

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: January 25, 2022

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB21-0452. a.k.a. PB File No 1903. 1826 Collins Avenue. Indoor entertainment.**

An application has been filed requesting a modification to a previously issued conditional use permit for a robotic parking system in a commercial main use parking garage to operate the garage after midnight with an accessory use 240-seat restaurant. Specifically, the applicant requested to include indoor entertainment for the restaurant, pursuant to chapter 118, Article IV and Chapter 142, Article V, and Chapter 130, Article II of the City Code.

RECOMMENDATION

Approval with conditions.

BACKGROUND

January 27, 2009

The applicant, obtained a conditional use permit (CUP) from the Planning Board for a robotic parking system in a commercial main use parking garage with an accessory use 240-seat restaurant; and to operate the garage after midnight.

October 26, 2021

At the request of the applicant, the Planning Board continued the item to the November 30, 2021 meeting. On November 30, 2021, at the request of the applicant, the Planning Board continued the item to the December 21, 2021 meeting.

December 21, 2021

Due to the Planning Board hearing lack of quorum, this Item was continued to January 25, 2022.

ZONING/SITE DATA

Legal Description:

Lot 4, less the West 25 feet thereof, Block 2, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, recorded in Plat Book 2, Page 77 of the Public Records of Miami-Dade County, Florida.

Future Lands Use: Medium Intensity Commercial (CD-2)

Zoning: CD-2, Commercial Medium Intensity zoning district

Lot Area: Approximately 9,557 square feet (50 feet wide x +/- 191.00 feet deep)

Surrounding: South: 1800 Collins Avenue Condominium

East: (Hotels) - The Shelborne Hotel, The Nautilus Club, The Shore Club
West: James Central Towers Condo and other low to mid-rise residential buildings
North: Dorchester Hotel

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

THE PROJECT

The applicant, MB Entertainment Corp, has submitted an application to modify an approved Conditional Use Permit for a commercial main use robotic parking garage with a 240-seat restaurant in order to authorize indoor entertainment. The applicant is not seeking to modify other operations for the restaurant.

Per Section 142-1361 of the Land Development Regulations (LDRs), an alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall, with an occupant content of 200 or more persons constitutes a Neighborhood Impact Establishment (NIE). For reference, restaurant without entertainment can have an occupant content of 300 or more persons before constituting an NIE.

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 permissible uses in the High Intensity Commercial Category (CD-2) as designated on the Future Land Use Map within 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 – This is an existing establishment, and as such, 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 – Entertainment and Neighborhood Impact Establishments are permitted as conditional uses in this zoning district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Building Permit.

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

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

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

Partially Consistent – The site is has a certificate of occupancy for the robotic parking indicating that the required parking for the restaurant is being provided on-site in the robotic parking garage. However, it is staff's understanding that the robotic parking garage system has never functioned. As a result, staff is incorporating a condition to ensure that the required parking is provided and available for use before prior to the issuance of a certificate of use for entertainment.

The applicant has indicated that valet parking is provided to restaurant patrons. Section 130-36 of the LDRs, required parking can be provided within 1,200 feet of the establishment within a local historic district. The applicant could potentially satisfy parking requirements through these provisions with another garage within the vicinity.

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.

Consistent – There are other restaurants within the vicinity, however restaurants and entertainment uses are appropriate for this area, which consists primarily of several large hotels. Therefore, no negative impact through the concentration of uses is expected.

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 operational plan was submitted with the application and details hours for deliveries and trash pickup, hours of operation, hours of entertainment, number of employees, crowd control and security procedures, and other procedures.

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.

As this is an existing restaurant, the applicant has indicated how parking is managed. However, it is staff's understanding that the robotic parking garage system has never functioned. The applicant will have to ensure that the required parking is functional before obtaining a certificate of use.

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 applicant's operations plan provides procedures for indoor/outdoor crowd control. Staff has included conditions into the draft order to further ensure that crowds are managed appropriately.

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

The applicant has indicated that there will be trained security staff during hours of operation and that security staff will enforce patron age restrictions. Staff has incorporated conditions into the draft order in order to further ensure the security of the establishment.

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.**

There is no traffic circulation analysis as stated on the LOI. Transportation Department review was not required.

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

The applicant's operations plan indicates that the establishment will continue to use the enclosed trash room. The pickups are scheduled daily at approximately 6:30 AM. Staff has incorporated conditions into the draft order in order to further sanitation for the establishment.

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 Edward Dugger + Associates (ED+A) indicating how the sound system would function and be operated. The analysis was peer reviewed by the City's sound consultant, Arpeggio. See attached sound study and peer review. Staff has incorporated conditions into the draft order to ensure that sound does not impact surrounding properties.

8. **Proximity of proposed establishment to residential uses.**

There are residential buildings to the west and south of the subject property. The entertainment uses are indoors and located on the eastern portion of the building fronting Collins Avenue. With appropriate measures, the entertainment should not impact the residential buildings adjacent to the site. Staff has incorporated conditions to ensure that the nearby residential uses are not impacted by the proposed entertainment use.

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

Restaurants and entertainment establishments are a typical along the Collins Avenue corridor. As such, there will be no cumulative effect on adjacent pre-existing uses.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations 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, as this is an existing building and establishment.

(2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

Not Applicable, as this is an existing building and establishment.

(3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

Not Applicable, as this is an existing building and establishment.

(4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

Not Applicable, as this is an existing building and establishment.

(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, as this is an existing building and establishment.

(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, as this is an existing building and establishment.

(7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

Not Applicable, as this is an existing building and establishment.

(8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

Not Applicable, as this is an existing building and establishment.

(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, as this is an existing building and establishment.

(10) Where feasible and appropriate, water retention systems shall be provided.

Not Applicable, as this is an existing building and establishment.

ANALYSIS

The proposal affects a main use parking garage located at 1826 Collins Avenue. The garage has 138 spaces and an accessory restaurant which is authorized to contain up to 240 seats per the approved CUP. The restaurant spans four (4) floors on the eastern side of the building. The garage received its certificate of occupancy in 2012 and the restaurant received its certificate of occupancy in 2014. Staff has is unaware of any issues related to the operation of this particular restaurant. The applicant submitted a request to modify the approved CUP to allow indoor entertainment within the restaurant. This request would constitute the restaurant as an NIE. The applicant is not requesting to modify any other operations on the site.

Sound

The applicant provided a sound study prepared by Edward Dugger + Associates (ED+A) indicating how the sound system would function and be operated. The analysis was peer reviewed by the City's sound consultant, Arpeggio. The City's sound consultant has concerns with the operations, given the proximity to residential uses and made several recommendations in order to minimize potential impact. See attached sound study and peer review. Staff has incorporated the following conditions into the draft order to ensure that sound does not impact surrounding properties:

- a. Only the Applicant's approved speakers, as approved by this Conditional Use Permit, shall be used. All performers, including, but not limited to, DJ's, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's and performers as to the requirements of this conditional use permit related entertainment.
- b. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application and the conclusions of the City's peer review.
- c. At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.
- d. Sound from the entertainment establishment shall not be plainly audible from the western and southern property lines of the subject property.
- e. The applicant shall install a sound level monitoring system to continuously monitor sound levels to ensure compliance with the requirements of the CUP, in a manner to be reviewed and approved by the City.
- f. Before the issuance of a certificate of use is issued, a field visit with the applicants and Planning staff shall be required to verify the sound system operations.
- g. A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.

Parking

The site has a 138-space robotic parking system that received a Certificate of Occupancy in 2012. 52 spaces in the garage are intended to provide the required parking for the restaurant. However, as previously mentioned, it is staff's understanding that this robotic parking garage system has never functioned. As a result, while the required parking spaces technically exist, they are not available for use. In order to address this issue, staff is incorporating a condition to ensure that the required parking is provided and functioning manner before prior to the issuance of a certificate of use for entertainment.

The applicant has indicated that valet parking is provided to restaurant patrons to address the operational needs of the venue. However, the non-functioning robotic parking structure contains the 'required' parking spaces. Pursuant to Section 130-36 of the LDRs, required parking can be provided within 1,200 feet of the establishment within a local historic district. The applicant could potentially satisfy parking requirements through these provisions within the vicinity and the existing valet parking operations.

SUMMARY

The existing restaurant is located along Collins Avenue, which contains several restaurants and entertainment establishments that cater to nearby tourists and residents. However, given the site's proximity to residential uses, the potential exists to negatively impact those residents if the use is not properly controlled. Staff has incorporated several conditions to ensure that the sound is contained inside the establishment and for continuous monitoring to take place. Staff does not object to the applicant's request for entertainment within the interior of the existing restaurant, provided the safeguards incorporated in the attached draft order are approved.

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: 1826 Collins Avenue.

FILE NO. PB21-0452, a.k.a. PB File No. 1903

IN RE: The Application requesting a modification to a previously issued conditional use permit for a robotic parking system in a commercial main use parking garage to operate the garage after midnight with an accessory use 240-seat restaurant. Specifically, the applicant requested to include indoor entertainment for the restaurant, pursuant to chapter 118, Article IV and Chapter 142, Article V, and Chapter 130, Article II of the City Code.

LEGAL DESCRIPTION: Lot 4, less the West 25 feet thereof, Block 2, FISHER'S FIRST SUBDIVISION OF ALTON BEACH, according to the Plat thereof, recorded in Plat Book 2, Page 77 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: ~~January 27, 2009~~ January 25, 2022

MODIFIED CONDITIONAL USE PERMIT

The applicant, IC, LLC, is requesting a Conditional Use approval pursuant to Section 118-195 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for a Conditional Use Permit was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property, upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the CD-2, Commercial Medium 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 not consistent with the Land Development Regulations, but will be when Condition No. 3 is in compliance;

That the public health, safety, morals, and general welfare will not be adversely affected if the applicant complies with the conditions stated herein;

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 recommendation, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the conditions below, which have been accepted by the applicants: Underlining = new language; Strikethrough = deleted language.

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. 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 IC, LLC as owner of the property. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
3. The applicant shall redesign the driveway to a width of 22 feet in order to conform to the requirements of the City Code, or in the alternative shall apply to the Board of Adjustment to obtain a variance in accordance to Chapter 118, Article VIII, "Procedures for Variances."
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 of the modified plans.
5. 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.
6. The Final Order for File No. 6265 issued by the Historic Preservation Board on January 13, 2009 is hereby adopted and incorporated into this order by reference.
7. Storage of vehicles by valet operators for off-site facilities shall be permitted.
8. The off-street parking requirements for the accessory restaurant shall be satisfied only within the garage. Required parking for off-site venues shall not be satisfied at this garage.
9. The proposed accessory use restaurant on the site shall not be permitted to use the rooftop. The restaurant seating shall be contained inside the premises and restricted to no more than 208 seats and an occupant load that shall not exceed 240 persons or any lesser number as may be determined by the Chief Fire Marshal.
10. "Entertainment," as defined in the City Code shall ~~be prohibited within the site, inclusive of the accessory use restaurant, rooftop and any outdoor area.~~ shall only be permitted in indoor portions of the restaurant, subject to the following limitations:

- a. Only the Applicant's approved speakers, as approved by this Conditional Use Permit, shall be used. All performers, including, but not limited to, DJ's, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's and performers as to the requirements of this conditional use permit related entertainment.
 - b. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application and the conclusions of the City's peer review.
 - c. At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.
 - d. Sound from the entertainment establishment shall not be plainly audible from the western and southern property lines of the subject property.
 - e. The applicant shall install a sound level monitoring system to continuously monitor sound levels to ensure compliance with the requirements of the CUP, in a manner to be reviewed and approved by the City.
 - f. Before the issuance of a certificate of use is issued for entertainment, a field visit with the applicants and Planning staff shall be required to verify the sound system operations.
 - g. A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.
 - h. Before the issuance of a certificate of use is issued for entertainment, the applicant shall demonstrate that the required parking for the restaurant use is functioning and available for parking vehicles.
11. The robotic parking system and vehicle elevators must be inspected and serviced at least once per year with an annual safety report signed by a Licensed Mechanical Engineer submitted to the Planning Department.
12. The parking garage shall consist of 139 spaces, of which 52 are required parking for the accessory restaurant. The garage operation will be 24 hours per day, seven days a week. Accessibility for public use, including the valet parking authorized in Condition No. 7 shall be available at all times. The facility shall be equipped with closed circuit recording monitors to

assure the safety and security of the public. There shall be security personnel of at least one person monitoring the garage operation 24 hours a day, seven days a week. The structure, operation, procedures, maintenance, service response procedures, remote technical service team, local, on-site service team, and spare parts inventory shall be in accordance with the four-page letter dated January 16, 2009 from Automotion Parking Systems, LLC of West Hempstead, New York, as proffered by the applicant, except that the reference to the facility being unattended shall be deleted.

13. The facility shall ensure that noise or vibration from the operation of the robotic parking system and car elevators shall not be plainly audible or felt by any individual standing outside an apartment or hotel unit at any adjacent or nearby property. Noise and vibration barriers shall be incorporated into the final design to ensure that surrounding walls decrease sound and vibration emissions outside of the parking garage. The robotic parking system shall use sound deadening material between all connections from the robotic parking system to the building in order to eliminate all sound transference and vibration in the system and the building as well.
14. When construction has been completed, but before the commencement of the garage operations authorized by this Conditional Use Permit and before the issuance of a Business Tax Receipt, the garage operations shall be fully tested under the supervision of Mr. Donald J. Washburn, President of The Audio Bug, Inc. to ensure that all aspects of the garage operation fully comply with the Parking Garage Noise Impact Study by The Audio Bug, Inc., dated November 8, 2008 as amended by The Audio Bug, Inc. letter dated January 20, 2008, all as submitted by the applicant. The garage shall not begin operating until staff has received and approved in writing a final written report by Mr. Washburn stating that as tested, all aspects of the garage operation fully comply with the Parking Garage Noise Impact study as amended. Thereafter, all aspects of the garage operation shall fully and continuously comply with the aforementioned Noise Study as amended.
15. The parking platforms must be sealed and of a sufficient width and length (minimum of 7.5' by 16') to completely cover the bottom of the vehicle on the platform to prevent dripping liquids or debris onto the vehicle below.
16. The facility must maintain adequate backup generators sufficient to power the car elevators. The generator shall be maintained in proper operating condition. The location of the generators shall be submitted for the review and approval by staff to ensure that any negative impacts associated with the operation or testing of the equipment are minimized. The generators shall be installed in accordance with Code requirements regarding minimum floodplain criteria.
17. Deliveries and garbage pickup shall be conducted directly on site and not on the street. The trash/garbage container shall have rubber wheels and shall not be permitted to be wheeled to curbside for pick-up. Deliveries and pickups shall be handled and managed by a dock master supervisor who shall be responsible for controlling traffic when these activities are scheduled in order to minimize the disruption of traffic on Collins Avenue. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.

18. Plans shall be modified to reflect on site service of trash removal and deliveries in order to maintain a free-flow of the right of way, including the public sidewalk.
19. The applicant shall submit an MOT (Method of Transportation) to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
20. The applicant shall increase the driveway turning radii at Collins Avenue to at least 10 feet, and place double yellow lines and a stop bar/stop sign on the driveway in order to clearly delineate the inbound and outbound lanes, as per the recommendations of the Traf Tech traffic impact analysis report dated November 6, 2008.
21. A landscape plan for the entire site, prepared by a Professional Landscape Architect, inclusive of street trees as per the City of Miami Beach Master Street Tree Plan, shall be submitted to and approved by staff before a building permit is issued for construction. The landscaping that may be proposed for the edge along the sidewalk shall not exceed a maximum of two feet in order to provide adequate sight distance at the project driveway.
22. 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 may be determined by the Concurrency Management Division.
23. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit.
24. 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.
25. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the parking facility.
26. 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 of the accessory restaurant should there be valid complaints about loud, excessive, unnecessary, or unusual late night noise.
27. 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.
28. 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.

29. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a Building Permit
30. 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.
31. 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.

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