

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: December 21, 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

Denial of the proposed revised conditions pertaining to hours of operation.

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 the 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 the 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.
- July 27, 2021* The Planning Board approved a modification to the previously approved Conditional Use Permit to allow for the introduction of Entertainment on the second-floor expansion. The Planning Board continued the portion of the item as it relates to hours of operation to the September 28, 2021 meeting.
- September 28, 2021* At the request of the applicant, the Planning Board continued the item to the October 26, 2021 meeting.
- October 26, 2021* At the request of the applicant, the Planning Board continued the item to the November 30, 2021 meeting.
- November 30, 2021* At the request of the applicant, the Planning Board continued the item to the December 21, 2021 meeting.

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.

On July 27, 2021, the Planning Board modified the order, allowing the establishment to have 386 seats and an occupant content of 669 persons. The modification allows the establishment to expand the operations to the second floor of the building with entertainment at a volume that exceeds normal conversation.

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 use of the second-floor lounge area is limited to private members and their invited guests or for private events.

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 letter of intent (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

Hours of Operation

On July 27, 2021, the Planning Board approved modifications to the approved CUP for Mila. As part of the modification, the Planning Board approved hours of operation as listed below:

- i. 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 HPB.
- ii. 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.
- iii. 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.

The applicant indicated that they would like to allow for operations beyond 1:00 AM on the second floor and requested that the Planning Board approve the project and continue the item specifically in regard to hours of operation. Specifically, the applicant's proposed operations plan requested that the second floor be allowed to operate until 4:00 AM.

Staff continues to have concerns that allowing for later operations will impact the residential area to the south as people leave. As people wait for their personal vehicles or ride share pick-up, there is potential for noise, which would be more impactful if it were taking place at later hours. Therefore, staff recommends that the Planning Board maintain the hours of operation that were approved at the July 28, 2021 meeting and that no additional changes be made to the Order.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board deny the proposed expanded hours for the second floor and maintain the hours of operations as approved at the July 28, 2021, meeting.

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**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 386 247 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 400 669 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.
 - vi. The use of the second floor lounge shall be limited to primate members and their invited guests or private events.
- 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.

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- 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.

{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 _____ ()