

August 30, 2021

Via Online Submission

Honorable Chair and Members of the Planning Board
Planning & Zoning Department
City of Miami Beach
1700 Convention Center Drive, Second Floor
Miami Beach, Florida 33139

Re: Letter of Intent for a Modification to the Conditional Use Permit Issued Under Planning Board File No. PB21-0452 f/k/a Planning Board File No. 1903 for a Neighborhood Impact Establishment Eme Miami at 1826 Collins Avenue, Miami Beach, Florida (“Restaurant”)

Dear Chair and Board Members:

Our Law Firm represents MB Group Entertainment Corp. (the “Applicant”), the tenant of the restaurant space located at 1826 Collins Avenue, Miami Beach, Florida (“Property”) in this application for a Modification to the existing Conditional Use Permit for a Neighborhood Impact Establishment (“NIE”) issued under Planning Board File No. 1903 pursuant to §142-1361 and §142-1362 of the City Code. Please allow this letter, as well as the enclosed Operations Plan, to serve as the Applicant’s Letter of Intent (“LOI”) in connection with the foregoing application.

The Property is located in the CD-2 (commercial medium intensity) zoning district. The CD-2 zoning district is designed to provide for commercial activities, services, offices and related activities which serve the entire city. *Sec. 142-301 City Code*. The main permitted uses in this zoning district are commercial uses, apartments, apartment hotels, hotels, hostels, suite hotels, alcoholic beverage establishments, and religious institutions with occupancy of 199 persons or less. *Sec. 142-302 City Code*.

The property previously obtained a Conditional Use Permit on January 27, 2009 under Planning Board File No. 1903 for a robotic parking system in a commercial main use parking garage to operate the garage after midnight with an accessory restaurant use, a copy of which is enclosed in the application materials. Currently, Condition No. 10 of the previously issued Conditional Use Permit prohibits “Entertainment” as defined in the City Code, which is Applicant is seeking to modify.

The Applicant operates a unique Latin flare Miami-based concept restaurant and is seeking to add an indoor entertainment program for its patrons to consist of a DJ playing music above ambient levels and at times, live entertainment by a performer. The Restaurant is fully licensed and permitted as a two hundred (200) seat restaurant. A copy of the City of Miami Beach Business Tax Receipt is enclosed with the application materials along with the Occupant Content Certificate as issued by the City’s Fire Department reciting an occupancy of two hundred and seventeen (217) patrons. The Applicant is not seeking to increase the seat count, occupancy, or the square footage of the Restaurant, but rather is only seeking to add “entertainment” as described herein. Therefore, the Applicant is requesting for Condition No. 10 of the

existing order which reads as “Entertainment, as defined in the City Code shall be prohibited within the site, inclusive of the ~~accessory restaurant use~~, rooftop and any outdoor area.”

Edward Dugger + Associates, P.A. (“ED+A”) visited the property to inspect the placements of the existing sound system and loudspeakers. Enclosed with the application materials, please find the Acoustical Review Report prepared by ED+A. The applicant will follow the design criteria to allow for effective control and management of sound generated throughout the property as recommended by ED+A. The DJ and/or live performer will only utilize the house sound system and the volume will be controlled only by restaurant management. ED+A has concluded that by regulating the sound level output of the audio system, which the Applicant will do by following the design criteria as specified, sound transmission will be minimized to the building’s exterior so that the sound levels are not plainly audible outdoors.

Standard Conditional Use Criteria. In addition to the other materials submitted with this application, the following information is submitted in accordance with the conditional use review guidelines under §118-192 of the City’s Code’s Land Development Regulations.

(1) The use is consistent with the comprehensive plan or neighborhood plan if one exists for the area in which the property is located.

Satisfied. A restaurant is a permitted use, and a NIE is permitted as a conditional uses, in the CD-2 zoning district. Further, these uses are consistent with the comprehensive plan future land use designation of the Restaurant of CD-2.

(2) The intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the comprehensive plan.

Satisfied. The Restaurant does not result in an impact that will exceed the threshold levels of service for this commercial corridor. The Restaurant is fully licensed and permitted as a two hundred (200) seat restaurant. The Applicant is not seeking to increase the seat count, occupancy, or the square footage of the Restaurant, but is only seeking to add an indoor entertainment program consisting of a DJ playing music above ambient levels and at times, live entertainment by a performer

(3) Structures and uses associated with the request are consistent with the land development regulations.

Satisfied. The restaurant is a permitted use, and a neighborhood impact establishment is a conditional use, in the CD-2 zoning district. Further, these uses are consistent with the comprehensive plan future land use designation of the Restaurant within the CD-2.

(4) The public health, safety, morals, and general welfare will not be adversely affected.

Satisfied. As set forth in the cumulative application materials, the proposed use and controlled operation of the venue will not adversely affect the public health, safety, morals, and general welfare.

(5) Adequate off-street parking facilities will be provided.

Satisfied. Both the Applicant’s restaurant space and the building’s parking garage each have a valid Certificate of Occupancy for their use and therefore, meet the requirements under the zoning code. The Restaurant is fully licensed and permitted as a 200 seat restaurant and has been CO’ed as a restaurant space since 2014 under the existing Conditional Use Permit for the property. Enclosed with the application materials please find a copy of the Certificate of Occupancy for the restaurant space that was issued in 2014.

As the Applicant is a Tenant of the restaurant space, they have no control over the CO'ed parking garage. Enclosed with the application materials please also find a copy of the Certificate of Occupancy for the parking garage, which has been issued since 2012.

The Property is located on Collins Avenue and is within walking distance to many parking facilities. There are surface parking-lots and other parking garages located within the immediate area for use by restaurant patrons. However, even considering those parking accommodations, the venue is located within an area of the City where patrons can easily walk instead of drive and the applicant anticipates many patrons will walk or take an Uber. Nevertheless, there is valet parking offered by the building to restaurant patrons, which has proved to be sufficient to accommodate the operations.

(6) Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

Satisfied. As set forth in the cumulative application materials, the proposed use and controlled operation of the venue will not adversely affect the public health, safety, morals, and general welfare. In addition, the Applicant has provided for necessary safeguards in its Operations Plans attached hereto, providing for the protection of surrounding the properties, persons and neighborhood values.

(7) The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.

Satisfied. The safeguards included in the approved Operations Plans attached hereto will ensure there is no negative impact on the surrounding neighborhood. The Applicant's proposed use is unique and should serve to improve the surrounding neighborhood.

Neighborhood Impact Establishment Criteria. In addition to the other materials submitted with this application, the following supplemental information relating to this request is provided pursuant to §142-1362(a) of the City Code's Land Development Regulations:

(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:

Satisfied. The Applicant has provided a detailed operational and business plan, which addresses the hours of operation, number of employees required to effectively operate the food and beverage operations, menu items, goals of the business, and other operational characteristics pertinent to the application.

(2) A parking plan which fully describes where and how the parking is to be provided and utilized:

Satisfied. The Property is located on Collins Avenue and is within walking distance to many parking facilities. There are surface parking-lots and other parking garages located within the immediate area for use by restaurant patrons. However, even considering those parking accommodations, the venue is located within an area of the City where patrons can easily walk instead of drive and the applicant anticipates many patrons will walk or take an Uber. Nevertheless, there is valet parking offered by the building to restaurant patrons.

(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 will be controlled:

Satisfied. Two (2) of the security officers are at the main entrance door on Collins Avenue during all hours of operation to ensure easy and safe access for its patrons.

(4) A security plan for the establishment and any parking facility, including enforcement of patron age restrictions:

Satisfied. Patrons of the restaurant are able to gain access to the venue through its main entrance on Collins Avenue. The applicant employs seven (7) security personnel during the hours of operation. Two (2) of the security officers are at the main entrance door on Collins Avenue during all hours of operation to ensure easy and safe access for its patrons. On the second through fourth floor of the restaurant, the remaining five (5) security officers are stationed throughout to ensure the safety of its patrons during all hours of operations. The applicant's security staff will specifically enforce patron age restrictions.

(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:

Satisfied. The Property is located on Collins Avenue and is within walking distance to many parking facilities. There are surface parking-lots and other parking garages located within the immediate area for use by restaurant patrons. However, even considering those parking accommodations, the venue is located within an area of the City where patrons can easily walk instead of drive and the applicant anticipates many patrons will walk or take an Uber. Nevertheless, there is valet parking offered by the building to restaurant patrons, which has proved to be sufficient to accommodate the operations.

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

Satisfied. The Applicant will utilize the buildings enclosed trash room as indicated on the architectural plans submitted with the enclosed application. The existing trash room has sufficient capacity to accommodate the restaurant operations. Trash is picked up seven (7) days a week around approximately 6:30 a.m.

(7) A noise attenuation plan which addresses how noise will be controlled to meet the requirements of the noise ordinance:

Satisfied. ED+A visited the property to inspect the placements of the existing sound system and loudspeakers. Enclosed with the application materials, please find the Acoustical Review Report prepared by ED+A. The applicant will follow the design criteria to allow for effective control and management of sound generated throughout the property as recommended by ED+A. The DJ and/or live performer will only utilize the house sound system and the volume will be controlled only by restaurant management. ED+A has concluded that by regulating the sound level output of the audio system, which the application will do by following the design criteria as specified, sound transmission will be minimized to the building's exterior so that the sound levels are not plainly audible outdoors.

(8) Proximity of proposed establishment to residential uses:

Satisfied. The Applicant's operations are not anticipated to have any adverse effect on the surrounding residential uses. Based on the updated Acoustical Review Report prepared ED+A, by the Applicant following the design criteria as recommending by ED+A the sound levels are not anticipated to have an impact on the neighboring properties.

(9) Cumulative effect of proposed establishment and adjacent pre-existing uses:

Satisfied. The Restaurant is currently a fully licensed and permitted as a two hundred (200) seat restaurant. Based on the existing operations and the proposed operations, the Applicant's operations are not anticipated to have any adverse effect when the adjacent pre-existing uses are considered.

Below please find the Applicant's responses to each of the Sea Level Rise and Resiliency Review Criteria pursuant to §133-50 of the City Code's Land Development Regulations.

(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.

(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 right-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.

Not Applicable.

(8) Existing buildings shall be, where reasonable feasible and appropriate, elevated to 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 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.

Conclusion. In light of the foregoing, and the application materials submitted herewith, we respectfully request the Planning Board's approval of this application.

Very Respectfully Submitted,

/s/ James E. Rauh

James E. Rauh, Esq.
For the Firm

Enclosures