

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

PROPERTY: 940 Ocean Drive — Havana 57
FILE NO. PB 19-0285

IN RE: An application for Conditional Use Approval for a Neighborhood Impact Establishment, open-air entertainment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V, Division 6 of the City Code.

LEGAL DESCRIPTION: Lots 3 and 4, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

MEETING DATE: September 24, 2019

CONDITIONAL USE PERMIT

The applicant, 940 Ocean Drive LLC, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment and Outdoor Entertainment 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 MXE, Mixed-Use Entertainment 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



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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, including modification to the hours of operation, 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 940 Ocean Drive LLC, any changes in ownership of 50% (fifty percent) or more stock ownership, or the equivalent, shall require the new owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.
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. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. Prior to the issuance of any approval for uses approved herein, including but not limited to, applicable certificates of occupancy, certificates of use, and a business tax receipt, the applicant shall either obtain administrative approval or apply to the historic preservation board for a certificate of appropriateness for all modifications made to the lobby, courtyard and porch, or remove all such modifications, in a manner satisfactory to historic preservation staff.
7. The Applicant agrees to the following operational conditions for the entire facility:
 - a. The CUP shall have the following maximum occupant content (including within the interior and exterior portion located on private property) for the Courtyard, interior, restaurant and ocean terrace: Maximum of 220 persons, or any lesser such occupant content as determined by the Fire Marshal.
 - b. The indoor restaurant and bar may remain open:
Monday through Sunday from 8:00 a.m. to 5:00 a.m. and indoor entertainment shall be allowed.
 - c. The courtyard may remain open with outdoor entertainment:
Monday through Sunday from 8:00 a.m. to 3:00 a.m.

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Entertainment within the courtyard shall not exceed a volume that would interfere with normal conversation.

The doors on the west side of the restaurant leading to the courtyard shall remain closed at all times except when patrons and staff need to use them for access.

- d. The restaurant operations at the front porch may remain open as follows:

Monday through Sunday from 8:00 a.m. to 5:00 a.m. with no entertainment.

Any music or sound played by a DJ located in the interior may be played through speakers installed on the exterior, provided the volume of sound emitted from the exterior speakers does not exceed a level that interferes with normal conversation.

The anticipated audio levels proposed by the applicant to be played in the interior shall not interfere with normal conversation at the exterior of the premises, at the public sidewalk abutting the property, with the front doors open.

- e. At all times that entertainment is taking place anywhere on the subject property, a restaurant shall be open with food service, a full menu, and operating kitchen.
- f. The house sound system shall be installed and configured in such a manner as to limit the acoustical output of the system, and shall have password-protected security on all controls at all times.

Subwoofers shall not be utilized or installed in the courtyard, the front porch, or anywhere on the exterior of the premises.

The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Within 60 days of this approval, the sound system in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.

No third party sound system shall be allowed; only the house sound system shall be utilized.

- j. Television(s) may be permitted subject to a Certificate of Appropriateness and historic preservation board approval, if required. The volume level of the televisions in the courtyard shall comply with the audio volume limitations stated in this order.
- k. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- l. Delivery trucks shall not be allowed to idle in loading zones.
- m. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.

- n. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 AM.
 - o. Loading and deliveries from the alley shall at no time block the passage of any other vehicles along the alley.
 - p. 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.
 - q. Adequate trash room space that is 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.
 - r. An air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one garbage pick-up per day will be necessary.
 - s. Garbage dumpster covers shall be closed at all times except when in active use.
 - t. 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.
 - u. 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.
 - v. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - w. 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.
 - x. The host/hostess stand, podium and menu board shall be prohibited in the public right of way, and shall be placed on private property, except as may be permitted under the sidewalk café permit to be reviewed and approved by the Public Works department.
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.

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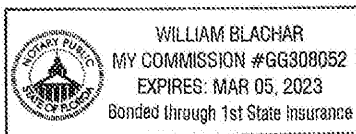
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9. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department within 90 days, prior to the issuance of a BTR for the addition of entertainment and include the following:
 - a. The applicant shall identify locations, acceptable to the Transportation Department, for bicycle racks to be installed in the public right-of-way and within the proposed development. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.
 - b. The applicant shall coordinate with the South Florida Commuter Services in participating in the transit subsidy program.
 - c. The applicant shall provide an analysis proposing for a drop-off and pick-up area shared with the valet drop-off and pick-up spaces.
 - d. The Developer shall conduct an updated valet utilization study incorporating the rideshare demand 60 days after opening of the proposed development with entertainment. The updated analysis shall include weekday peak hour and weekend peak hour analysis. Prior to commencement of the post-opening valet/ride-share analysis, the Developers' Traffic Engineer shall coordinate with the Transportation Department.
10. 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 with entertainment.
11. 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.
12. The Planning Board shall retain the right to call the owner or operator back before the Board 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.
13. 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.
14. 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.
15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

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16. 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.
17. 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.
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 shall comply with the requirements of the Ten Point Plan for Ocean Drive.

Dated this 30th day of OCTOBER, 2019.PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDABY: Michael Belush
Michael Belush, AICP
Chief of Planning and Zoning
For ChairmanSTATE OF FLORIDA)
COUNTY OF MIAMI-DADE)The foregoing instrument was acknowledged before me this 30th day of October, 2019, by Michael Belush, AICP, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

{NOTARIAL SEAL}

William Blachar
Notary:
Print Name
Notary Public, State of Florida
My Commission Expires: March 5th, 2023
Commission Number:Approved As To Form: Will Kallegeris (10/29/19)
Legal DepartmentFiled with the Clerk of the Planning Board on Jenna Gualing (10/30/19)

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