

August 30, 2021

VIA HAND DELIVERY**City of Miami Beach Planning Board**c/o Thomas R. Mooney
Department of Planning
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: UPDATED: PB21-0435 Application for Modification of Conditional Use Permit PB19-0310 allowing Entertainment, DJ's, Performers and Televisions without live music in the Rooftop outdoor areas ("CUP") for The Lincoln Eatery at 723 N Lincoln Lane, Miami Beach FL 33139 ("the Property")

Dear Planning Board Members:

Our law firm represents PPF 723 Lincoln Lane LLC. ("Applicant") whose property is located at 723 N Lincoln Lane, Miami Beach FL 33139 ("Lincoln Eatery"). Lincoln Eatery is located in the Commercial High-Density District ("CD-3"). Through this letter the Applicant requesting approval of a Modification of Conditional Use Permit PB19-0310 approved on September 24, 2019 ("CUP") to modify and permit Entertainment, DJ's, live performances and Television's, without live music only added only to the rooftop outdoor areas of Property.

I. Project

Lincoln Eatery is currently operating a Food Hall that is permitted indoor entertainment, live performances including live music, DJ's and televisions under PB19-0310 and Applicant would like to extend some of those uses onto the rooftop outdoor areas previously approved by the Board. The modification if approved will not change any of the uses approved for the ground floor outdoor areas. Entertainment, DJ's, live performances and Television's, without live music only is being requested for the rooftop outside areas only. There is also a change in the currently approved hours to allow for legal long holiday weekends and legal holidays within CUP. Therefore, we are only requesting the following amendments to the CUP;

1. **Condition 2 a. v.** shall be amended as follows: Background music played at a volume that does not interfere with normal conversation may be permitted in the ground outdoor areas ~~including the ground level and the rooftop.~~ Entertainment shall not be permitted in the ground outdoor areas.”;

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Greenberg Traurig, P.A. | Attorneys at Law

333 Southeast Second Avenue | Suite 4400 | Miami, FL 33131 | T +1 305.579.0500 | F +1 305.579.0717

www.gtlaw.com

2. **Condition 2 a.vi**, shall be amended as follows: "A DJ or live performances may play music in the indoor portions of the restaurant and without live music also in the rooftop areas. The music may start at 10:00 a.m. and shall not operate past 11:00 p.m., Sunday-Wednesday, and 10 a.m. to 2 a.m. Thursday thru Saturdays and legal long weekends and legal holidays."
3. **Condition 2 a. xi**. shall be amended as follows: "Televisions shall not be located anywhere in the ground exterior areas of the property."

With these amendments it would allow the use of DJ's, live performances and televisions without any live music on rooftop outdoors areas as currently allowed indoors. The modification does not request any changes in the maximum permitted seats currently approved in the CUP. The CUP as approved included what we describe as Phase 2, the complete use of rooftop area. As a result of COVID at this time we have only completed a portion of the approved rooftop area which is referred to as Phase 1 (existing). It is the intent of the Applicant to ultimately complete Phase 2 as approved in 2019 with the requested modifications as we come out of the pandemic.

II. Compliance with 118-192 (a) Conditional uses may be approved in accordance with the procedures and standards of this article provided that:

- a. (1) The use is consistent with the comprehensive plan or neighborhood plan if one exists for the area in which the property is located.
 - i. Yes, the Project is along Lincoln Lane, facing City garage and commercial businesses away from residential uses.
- b. (2) 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.
 - i. No new impact. There is no increase in number of seats currently approved by CUP in 2019.
- c. (3) Structures and uses associated with the request are consistent with these land development regulations.
 - i. Yes. Will comply with land development regulations.
- d. (4) The public health, safety, morals, and general welfare will not be adversely affected.
 - i. No impact, please see operational plan and sound attenuation plan.

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- e. (5) Adequate off-street parking facilities will be provided.
 - i. N/A, existing operations not looking to increase CUP approved seat maximum. In addition, there is street parking, City garage and surface parking lots surrounding the Lincoln Eatery.
- f. (6) Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.
 - i. Yes, the Sound attenuation plan submitted with no changes to ground level outdoor areas and not requesting live music for the outdoor rooftop areas.
- g. (7) The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.
 - i. No, the area is away from residences and fronting an alley, city parking garage and surface parking lot.
- h. (8) The structure and site complies with the sea level rise and resiliency review criteria in chapter 133, article II, as applicable.
 - i. Yes, detailed below.

III. **Compliance with 142-1362:** In reviewing an application for an outdoor entertainment establishment, open air entertainment establishment, neighborhood impact establishment, or after-hours dance hall, the planning board shall apply the following supplemental review guidelines criteria in addition to the standard review guidelines for conditional uses pursuant to chapter 118, article IV:

- a. An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.
 - i. Yes, as approved In CUP in 2019 and updated for modification.

- b. A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, selfpark, shared parking, after-hour metered spaces and the manner in which it is to be managed.
 - i. Since there is no request to increase the maximum seats approved under CUP in 2019, there is no new impact.
- c. An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises will be controlled.
 - i. No Change, will be addressed in Operational Plan.
- d. A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.
 - i. No Change as approved in CUP in 2019.
- e. A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.
 - i. N/A, no increase in seats requested for modification.
- f. A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.
 - i. No Change same as approved, please see Operations Plan.
- g. A noise attenuation plan which addresses how noise will be controlled to meet the requirements of the noise ordinance.
 - i. Provided to address the changes in the rooftop outdoor areas
- h. Proximity of proposed establishment to residential uses.
 - i. Closest is northwest side of 17th street & Meridian avenue buffered by Macy's building and Lincoln Eatery is facing alley and Lincoln road.
- i. Cumulative effect of proposed establishment and adjacent pre-existing uses.
 - i. Lincoln Eatery is in isolated area away from other uses.

IV. Compliance with Sea Level Rise and Resiliency Review Waiver - Section 133-50(a) provides review criteria for compliance with the City's recently adopted sea level rise and resiliency criteria.

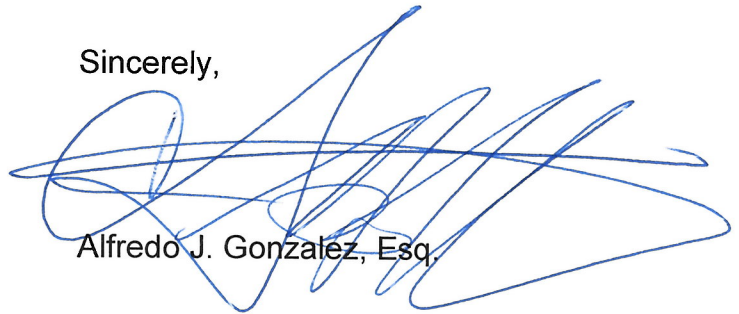
- (i) *A recycling or salvage plan for partial or total demolition shall be provided.*
 - a. N/A, existing areas.
- (ii) *A recycling plan will be provided as part of the submittal for a partial/total demolition permit to the building department.*
 - a. N/A, existing areas.
- (iii) *Windows that are proposed to be replaced shall be hurricane proof impact windows.*
 - a. N/A, no new windows being proposed.
- (iv) *Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.*
 - a. N/A no structural changes to interior areas proposed.
- (v) *Whether resilient landscaping (salt tolerate, highly water absorbent, native or Florida friendly plants) will be provided.*
 - a. N/A. no landscaped area proposed.

- (vi) *Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change compact, including a study of land elevation and elevation of surrounding properties were considered.*
 - a. N/A, no new building construction.
- (vii) *The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.*
 - a. N/A, not as part of modification being requested.
- (viii) *Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation with room to raise.*
 - a. Yes, the only changes in modification impact roof top areas.
- (ix) *Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.*
 - a. N/A
- (x) *When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter 54 of the City Code.*
 - a. N/A
- (xi) *Where feasible and appropriate, water retention systems shall be provided.*
 - a. N/A

V. Conclusion

Prior to making this application, the Applicant has consulted with City staff and the neighbors on these issues. So, accordingly, the Applicant is requesting that the Planning Board approve this application for the Modification of Conditional Use Permit PB19-0310 as described in.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Alfredo J. Gonzalez', is written over the typed name.

Alfredo J. Gonzalez, Esq.

AJG.

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