

**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. 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.

DS


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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 ~~strike through~~ 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 prior to the applicant's submission and the City's acceptance 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 at all times.
 - c. Any "wet T-shirt," "thong", or "bikini" contest, or similar type of events shall be prohibited.

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- 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 hours of operation, which plan mitigates negative impacts to 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 (with a maximum of two speakers on the premises), playing only background music at a volume level that does not interfere with normal conversation (i.e. at an "ambient" volume level), with no DJ, 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 background music at a volume level that does not interfere with normal conversation (i.e. at an "ambient" volume level) 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.

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- 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 between 12:00 PM and 6:00 PM only.
 - o. The applicant shall coordinate with the City's Parking Department to designate a loading zone area on the Washington Avenue side of the venue.
 - p. No special events (as defined in Chapter 12 of the City Code) that are associated with the proposed entertainment establishment shall be held on the premises.
 - q. The hours of operation shall be limited to no later than 2:00 AM each night, and may be reduced, but the kitchen shall remain open for full meal service during all hours of operation.
 - r. The sidewalk café on 5th Street shall close no later than 2:00 AM each night.
 - 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 this conditional use permit or the full conditional use permit in a conspicuous place on or about the premises where it may be viewed upon inspection by any official of the city. Any failure to display the operating conditions or the full conditional use permit shall result in the issuance of a notice of violation.
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).

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5. The Planning Board shall retain the right to call the owner or operator back before the Board 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 a business tax receipt to operate this entertainment establishment.
10. The Planning Board shall retain the right to call the owner or operator back before the Board 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. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at applicant's expense. No building permit, certificate of use, certificate of

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occupancy, certificate of completion, or business tax receipt 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.

8/15/2021 | 6:59 PM EDT

Dated: _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:

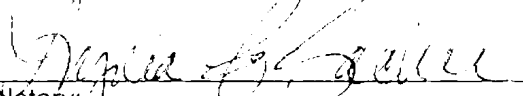

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BY: _____
Rogelio Madan, AICP
Chief of Chief of Community Planning & Sustainability
FOR THE CHAIRMAN

STATE OF FLORIDA)

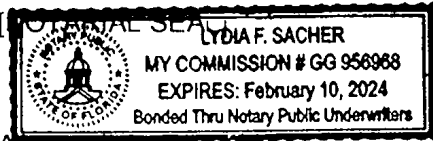
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 15th day of August, 2021, by Rogelio Madan, Chief of Community Planning & Sustainability for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.


Notary: _____
Print Name: Cynthia F. Gardner

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Notary Public, State of Florida

My Commission Expires:

Commission Number:

February 10, 2024
GG 956988

Approved AS TO Form.

Legal Department

8/15/2021 | 11:35 AM EDT

DocuSigned by:
[Signature]
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Filed with the Clerk of the Planning Board on

8/20/2021 | 1:26 PM EDT

DocuSigned by:
Jessica Gonzalez
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