

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: **PB21-0446 a.k.a. PB20-0391 a.k.a. PB18-0253 – 800 Lincoln Road – Restaurant.**

An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment with outdoor entertainment and an occupant content exceeding 300 persons. Specifically, the applicant is requesting the introduction of Entertainment on the second-floor expansion. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions.

BACKGROUND/HISTORY

- October 13, 2015* The Historic Preservation Board (HPB) reviewed and approved a Certificate of Appropriateness (COA) for the partial demolition, restoration and renovation of the existing 'Contributing' structure on the site and the construction of a new 1-story rooftop addition and new 3-story ground level addition, including variances to reduce the required rear pedestal setback and not provide the minimum required parking for off-street loading spaces (HPB 7550.)
- December 13, 2016* The HPB approved a COA for modifications to a previously approved COA for additional interior demolition and design modifications to the ceiling (HPB 16-0066.)
- February 26, 2019* The Planning Board approved a conditional use permit for a Neighborhood Impact Establishment.
- March 11, 2019* The HPB approved a COA for improvements at the roof level and the introduction of a rooftop outdoor bar counter, landscape features and mechanical equipment, including variances to exceed the allowable hours of operation for an accessory outdoor bar counter, to exceed the maximum sign area and for the installation of a sign along a frontage that does not provide direct access from the street.

October 13, 2020 The HPB approved a COA for modifications to a previously issued Certificate of Appropriateness. Specifically, the applicant requested approval for the installation of additional canopy structures at the rooftop outdoor dining area including the deletion of condition I.C.1.d. of the Final Order.

December 14, 2020 The Planning Board approved a modification to a previously approved Conditional Use Permit for outdoor entertainment for a disk jockey playing recorded music at a volume that does not interfere with normal conversation.

ZONING/SITE DATA

Legal Description:

Lots 7 and 8, Block 49 of Lincoln Subdivision, according to the plat thereof recorded in Plat Book 9, Page 69 of the public records of Miami Dade County, Florida.

Zoning District:

CD-3, Commercial high intensity

Future Land Use Designation:

CD-3, Commercial high intensity

Surrounding Uses:

North:	Retail and restaurant uses
West:	Retail and restaurant uses
South:	Residential and parking lot uses
East:	Retail and restaurant uses

(See Zoning/Site map at the end of the report)

THE PROJECT

The applicant has submitted plans entitled "MILA", as prepared by STA Architectural Group, dated June 1, 2021. The applicant is requesting approval for the expansion of operations, as well as the introduction of indoor entertainment to a previously approved neighborhood impact establishment (NIE). The existing CUP includes outdoor entertainment that is limited to a disk jockey playing recorded music at a volume that does not interfere with normal conversation on the third floor.

Per Page A-4.3 on the plans, the existing restaurant on the third level is proposing to increase the occupancy load from 358 persons to 379 persons and from 247 seats to 254 seats. 142 seats are proposed to be located inside and 112 seats are proposed to be located within the outdoor area.

The applicant is also proposing to expand the operations to the second floor of the building with entertainment at a volume that exceeds normal conversation. The proposed occupant content for this level is 290 persons and the restaurant and bars have 132 seats. The establishment is proposed to have a total occupancy load of 669 persons, and 386 total seats.

The entertainment proposed on the second floor of the building is music played at above ambient

levels, and includes DJ's, Jazz bands and other live performances. The applicant is also proposing to host events such as weddings, corporate meetings, Bar and Bat Mitzvahs, etc.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

1. **The Use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

Consistent – The request is consistent with the Comprehensive Plan.

2. **The intended Use or construction would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan**

Consistent – The proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

3. **Structures and uses associated with the request are consistent with these Land Development Regulations.**

Consistent – Neighborhood Impact Establishments, Outdoor and open-air Entertainment are permitted as conditional uses in the (CD-3) Zoning District. These comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Planning Department prior to the issuance of a Business Tax Receipt (BTR).

4. **Public health, safety, morals and general welfare would not be adversely affected.**

Consistent – The proposed establishment may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. The facility would have to comply with all applicable laws and regulations for licensure.

5. **Adequate off-street parking facilities would be provided.**

Consistent – The project does not have any off-street parking requirements, but operationally the applicant provides valet parking services as previously approved.

6. **Necessary safeguards would be provided for the protection of surrounding property, persons, and neighborhood values.**

Consistent – Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

- 7. The concentration of similar types of uses would not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.**

Partially Consistent – There is one Neighborhood Impact Establishment (NIE) with entertainment in the area; approved by the Board on January 22, 2019 at 723 North Lincoln Lane (The Lincoln Eatery.) Staff does not anticipate a negative impact on the surrounding area but is recommending conditions to mitigate any adverse impacts.

NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for an outdoor entertainment establishment, open air entertainment establishment or a neighborhood impact establishment, 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:

- 1. 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.**

The LOI and the operations plan submitted with the application details the proposed operation of the venue. Also, see analysis in this report.

- 2. A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, self-park, shared parking, after-hour metered spaces and the manner in which it is to be managed.**

The project does not have any off-street parking requirements, valet parking services are available at the Restaurant's entrance on Meridian Avenue.

- 3. 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 would be controlled.**

The LOI states that all staff will guide guests from the entry vestibule to the elevators, and monitor to prevent queuing and any obstructions to the passage of patrons on the public sidewalk. See the LOI for more details.

- 4. A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.**

The LOI states that there will have security personnel. See the LOI for more details.

- 5. 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**

A full traffic study was not required, the applicant submitted a traffic report with a Traffic Demand Management plan included in the board packages that was reviewed by the Transportation Department.

6. A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.

As previously approved, the sanitation operation will remain the same, it is conducted at the rear of the property facing South Lincoln Lane (alley.) There is an enclosed trash room area shown on the plans at the rear of the property facing the alley where trash can be stored inside the structure and a loading space shown.

7. A noise attenuation plan which addresses how noise would be controlled to meet the requirements of the noise ordinance.

The applicant provided a sound study prepared by Eduard Dugger + Associates, PA, and a peer review was performed by Arpeggio Acoustic Consulting, LLC. See the analysis.

8. Proximity of proposed establishment to residential uses.

The proposed venue is primarily surrounded by commercial uses. There are residential buildings directly to the south of the property. Due to the proximity to residential uses, staff is recommending conditions to mitigate any potential negative impacts from the operations of this proposed project on surrounding properties.

9. Cumulative effect of proposed establishment and adjacent pre-existing uses.

There is one Neighborhood Impact Establishment (NIE) with entertainment in the area, which was approved by the Board at the January 22, 2019, at 723 North Lincoln Lane (The Lincoln Eatery.) Staff is recommending conditions to mitigate any adverse impacts.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- 1. A recycling or salvage plan for partial or total demolition shall be provided.**
Not Applicable.
- 2. Windows that are proposed to be replaced shall be hurricane proof impact windows.**
Not Applicable. Existing structure.
- 3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.**
Not Applicable.

4. **Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.**
Not Applicable.
5. **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.**
Not Applicable.
6. **The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.**
Not Applicable.
7. **Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.**
Satisfied.
8. **Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.**
Not Applicable.
9. **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 of 54 of the City Code.**
Not Applicable.
10. **Where feasible and appropriate, water retention systems shall be provided.**
Not Applicable.
11. **Cool pavement materials or porous pavement materials shall be utilized.**
Not Applicable.
12. **The design of each project shall minimize the potential for heat island effects on-site.**
Not Applicable.

ANALYSIS

Project Description and Operations

The restaurant is currently operating as a Neighborhood Impact Establishment (NIE) and includes an alcoholic beverage establishment with outdoor entertainment limited to a disk jockey playing recorded music at a volume that does not interfere with normal conversation on the existing third floor. The applicant is proposing to expand the operations to the second floor with entertainment at a volume that exceeds normal conversation. The proposed occupancy load for this level is 290 persons and 132 seats for the restaurant and bars.

As previously approved, the hours of operation of the third floor are as follows:

1. Restaurant: 11:00 AM to 1:00 AM, Sunday – Thursday
11:00 AM to 2:00 AM Friday - Saturdays
2. Interior Bar & Outdoor bar: 11:00 AM to 12:00 AM, Sunday – Thursday
11:00 AM to 2:00 AM, Fridays and Saturdays*

**The operation of the outdoor bar counter until 2:00 AM was approved by the Historic Preservation Board (HPB.) on March 11, 2019.*

3. Third floor entertainment hours (limited to a DJ playing recorded music at a volume that does not interfere with normal conversation) :

6:00 PM to 2:00 AM, Monday to Friday
12:00 PM to 2:00 AM, Saturday to Sunday

The proposed hours of operation of the second floor are as follows:

1. Restaurant and bars: 11:00 AM to – 4:00 AM, Monday to Sunday
2. Entertainment: 11:00 AM to – 4:00 AM, Monday to Sunday

Staff has concerns with the proposed hours of operations of the restaurant, as detailed more specifically below.

Sound

Eduard Dugger + Associates, PA, commissioned by the applicant, conducted a sound study. Arpeggio Acoustic Consulting, LLC, commissioned by the City and paid for by the applicant, conducted a peer review.

The entertainment proposed on the existing second floor consists of music to be played at above ambient levels, as well as a DJ, Jazz band and other live performances. The applicant is also proposing to host events such as weddings, corporate meetings, Bar and Bat Mitzvahs.

The sound study conclusion mentions that the applicant's noise attenuation plan for the fully enclosed second floor addition to the restaurant will comply with the City's noise ordinance and ensure the sound produced from the second-floor sound system will be inaudible from outside the building. Arpeggio concludes "that the sound study prepared by ED+A accurately assesses the negligible potential for noise impacts on the community due to both architectural and sound system design considerations."

As it pertains to the residential buildings directly to the south of the property, staff believes that as proposed, the entertainment will be acoustically buffered by the enclosed space on the second

floor and the rooftop structure that contains the indoor portion of the restaurant. See attached reports.

The existing outdoor area primarily faces north onto Lincoln Road where the underlying level of noise coming from the street and other existing conditions should not result in the project having an acoustical impact on the surrounding neighborhood if the applicant complies with the conditions on the CUP. However, there have been several noise complaints from area residents. See the Code Compliance section below.

Code Compliance

There have been active Code Compliance Cases related to noise since the last modification to this conditional use permit on January 1, 2021.

Case Number	Case Type	Assigned To	Case Status	Open Date	Closed Date
NC2021-18116	Noise Complaint	Perez,Anthony	Verbal Warning Notice	1/21/2021	
NC2021-18131	Noise Complaint	Jefferson,Mounia	Verbal Warning Notice	1/22/2021	
NC2021-18228	Noise Complaint	Balgobin,Nehru	No Violation Observed	1/27/2021	1/27/2021
NC2021-18264	Noise Complaint	Perez,Anthony	Verbal Warning Notice	1/29/2021	
NC2021-18398	Noise Complaint	McLean,Brandon	Verbal Warning Notice	2/5/2021	
NC2021-18491	Noise Complaint	Santana,Rene	Closed	2/9/2021	4/6/2021
NC2021-18537	Noise Complaint	Lacayo,Alexander	Verbal Warning Notice	2/12/2021	
NC2021-18561	Noise Complaint	Castillo, Henry	Verbal Warning Notice	2/13/2021	
NC2021-18594	Noise Complaint	Santana,Rene	Verbal Warning Notice	2/14/2021	
NC2021-19062	Noise Complaint	Jarquín,Joardeen	Invoice Pending	3/12/2021	
NC2021-20474	Noise Complaint	McLean,Brandon	No Violation Observed	6/4/2021	6/4/2021

Most of these complaints identified resulted in a warning notice due to violations of the noise ordinance. It seems that the applicant is not always complying with the current conditions of the CUP, which only allows for a disk jockey playing recorded music at a volume that does not interfere with normal conversation (ambient levels) as the only form of entertainment. Loud Music should not be able to be heard from the street level. Staff will continue to monitor the establishment and take appropriate measures to ensure compliance should any additional written violations be issued.

Sanitation and Deliveries

As previously approved, waste and recycling collection and deliveries would take place from the rear of the building facing the alley within a loading area shown on the plans and occur between 8:00 AM and 5:00 PM.

Security and Crowd Control

As previously approved, there is one security officer downstairs to welcome guests to the existing third floor restaurant space and one security officer on the third floor to monitor the existing restaurant operations. The Applicant will employ one additional security officer to monitor the second-floor restaurant operations. The security officer who is stationed downstairs will be

positioned there throughout all hours of operation and through closing to monitor crowd control and prevent queuing on the public right of way.

Staff has concerns with late-night crowd-control of this venue given the proximity to residential uses. To this end, staff has proposed reduced hours to minimize potential impacts.

Conclusion

There is a residential area in the Flamingo Park neighborhood directly to the south of this establishment buffered only by an alley and a narrow surface parking lot. The residential area is mostly composed of multifamily buildings that are part of the Flamingo Park Historic District. Staff is concerned with potential issues related to the proposed hours for the restaurant expansion with entertainment.

As people will be leaving in the late-night hours, the crowds have the potential to impact the adjacent residential neighborhood with noise and other security issues. To prevent these issues, staff is proposing that the entire establishment close at 2:00 am, as previously approved for the third level of this restaurant. Additionally, staff recommends that any entertainment exceeding a volume above ambient levels cease no later than 1:00 am.

In light of the recent amount of noise complaints, staff is also recommending that the applicant appear in front of the Board for a progress report in 90 days to monitor the operations.

Finally, in order to be consistent with recent CUP approvals, staff is recommending the following additional condition:

- A. That the requirement for change of ownership be modified to allow any future change of ownership to take place with the submittal of an affidavit to the Planning Department where the applicant acknowledges and accepts all of the conditions in the MCUP. A progress report shall be scheduled within 60 days of the submission of the affidavit.

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: 800 Lincoln Road

FILE NO. PB21-0446 a.k.a. PB20-0391 a.k.a. PB18.0253

IN RE: An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment with outdoor entertainment and an occupant content exceeding 300 persons. Specifically, the applicant is requesting the introduction of Entertainment on the second-floor expansion. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: Lots 7 and 8, Block 49 of Lincoln Subdivision, according to the plat thereof recorded in Plat Book 9, Page 69 of the public records of Miami Dade County, Florida.

MEETING DATE: July 27, 2021. ~~December 14, 2020~~

CONDITIONAL USE PERMIT

The applicant, Mila Florida LLC, ~~Mila Miami LLC~~, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the 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 CD-3, Commercial high 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 of the 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 Mila Florida LLC, ~~Mila Miami LLC~~, as tenants and operators of the Neighborhood Impact Establishment consisting of a restaurant and bar with an accessory outdoor bar on the roof deck. 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 Certificate of Use/Business Tax Receipt. A progress report shall be scheduled within 60 days following the applicant's submission and staff's approval of the affidavit.
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. 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.
5. Final design and details of the rooftop area shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Historic Preservation Board.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
7. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, 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. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 379 ~~247~~ seat Neighborhood Impact Establishment, subject to the criteria listed below:
 - i. The restaurant and bar subject to this CUP shall have a maximum occupant content of approximately 400 persons or any lesser such occupant content as determined by the Fire Marshal.

- ii. The indoor and outdoor portions of the establishment may operate from 7:00 AM until 2:00 AM. The accessory outdoor bar counter shall not be operated or utilized between midnight and 8:00 AM, unless a variance for extended hours is granted by the Historic Preservation Board.
 - iii. On the third floor, entertainment of any kind shall be prohibited at all times, except for disc jockeys playing recorded music at a volume that does not interfere with normal conversation.
 - iv. On the second floor, entertainment that exceeds an ambient volume level (i.e. a volume that does not interfere with normal conversation) shall only be permitted between 10:00 AM and 1:00 AM. During all other hours, entertainment shall not exceed an ambient volume level.
 - v. Televisions shall not be located anywhere in the exterior areas of the property.
- B. Delivery trucks shall only be permitted to make deliveries from City authorized and designated commercial loading zones.
 - C. Delivery trucks shall not be allowed to idle in the loading zone.
 - D. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - E. Deliveries and waste collections may occur daily between 8:00 AM and 5:00 PM.
 - F. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
 - G. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
 - I. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
 - J. Garbage dumpster covers shall be closed at all times except when in active use.
 - K. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
 - L. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.

- M. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
 - N. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - O. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
- 8. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.
 - 9. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Business Tax Receipt.
 - 10. Within ninety (90) days after obtaining the Business Tax Receipt the tenant shall update the Traffic Demand Management (TDM) study and submit the report to the Transportation Departments. At that time, the Transportation Department may impose additional conditions to address possible problems and to determine the timing and need for future updates to the TDM.
 - 11. 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.
 - 12. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
 - 13. 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. 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.
 - 14. 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.

15. 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.
16. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
17. 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.
18. 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.
19. 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.

Dated: _____.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Chief of Community Planning & Sustainability
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

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

Notary:
Print Name
Notary Public, State of Florida

{NOTARIAL SEAL}

My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department ()

Filed with the Clerk of the Planning Board on _____ ()

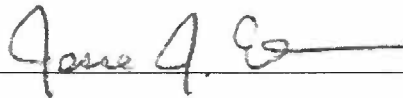


**Peer Review of Sound Study for
Mila Restaurant,
800 Lincoln Road, Miami Beach, Florida
PB 21-0446**

Prepared for:

**Miami Beach Planning Department
1700 Convention Center Drive
Miami Beach, Florida 33139**

Prepared by:



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June 3, 2021

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1 Introduction

This report documents a peer review of an acoustic study conducted for the City of Miami Beach related to an application for a Modification to a prior Conditional Use Permit (CUP) for a Neighborhood Impact Establishment/Outdoor Entertainment Establishment at 800 Lincoln Road. The reviewed report, prepared by Edward Dugger + Associates (ED+A) and dated May 28, 2021, describes the project and regulatory criteria and offers recommendations related to architecture and sound system design to limit impact on adjacent areas.

2 Project Description

The facility, Mila Restaurant, is located, and currently operates, at the southwest corner of Lincoln Road and Meridian Avenue in the Lincoln Mall shopping district. On December 14, 2020, the Planning Board approved a modification of the original CUP to allow indoor and outdoor entertainment in the form of a DJ playing recorded music at ambient level. The current application seeks to expand restaurant operations to the second floor of the property with 183 seats. The existing and proposed expansion areas are contiguous and internally connected by a staircase. This expansion area would be used for dining as well as events such as weddings, corporate meetings, and Bar and Bat Mitzvahs with music programs including DJs, jazz bands, and other live performances. The application seeks to allow music played above an ambient level within this enclosed second-floor expansion space. The nearest residential use appears to be located south of the property in a separate building which is shielded from the proposed expansion by the restaurant building itself.

3 Comments and Conclusions

The sound study report identifies potential paths for sound transmission to the exterior, focusing on the path through the exterior façade as well as a path via the stairwells that connect the second and third floors of the restaurant. Addressing the first path, the ED+A report refers to a large buffer at Lincoln Road formed by the space between the existing exterior wall and the new second-floor wall. Similarly, a buffer space appears along the Meridian Avenue side, albeit it is not as deep. For this reason, we do not anticipate that sound transmission through exterior walls will be an issue. (There is certainly the potential for music in the second-floor mezzanine area to be audible in the first-floor retail space, but this is not the subject of this study and may not be an issue if operating hours are not concurrent.) The second path is along one or two of the common rear stairwells. In that case, ED+A makes a cogent case that the length of travel of sound from the second floor to the terrace on the third floor renders this path negligible.

Additionally, the ED+A report includes several recommendations which will help with mitigating any noise issues in the community. These recommendations include the use of volume controls accessible only to management, the requirement to use only the house system, use of a distributed audio system set up in zones, and others.

In conclusion, it is our opinion that the sound study prepared by ED+A accurately assesses the negligible potential for noise impacts on the community due to both architectural and sound system design considerations.

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

PROPERTY: 743 Washington Avenue

FILE NO: 2053 (f.k.a. 1906)

IN RE: The application by 743 Washington Entertainment, LLC, requesting a Modification to an existing Conditional Use Permit, pursuant to Section 118-195 of the City Code for a Neighborhood Impact Establishment, to change the name of the operator, as required by Condition 2 of the CUP.

LEGAL DESCRIPTION: Lot 14 Block 33 of OCEAN BEACH ADDITION #1, according to the plat thereof, recorded in Plat Book 3, Page 11 of the public records of Miami-Dade County, Florida.

MEETING DATE: ~~February 28, 2012~~ July 27, 2021

MODIFIED CONDITIONAL USE PERMIT

The applicant, 743 Washington Entertainment, LLC, filed an application with the Planning Director to modify the Conditional Use Permit pursuant to Section 118-193 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the proposed modification 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 CD-2 Commercial, Medium Intensity Zoning District;

That the intended Use is consistent with the Comprehensive Plan for the area in which the property is located;

That the majority of surrounding uses are commercial and residential uses;

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 when the conditions of approval are in compliance;

That necessary safeguards will be 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 recommendations, that the modifications to the Conditional Use Permit be GRANTED, as provided below: Underlining = new language; Strikethrough = deleted language.

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall provide a progress report to the Board in 90 days after the Business Tax Receipt has been issued. 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 ~~743 Washington Entertainment, LLC~~ Mansourandco, LLC as operator of this entertainment establishment. ~~Subsequent owners and operators shall be required to appear before the Board 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 within 60 days followed by the submission and acceptance of the affidavit.
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. Security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation.
5. The hours of operation for this entertainment establishment shall be as follows:
 - Monday - Wednesday: 10:30 AM to 5:00 AM
 - Thursday - Sunday: 5:00 PM to 5:00 AM
6. As shown on the plans, the existing double door vestibules shall be maintained at the main entrance of the establishment.
7. A revised floor plan that shows the seating arrangement shall be submitted to staff for review and approval prior to obtaining a building permit or Certificate of Completion, Certificate of Occupancy or Business Tax Receipt. In addition, as proffered by the applicant, security personnel shall be posted in close proximity to all doors, including the rear exit door.

8. The garbage holding room opening towards the alley shall be enclosed and air conditioned in order to contain malodorous garbage and to avoid any garbage escaping to the alley.
9. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy or Certificate of Completion. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt.
10. The applicant shall coordinate with the Parking Department and the Transportation Manager the location of valet drop-off/pick up and sufficient spaces for the queuing of vehicles waiting to be serviced by the valet operator.
11. Once the applicant enters into a contract with the valet operator, a valet staffing plan and a vehicle storage plan shall be submitted to staff for review and approval.
12. The applicant shall submit for staff review and approval specific noise attenuation measures inclusive of interior proofing prior to the issuance of a Business Tax Receipt.
13. Any window treatment that may be proposed shall be such that there is a clear view from the sidewalk in order to activate the area. Such treatments shall be included in the building permit plans and shall be reviewed and approved by staff.
14. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
15. Queuing of persons on the sidewalk shall be prohibited. Queuing shall take place within the premises, as shown in the plans submitted, and controlled by The Gates security personnel so that there is no spillover that could conflict with pedestrian flow in front of the subject establishment.
16. The applicant shall be responsible for maintaining the frontage and exterior of the building and the property in excellent condition, including keeping the sidewalk, curb and gutter in front and side of the building in a clean and sanitary condition, free of all refuse, 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.
17. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation or the occupant load should there be issuance of written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual late night noise.
18. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, 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.
19. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit.

20. Within a reasonable time after applicant's receipt of this Modified 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.
21. 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.
22. 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 the 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.
23. 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.
24. 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.

Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

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 _____ day of _____, _____, 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.

[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 _____ ()