

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

PROPERTY: 1908 Collins Avenue

FILE NO. 1988

IN RE: The Application by Baoli Miami, LLC requesting Conditional Use approval for a Neighborhood Impact Establishment (NIE) for Baoli, a dinner restaurant with evening entertainment and dancing replacing Vita Restaurant, also a dinner restaurant with evening entertainment and dancing with an approximate maximum occupancy content of 358 persons.

LEGAL DESCRIPTION: Lots 2, 3 and 4, Block 53 of "Pine Ridge Subdivisions," a subdivision recorded in Plat Book 6 at Page 34 of the Public Records of Miami-Dade County, Florida; less the west 5/0 feet of Lots 2 and 3 and also, less the west 59.42 feet of the north 20 feet of Lot 3, being described in Deed Book 2075, Page 191 of the Public Records of Miami-Dade County, Florida

MEETING DATE: January 25, 2011

CONDITIONAL USE PERMIT

The applicant, Baoli Miami, LLC, filed an application with the Planning Director for a Conditional Use Permit for a Neighborhood Impact Establishment (NIE) for Baoli, a dinner restaurant with evening entertainment and dancing replacing Vita Restaurant, also a dinner restaurant with evening entertainment and dancing with an approximate maximum occupancy content of 358 persons.

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, Residential multifamily 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 recommendation, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. 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 Baoli Miami, LLC, as tenant/operator of the property where the venues constituting a Neighborhood Impact Establishment are located. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board, within 90 days of change of ownership or operator to affirm their understanding of the conditions listed herein.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property's owners, and all successors in interest and assigns.
4. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Modified Conditional Use Permit.
5. The applicant shall comply with all the conditions of the Historic Preservation Board Final Order under File No. 7204 issued on November 9, 2010, which is hereby adopted and incorporated into this order by reference.
6. The hours of operations shall be as proposed by the applicant:
 - a. Dining Hours: 7:00 p.m. until 1:00 a.m. seven days a week.
 - b. Entertainment: 12:00 a.m. until 5:00 a.m. seven days a week.
7. 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 determined by the Transportation/Concurrency Management Division.
8. The Applicant shall close the retractable skylight by 12:00 a.m. seven days a week. The Applicant shall install an automatic timer that ensures closure of the retractable skylight at 12:00 a.m. seven days a week. The Applicant agrees that no employee will have access to the timer, except the manager.
9. In the event that the retractable skylight temporarily or permanently breaks, the Applicant shall place it in the closed position as soon as possible and keep it closed through the duration of any repairs, except as necessary to conduct such repairs.

10. Within sixty (60) days of the issuance of the TCO or CO for the project, the Applicant shall complete an additional sound study. The purpose of this sound study will be to measure the volume of noise emanating from the entertainment establishment once the improvements approved as a part of this application has been constructed. Once the sound study is completed, the Applicant shall make a progress report to the Planning Board. The Applicant agrees to make further modifications to the sound system if the study demonstrates that the noise from the entertainment establishment violates the noise ordinance when the skylight is closed.
11. All queuing of patrons shall occur within the building within the subject property.
12. Applicant shall not play music, whether amplified or live, at a volume that constitutes entertainment under the Code of the City of Miami Beach before 12:00 a.m. and anytime the skylight is open.
13. Commercial use of any rooftop throughout the property shall be prohibited.
14. The catwalk along the southern elevation of the second story from the mezzanine area to the restrooms located in the rear of the property shall only be for handicapped access and no other use.
15. All exits, except emergency only exits, to Collins Avenue shall be equipped with a double door vestibule.
16. The ground floor windows facing Collins Avenue shall be sufficiently transparent to afford views of the interior of the facility.
17. Except as may be required for fire or building code/Life Safety Code purposes, no loudspeakers shall be affixed to or otherwise located on the exterior of the premises.
18. The occupant load shall be limited to no more than 358 patrons as proposed by the applicant or as determined by the Fire Marshal. The Fire Department staff shall validate the patron occupant load, prior to the approval of any Certificate of Occupancy or Certificate of Use for all the outdoor areas and pool deck venues.
19. The installation plan for the sound system, including the location of all the speakers and sound system controls shall be submitted to staff for review and approval prior to obtaining a building permit.
20. When the sound system is completely installed, but before the Business Tax Receipt has been issued, it shall be tested under the supervision of a qualified acoustical consultant acceptable to Planning staff, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. A final report issued by such acoustical consultant shall be submitted to staff.
21. The applicant shall submit a construction management plan to staff for review and approval prior to the issuance of a building permit.
22. Security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all the venues serving alcohol. A violation of this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.

23. Prior to the issuance of a Certificate of Occupancy, 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. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt.
24. Final calculations shall be made to determine the parking requirement for the project and any deficiency in the requirement and the parking spaces provided. The payment of the fee in lieu of providing all the required parking shall be determined at this time and payment of the required fee shall be made prior to the issuance of a building permit.
25. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
26. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter on Collins Avenue and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
27. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation or the occupant should there be issuance of written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual noise.
28. 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.
29. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit.
30. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida at the expense of the applicant.
31. Non-compliance with any of the conditions specified herein shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code, including but not limited to revocation of this Permit.
32. 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.
33. 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 114-7 of the 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 permit.

34. 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.

Dated this 16th day of March, 2011.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
Richard G. Lorber, Acting Planning Director, AICP,
LEED AP
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 16th day of March, 2011, by Richard G. Lorber, Acting Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]



TERESA MARIA
MY COMMISSION # DD 928148
EXPIRES: December 2, 2013
Bonded Thru Budget Notary Services

[Signature]
Notary:
Print Name: TERESA MARIA
Notary Public, State of Florida
My Commission Expires: 12-2-2013
Commission Number: DD 928148

Approved As To Form:
Legal Department (Filed 2-24-11)

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