

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: July 26, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0519, a.k.a. PB0416-0008 a.k.a. PB File No. 2136. 4041 Collins Avenue.**

An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment with Entertainment. Specifically, the applicant is requesting modifications to the ownership/operator, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions

BACKGROUND/HISTORY

June 24, 2014	The Crown Miami Hotel Owner LLC, was granted a Conditional Use permit for a neighborhood impact establishment with a maximum occupant content of 1,284 persons.
August 26, 2014	The Crown Miami Hotel Owner LLC, was granted a Modified Conditional Use Permit (MCUP) for a neighborhood impact establishment with a maximum occupant content of 1,590 persons.
March 24, 2015	The Crown Miami Hotel Owner LLC came before the Board for the required 90 day Progress report.
November 24, 2015	The Crown Miami Hotel Owner LLC appeared before the Board for a Progress Report due to a noise violation and the matter was continued to the January 26, 2016 meeting pending an update on measures taken to mitigate sound spillage from the pool area.
January 26, 2016	The Crown Miami Hotel Owner LLC appeared before the Board for a Progress Report and the matter was discussed, with no further progress reports scheduled.
June 28, 2016	The applicant requested modifications to change the ownership from Crown Miami Hotel Owner LLC., to HT Miami Beach LLC.

STAFF ANALYSIS

The applicant is requesting a modification to the existing Modified Conditional Use Permit (MCUP) in order to change the ownership/operator.

Should this request be approved, Condition 2 would be amended as follows:

2. This Modified Conditional Use Permit is issued to, ~~HT Miami Beach LLC, Golden Palms, LLC,~~ as the owner and Hyatt Corporation as the operator of The Thompson Miami Beach Hotel for a Neighborhood Impact Establishment, consisting of restaurants, lounges, bars and pool deck. ~~Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.~~

In order to be consistent with recent CUP approvals, staff is recommending the following additional conditions:

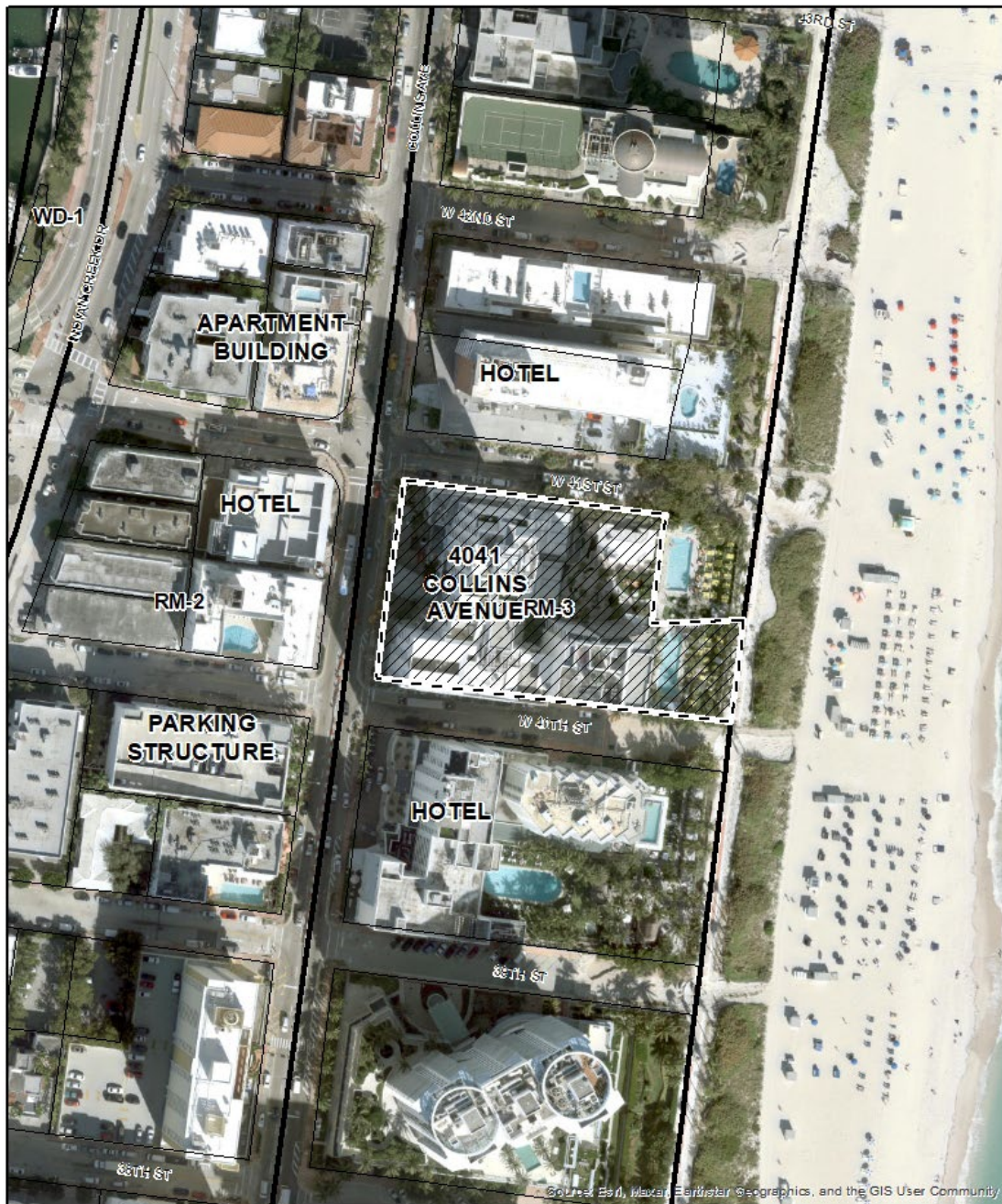
- A. That the requirement for change of ownership be modified to require that *any change of operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval 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.*
- B. That 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.

These proposed new conditions have been incorporated into a revised MCUP (see attached). The rest of the conditions remain the same.

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: 4041 Collins Avenue

FILE NO. PB22-0519 a.k.a. PB 0416-0008, f.k.a., File No. 2136

IN RE: Modifications to the ownership/operator for a previously issued conditional use permit for a Neighborhood Impact Establishment with Entertainment. Pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL

DESCRIPTION: See "Exhibit A" attached.

MEETING DATE: July 26, 2022, June 28, 2016

MODIFIED CONDITIONAL USE PERMIT

The Applicant, Golden Palms, LLC, requested a modification to a previously issued Conditional Use Approval for a Neighborhood Impact Establishment. Specifically the applicant requested to change the ownership/operator, pursuant to Section 118, Article IV 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 RM-3 – Multifamily Residential 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 staff recommendations, as may have been modified by the Planning Board, that a Conditional Use Permit as requested and set forth above, be GRANTED subject to the following conditions to which the applicant has agreed: Underlining denotes new language and ~~strike through~~ denotes stricken language from the previous Order.

1. 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, and again within 180 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 Modified Conditional Use Permit is issued to ~~HT Miami Beach LLC, Golden Palms, LLC,~~ as the owner and Hyatt Corporation as the operator of The Thompson Miami Beach Hotel for a Neighborhood Impact Establishment, consisting of restaurants, lounges, bars and pool deck. ~~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. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. 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.
5. 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.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
7. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the following venues, with a maximum occupant content of 1,590 persons or any lesser such occupant content as determined by the Fire Marshal:
 - a. 3-Meal Restaurant / "Venue 1"
 - i. 334 Total Occupancy
 - ii. Full-service restaurant with approximately 245 seats, which shall be permitted to serve breakfast, lunch and dinner until 2 a.m.

- iii. Interior and exterior seating facing another ground floor venue, “the Grove.”
- iv. Only permitted to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation.

b. La Esquina Taqueria / “Venue 2”

- i. 234 Total Occupancy
- ii. Full-service restaurant and café with approximately 129 seats which may serve lunch and dinner until 5 a.m. It shall be permitted to provide
- iii. Entertainment and dance may be permitted in the interior restaurant.
- iv. The café shall be permitted to operate until 3 a.m. and includes approximately 48 interior seats and approximately 36 exterior seats.
- v. The café shall only be permitted to play ambient background music at a volume that does not interfere with normal conversation.

c. 1930's House / “Venue 3”

- i. 334 Total Occupancy.
- ii. A bar lounge which contains approximately 50 seats located in the interior of the house. Entertainment and dancing shall be permitted until 5 a.m in the bar lounge portion of the venue.
- iii. The “Outdoor Northside”, includes approximately 19 seats and shall only be permitted to play ambient background music, and shall be permitted to stay open until 3:00 a.m.
- iv. The “Outdoor Southside”, which shall include approximately 39 seats.
- v. “The Grove”, includes approximately 64 seats, and shall only be permitted to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation, and shall be permitted to stay open until 3:00 a.m.

d. Pool / “Venue 4”

- i. 382 Total Occupancy.
- ii. The venue, located in the rear of the property, contains approximately 224 outdoor seats.

- iii. Lunch and dinner service shall be permitted until 3:00 a.m., at which time the venue shall be closed.
 - iv. The pool shall only be permitted to play ambient background music, which may include live music, at a volume that does not interfere with normal conversation.
 - e. Library/VIP Area & Banquet / “Venue 5”
 - i. 306 Total Occupancy.
 - ii. The venue is a lounge located in the interior second floor of the Thompson Hotel containing approximately 238 seats.
 - iii. Entertainment, including live music and dancing, shall be permitted.
 - iv. This venue shall be permitted to operate until 5:00 a.m.
- 8. 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, except that during the first ninety days following the issuance of a TCO, occupancy loads for Special Events shall not exceed aggregated permitted on paragraph 7. The Board reserves the right to modify occupancy loads for Special Events at the time of progress reports. Live entertainment may be permitted.
- 9. The equipment and installation plan for each proposed new sound system, including the location of all speakers and sound system controls shall be submitted to staff for review and approval prior to obtaining a building permit. Ninety days after opening, the sound systems in all the venues shall be tested by a qualified acoustic professional, and a report shall be submitted to staff for review.
- 10. Hotel security personnel and other hotel staff shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
- 11. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- 12. 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.
- 13. Valet attendants shall be prohibited from using 43 Street in their route to store and retrieve vehicles.

14. Valet operator and hotel security personnel shall monitor pick-up and drop-off areas to ensure that queuing of vehicles will not interfere with traffic on Collins Avenue.
15. As proposed by the applicant, security staff shall be posted at each entrance and exit point to the hotel. Security staff shall monitor patron circulation and occupancy levels in order to adjust crowds according to occupant loads. Additional security staff would be hired during special events, holidays, and high occupancy days, based on demand. Security cameras shall be installed around the perimeter of the property, as well as throughout the interior of the property, as needed.
16. During weekends and large events the Applicant shall maintain additional security staff to control crowds when the 41st Street entrance is in operation.
17. Trash collection shall take place seven days a week and noise from trash dumpsters shall be mitigated with rubberized wheels and/or other noise reducing materials, subject to the review and approval of staff.
18. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Building Permit.
19. 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.
20. 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 uses proposed for the project 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.
21. 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.
22. 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.
23. 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.
24. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant and returned to the Planning

Page 6 of 8

- Dated _____

BY: _____
Rogelio A. Madan, AICP
Chief of Community Planning and Sustainability
for Chairman

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

Notary:
Print Name:
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 _____ ()

EXHIBIT "A"

LAND DESCRIPTION:

PARCEL A

LOTS 1, 2, 3, 4, 5, 6, 7 AND 8, BLOCK 33, OF "AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, PAGES 7 AND 8, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

TOGETHER WITH THE STRIP OF LAND SHOWN ON THE PLAT AFORESAID AS AN ALLEY LYING BETWEEN LOTS 1, 2, 3 AND 4 OF THE EAST, AND LOTS 5, 6, 7 AND 8 OF THE WEST, IN BLOCK 33 OF "AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, PAGES 7 AND 8, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

ALSO DESCRIBED AS:

BEGIN AT THE SOUTHWEST CORNER OF LOT 8, BLOCK 33, "AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, PAGES 7 AND 8, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, THENCE NORTH 07° 25' 55" EAST FOR 200.00 FEET; THENCE SOUTH 82° 34' 49" EAST FOR 355.40 FEET TO THE INTERSECTION WITH THE EROSION CONTROL LINE RECORDED IN PLAT BOOK 105, PAGE 62, SHEET 14, OF MIAMI-DADE COUNTY, FLORIDA; THENCE SOUTH 06° 58' 25" WEST ALONG THE EROSION CONTROL LINE RECORDED IN PLAT BOOK 105, PAGE 62 SHEET 14 FOR 200.01 FEET; THENCE NORTH 82° 34' 43" WEST FOR 357.00 FEET TO THE POINT OF BEGINNING.