

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 26, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB21-0467. a.k.a PB File No. 1653. 1300 Ocean Drive. Change of Owner/Operator.**

An application has been filed requesting modifications to a previously issued conditional use permit for an outdoor entertainment establishment. 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

March 23, 2004 The Planning Board approved a Conditional Use Permit (CUP) for an outdoor entertainment establishment in order to have musicians located on the porch.

STAFF ANALYSIS

The applicant is requesting a modification to the existing Conditional Use Permit (CUP) in order to change the name of the operator. The business will now be owned and operated by Yuca Restaurant Company. The current owner and operator is Café Cardozo, LLC. Besides the name change, there is no anticipated change in operation.

Should this request be approved, Condition 3 of the CUP would be amended as follows:

3. This Conditional Use approval is issued to ~~Café Cardozo, LLC~~ Yuca Restaurant Company, as operator of the restaurant, for the outdoor entertainment in the front terrace of the Cardozo Hotel. Any change of operator 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, in advance, 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 prior to the applicant's submission and staff's 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 Conditional Use Permit.

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: 1300 Ocean Drive
Café Cardozo

FILE NO: PB21-0467. a.k.a PB File No. 1653.

IN RE: The application requesting modifications to a previously issued conditional use permit for an outdoor entertainment establishment. 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 7 and 8, Block 18, Ocean Beach Addition No. 2, according to the Plat thereof, as recorded in PB 2-56 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: ~~March 23, 2004~~ October 26, 2021

MODIFIED CONDITIONAL USE PERMIT

The applicant, Café Cardozo, LLC, filed an application with the Planning Director for a Conditional Use Permit pursuant to Chapter 118, Article IV, "Conditional Use Procedure" of the Code of the City of Miami Beach, Florida. Notice of the request for a Conditional Use Permit 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 MXE – Mixed Use Entertainment zoning district;

That the intended 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 Ordinance;
That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards are 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 a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed: Underlining = new language; Strikethrough = deleted language.

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall come back to the Board within 90 days from the date of approval of this Conditional Use Permit and provide a progress report. 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. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a Certificate of Use.
3. This Conditional Use approval is issued to Café Cardozo, LLC Yuca Restaurant Company, as operator of the restaurant, for the outdoor entertainment in the front terrace of the Cardozo Hotel. ~~Any change of operator 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, in advance, to affirm their understanding of the conditions listed herein. 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 prior to the applicant's submission and staff's acceptance of the affidavit.~~
4. The live outdoor entertainment shall be unamplified and limited to a maximum of three (3) musicians, with music played at ambient level only that will not interfere with normal conversation. No stage structure or special stage lighting is permitted, and no smoke machines may be employed. No dancing shall be permitted on the patio or other outdoor areas; dancing shall be limited to the inside of the building.
5. The volume of recorded music shall be controlled by the restaurant management only; DJs shall be prohibited from manipulating volume controls. Non-compliance with this condition shall be deemed a violation of the Permit and subject to the remedies as described in Sec. 118-194 of the City Code.
6. The hours of operation for the live entertainment shall be from 10:00 a.m. to 11:00 p.m. Sunday through Thursdays; and 10:00 a.m. to 12:00 midnight Fridays and Saturdays.
7. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") 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.

8. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if required, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division.
9. The applicant shall be responsible for maintaining the areas adjacent to the facility in excellent condition, including keeping the sidewalk, curb and gutter in front of the building in a clean and sanitary condition, free of all refuse at all times.
10. Queuing or gathering of pedestrians on the sidewalk in front of the establishment in order to listen to the musical performance without entering the premises shall be prohibited. In the event that there is queuing of people on the sidewalk restricting the free-flow of pedestrians, the operator shall be required to have staff take action to remove such crowds from the sidewalk and shall not be permit the crowd to spill uncontrolled into the street area.
11. The clear pedestrian path on the sidewalk in front of the establishment shall be no less than that which is required by the City's Sidewalk Cafe Ordinance. In the event that there is queuing of patrons in this area which impedes the clear path, the operator shall be required to remove tables and chairs from the sidewalk area to allow the free flow of pedestrian traffic.
12. The outdoor music performance approved by this Conditional Use permit shall be accessory to the normal operation of the restaurant operated by the applicant at this location. Tables and chairs with food and beverage service must be present on the front porch area at all times during any music performance.
13. This Conditional Use Permit shall be recorded in the Public Records of Dade County at the expense of the applicant.
14. 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.
15. 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 Conditional Use Permit.

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 114-7 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 permit.

Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Chief of Community Planning and Sustainability
for Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio A. Madan, Chief of Community Planning and Sustainability for 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 _____ ()