modified Conditional Use Permit is issued to ~~404 SB, LLC, 404 Washington Major restaurant, LLC,~~ as operator of this Neighborhood Impact Establishment consisting of a restaurant and alcoholic beverage establishment, with occupant content over 300 persons, and no entertainment. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent, shall require ~~review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.~~ the new owner or operator to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new owner or operator 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 of the affidavit
2. The patron occupant load shall be determined by the Fire Marshall. The applicant shall obtain a final occupant load from the City before the issuance of a Business Tax Receipt. This Modified Conditional Use Permit authorizes a total of approximately 348 seats (284 interior and 64 exterior).
3. Prior to the issuance of a building permit for the project, the applicant shall submit an operational plan and narrative for all portions of the project, which shall be subject to the review and approval of staff. At a minimum, such operational plan and narrative shall include the following:
 - a. A complete business/operation plan that includes more details of the operation, as well as security and crowd control, shall be submitted to staff for review and approval prior to the CO or issuance of the BTR, whichever occurs first.
 - b. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
 - c. Any "wet T-shirt," "thong", "bikini" or similar type of events shall be prohibited.

- d. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- e. 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 at all times. 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.
- f. The location of deliveries and trash collection shall be indicated on the Building Permit plans, subject to the review and approval of staff.
- g. The applicant shall submit to Planning staff for review and approval a delivery plan and waste removal plan, including the hours of operation, which does not negatively impact the residents across the street, prior to the issuance of a building permit. No trash pick-up shall be permitted before 8:00 AM on weekdays and 9:00 AM on weekends.
- h. All trash containers shall utilize rubber wheels, as well as a path consisting of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
- i. All trash rooms shall be air conditioned and sound-proofed in a manner to be approved by staff. The doors to the trash rooms shall remain closed and secured when not in use and all trash dumpsters shall be closed at all times except when in use.
- j. Except as may be required for fire or building code/Life Safety Code purposes, no speakers of any kind, shall be affixed to, installed, or otherwise located on the exterior of the Applicant's premises. Notwithstanding the foregoing, outdoor speakers, limited to one speaker per 500 square feet, MAXIMUM OF TWO ON THE PREMISES, playing only ambient background music at a level that would not interfere with normal conversation, with no DJ or person playing a play list, shall be permitted in the outdoor seating area within the Applicant's leased premises, provided such speakers are not operated between the hours of 12:00 a.m. and 10:00 a.m.
- k. Only ambient background music at a level that would not interfere with normal conversation shall be played in the interior of the premises. The restaurant manager shall maintain control of the music volume at all times.
- l. Security staff shall monitor patron circulation and occupancy levels during the hours of operation.

- m. No patrons shall be allowed to queue on the sidewalk or public right-of-way.
 - n. The applicant shall obtain approval from the City's Parking Department to use the area along Washington Avenue in front of the establishment for valet drop-off and pick-up and loading. Loading may occur in the curb cut adjacent to the trash room on Euclid Avenue only between 12:00 PM and 6:00 PM.
 - o. The applicant shall work out an agreement with the City's Parking Department to designate a no parking-loading zone area on the Washington Avenue side of the venue.
 - p. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, shall not be held on the premises.
 - q. The hours of operation shall be limited to 2:00 AM and may be reduced, but the kitchen shall remain open during all hours of operation.
 - r. The sidewalk café on 5th Street shall close at 2:00 AM.
 - s. 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 closing and 9:00 AM.
 - t. All trash pick-up shall occur from the designated area adjacent to the trash room on Euclid Avenue.
 - u. Any person or entity operating pursuant to this conditional use permit shall post the operating conditions identified in the permit or the full conditional use permit in a conspicuous place in or about the premises where it may be seen upon inspection by any official of the city. For failure to do so, such person or entity may be issued a notice of violation and fined as if it were operating without the conditional use permit, as if it were not issued.
4. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. Within ninety (90) days of the issuance of the TCO or CO for the project, or the date of commencement of operation of the establishment, whichever is later, the operator shall make a progress report to the Planning Board. The Board reserves the right to modify the conditions of this approval at the time of a progress report, in a non-substantive manner, including modifications 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).
5. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.
6. 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. 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.
 7. The City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division shall make the determination of the project's fair-share mitigation cost. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.
 8. The applicant shall obtain a Certificate of Occupancy prior to the issuance of a Business Tax Receipt.
 9. 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 to operate this entertainment establishment.
 10. Without in any manner limiting the general rights of the Planning Director or the Planning Board to recall the owner or operator or to modify this Conditional Use Permit, 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.
 11. 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.
 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. 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, certificate of use, certificate of occupancy, certificate of completion, or occupational license shall be issued until this requirement is satisfied.

- 14. 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.
- 15. 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.
- 16. 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 Community Planning and Sustainability

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

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

[NOTARIAL SEAL]

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

Approved As To Form:
Legal Department ()

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