

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: **PB 18-0238. 1766 Bay Road. Diya Indian Kitchen.**

BACKGROUND

January 22, 2019: A Conditional Use Permit (CUP) to operate was issued to Golden Era Holdings, LLC, for the operation of a restaurant exceeding 100 seats and 125 occupants, pursuant to Section 142-303 (b) and 118, Article IV of the City Code.

November 15, 2019: An affidavit was submitted to the City in order to change the owner/operator to The Rookman Group.

PROGRESS REPORT

On June 18, 2021 the attached cure letter was sent to The Rookman Group, the applicant for the CUP approved by the Planning Board on January 22, 2019, pursuant to the requirements of Section 118-194 of the City Code. The cure letter requested that the applicant appear before the Planning Board on July 27, 2021 for a progress report.

STAFF ANALYSIS

There are open violations as of the writing of this progress report, and a number of warnings and citations have been issued to the property since the CUP was approved by the Planning Board. Below are descriptions of the violations that were issued, as recorded in the City's code case management system. Zoning violations are highlighted in green and noise and operations violations of the City Code are highlighted in yellow.

- 06/11/2021 – **CC2021-10990** – City Code Violation – The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Alexander Lacayo has found there to be a violation(s) of the City Code, which is/are: Section 12-5: Conducting a Special Event without a permit.

Notes indicate that CCO A. Lacayo received a notification from plain clothes officers in reference to a live band being played inside the establishment, Upon my arrival I met with the owner of the establishment Dharam and advised of the complaint received, Live band was able to be seen playing inside the establishment located near the bar, Mr. Marahaj

informed me that he did have a BTR and was allowed to have a live band due to being grandfathered in, the system showed that there was no live entertainment, However under description the live entertainment was added, However it was under pending status, Violation was posted at the property as the business was closed upon my arrival, I also advised owner on duty that no entertainment was to be played until the violations were addressed with the finance department. Notice of Violation Observed.

- 06/11/2021 **ZV2021-03491** – Zoning Violation – The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). Specifically, Code Compliance Officer Alexander Lacayo has found there to be a violation(s) of the City Code, which is/are: Section 142-305. Prohibited use of an accessory outdoor bar counter in the CD-2 commercial zone in the Sunset Harbor Neighborhood including include outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, bars, dance halls, and entertainment establishments Except as provided in Article IV, Division 2 of this chapter and in Chapter 6.
REF: Live entertainment inside establishment.

Notes indicate that CCO A. Lacayo received a notification from a plain clothes officers in reference to the property located at 1766 Bay Road for having a live band playing inside the establishment, Upon my arrival I made contact with the owner of the establishment Dharam and advised of the complaint received, Upon making my way inside the establishment I was able to observe a live band to the left of the bar, Owner on site provided a BTR confirmation, However the BTR was listed as in pending status, Notified CCA Byars on duty and the next step was to proceed with the zoning violation, Owner refused to sign the notice of violation, Notice was posted at the property, After violation was posted I advised the owner that the live entertainment had to be shut down and no live entertainment was to be played until the issues was resolved with finance department. Notice of Violation Observed.

The approved CUP is attached. The following conditions of approval contained in the CUP are applicable regarding the above noted violations and warnings:

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).
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.
5. 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 restaurant and bar shall close by 2:00 AM, seven days per week. The outdoor portion shall close by 12:00 AM (midnight) daily.
 - b. At all times the establishment is open, food service with a full menu and operating kitchen shall be required throughout the venue.
 - c. The patron occupant content shall be a maximum of 199 persons, or as determined by the Fire Marshall, whichever is lower.
 - d. The number of seats within the confines of the property shall not exceed 120.
 - e. **Entertainment shall be prohibited at all times.**
 - f. **Special events pursuant to the Miami Beach City Code, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.**
 - g. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - h. Any queuing of patrons shall occur within the property or inside the restaurant only. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
 - i. Security staff shall monitor patron circulation and occupancy levels and shall take measures to strictly enforce patron age restrictions in the City Code at all times.
 - j. 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.
 - k. Waste removal and trash pick-up shall take place between 7:00 AM to 9:00 AM.
 - l. Delivery vehicles shall only be permitted to make deliveries from 7:00 AM to 3:00 PM.
 - m. Delivery trucks shall not idle in the loading zone.
9. 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.

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.

Staff would also note that per Condition 13 of the CUP, 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. At a minimum, staff recommends continuing this progress report 60 days to further discuss the operation of the establishment, as well as monitor compliance with the prohibition of entertainment and special events and other operational conditions of the CUP.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the progress report and schedule a follow-up progress report for September 28, 2021.

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

PLANNING DEPARTMENT
Tel: 305-673-7550 Fax: 305-673-7559

June 18, 2021

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

The Rookman Group
1766 Bay Road
Miami Beach, FL 33139

Re: PB 18-0238 1766 Bay Road.

Dear Sir/Madam:

A Conditional Use Permit (CUP) to operate was issued to Golden Era Holdings, LLC, on January 22, 2019 (see attached). On November 15, 2019, an affidavit was submitted to the City in order to change the owner/operator to The Rookman Group. It has come to the Planning Department's attention that written warnings and violations have been issued by the Code Compliance Department regarding the operation of the venue.

These violations include the following, which are still pending as of the date of this letter:

- 06/11/2021 – **CC2021-10990** – City Code Violation – The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Alexander Lacayo has found there to be a violation(s) of the City Code, which is/are: Section 12-5: Conducting a Special Event without a permit.

Notes indicate that CCO A. Lacayo received a notification from plain clothes officers in reference to a live band being played inside the establishment. Upon my arrival I met with the owner of the establishment Dharam and advised of the complaint received. Live band was able to be seen playing inside the establishment located near the bar. Mr. Marahaj informed me that he did have a BTR and was allowed to have a live band due to being grandfathered in, the system showed that there was no live entertainment. However under description the live entertainment was added. However it was under pending status. Violation was posted at the property as the business was closed upon my arrival. I also advised owner on duty that no entertainment was to be played until the violations were addressed with the finance department. Notice of Violation Observed.

- 06/11/2021 **ZV2021-03491** – Zoning Violation – The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). Specifically, Code Compliance Officer Alexander Lacayo has found there to be a violation(s) of the City Code, which

is/are: Section 142-305. Prohibited use of an accessory outdoor bar counter in the CD-2 commercial zone in the Sunset Harbor Neighborhood including include outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, bars, dance halls, and entertainment establishments Except as provided in Article IV, Division 2 of this chapter and in Chapter 6.

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The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted violations and warnings:

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 Golden Era Holdings, LLC, as operator, for a restaurant with alcoholic beverages. The subject establishment shall always be licensed as a single restaurant serving full meals at all times. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Business Tax Receipt.
5. 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 restaurant and bar shall close by 2:00 AM, seven days per week. The outdoor portion shall close by 12:00 AM (midnight) daily.

- b. At all times the establishment is open, food service with a full menu and operating kitchen shall be required throughout the venue.
 - c. The patron occupant content shall be a maximum of 199 persons, or as determined by the Fire Marshall, whichever is lower.
 - d. The number of seats within the confines of the property shall not exceed 120.
 - e. Entertainment shall be prohibited at all times.
 - f. Special events pursuant to the Miami Beach City Code, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
 - g. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - h. Any queuing of patrons shall occur within the property or inside the restaurant only. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
 - i. Security staff shall monitor patron circulation and occupancy levels and shall take measures to strictly enforce patron age restrictions in the City Code at all times.
 - j. 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.
 - k. Waste removal and trash pick-up shall take place between 7:00 AM to 9:00 AM.
 - l. Delivery vehicles shall only be permitted to make deliveries from 7:00 AM to 3:00 PM.
 - m. Delivery trucks shall not idle in the loading zone.
9. 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.
10. 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.

Therefore, in light of the non-compliance with the aforementioned conditions of approval contained in the CUP and the pending code violations, **you are requested to appear at the July 27, 2021 Planning Board hearing** for a verbal progress report. Please be advised that at the

time of the progress report, in accordance with the provisions of City Code Section 118-194(3), the Planning Board may consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings.

Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues noted herein, and initiate modification/revocation proceedings, this matter may be placed on the September 28, 2021 agenda meeting of the Board as a modification/revocation hearing. If a future public hearing is set, the board may consider the issue of noncompliance and the possible modification or revocation of the approval. Based on substantial competent evidence, the board may consider revoking the approval, modifying the conditions thereof, or imposing additional or supplemental conditions.

If you have any questions, please do not hesitate to contact Mr. Rogelio Madan at (305) 673-7000 ext. 26131 or via email at rogeliomadan@miamibeachfl.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Mooney', is written over a horizontal line.

Thomas R. Mooney, AICP
Planning Director

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

PROPERTY: 1766 Bay Road

FILE NO. PB 18-0238

IN RE: The applicant, Golden Era Holdings, LLC, requested a Conditional Use for a restaurant exceeding 100 seats and 125 occupants, pursuant to Section 142-303 (b) and 118, Article IV of the City Code.

LEGAL DESCRIPTION: The East 1/2 of Lot 9 and all of Lots 10, in Block 16 Island View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page-115, of the Public Records of Miami Dade County, Florida.

MEETING DATE: January 22, 2019

CONDITIONAL USE PERMIT

The applicant, Golden Era Holdings, LLC, filed an application with the Planning Director 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-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;

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

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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 Golden Era Holdings, LLC, as operator, for a restaurant with alcoholic beverages. The subject establishment shall always be licensed as a single restaurant serving full meals at all times. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators 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. Prior to the issuance of a Building Permit for the improvements proposed herein, the applicant shall submit a revised site plan and floor plan. At a minimum, such plans shall include the following:
 - a. An air conditioned trash room(s)/garbage room(s), which shall be large enough or sufficient in number so that more than one pick up of garbage per day will not be necessary. The location, dimensions and access points of such trash/garbage room(s) shall be subject to the review and approval of staff.
 - b. A high-level trash/garbage compacting device may be located in the air-conditioned trash/garbage holding room within the facility.
 - c. The number of seats within the confines of the property shall not exceed 120.
5. 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 restaurant and bar shall close by 2:00 AM, seven days per week. The outdoor portion shall close by 12:00 AM (midnight) daily.
 - b. At all times the establishment is open, food service with a full menu and operating kitchen shall be required throughout the venue.
 - c. The patron occupant content shall be a maximum of 199 persons, or as determined by the Fire Marshall, whichever is lower.
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 - g. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - h. Any queuing of patrons shall occur within the property or inside the restaurant only. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
 - i. Security staff shall monitor patron circulation and occupancy levels and shall take measures to strictly enforce patron age restrictions in the City Code at all times.
 - j. 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.
 - k. Waste removal and trash pick-up shall take place between 7:00 AM to 9:00 AM.
 - l. Delivery vehicles shall only be permitted to make deliveries from 7:00 AM to 3:00 PM.
 - m. Delivery trucks shall not idle in the loading zone.
6. The applicant shall submit a Transportation Demand Management (TDM) Plan for employees of the restaurant. This plan shall encourage the utilization of alternative modes of transportation to commute to and from work. The restaurant shall designate a staff person to coordinate the development and implementation of the TDM Plan with the city. The TDM Plan should include a reporting system to be able to track the effectiveness of the Plan and make adjustments for improvements as necessary.
 7. If in the future, the applicant wants to provide a valet parking operation for the site, the applicant shall return to the Planning Board with a valet parking analysis as a modification to the CUP. Depending on the outcome of the review, the Board may impose some specific mitigation measures as necessary.
 8. 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.
 9. 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.
 10. 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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PB18-0238--1766 Bay Road

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11. 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.
12. 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.
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. 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.
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.

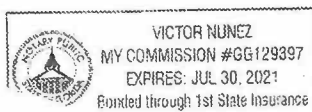
Dated this 24th day of JANUARY, 2019.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 24 day of JANUARY, 2019, 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}

Victor Nunez
Notary:
Print Name
Notary Public, State of Florida
My Commission Expires: GG129397 / JULY 30 2021
Commission Number:

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Approved As To Form: [Signature], 11/24/19
Legal Department

Filed with the Clerk of the Planning Board on [Signature], 1/25/19

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