

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: January 24, 2023

FROM: Thomas R. Mooney, AICP  
Planning Director 

SUBJECT: **PB22-0560. fka File No. 1988. 1908 Collins Avenue.**

An application has been filed requesting a modification to a previously modified conditional use permit. Specifically, the applicants are requesting to change the name of the owner/operator, pursuant to Section 118, Article IV of the City Code.

#### **RECOMMENDATION**

Approval with conditions

#### **BACKGROUND/HISTORY**

*November 9, 2010* The contributing building is located in the Museum Historic District and the Miami Beach Architectural District. The applicant obtained approval from the Historic Preservation Board on November 9, 2010.

*June 25, 2011* The Board granted Conditional Use approval to Baoli Miami, LLC to operate Baoli, a dinner and entertainment establishment in an existing 2-story building, with a rear courtyard and a maximum occupant content of 358 persons. The facility was home to Vita, a dinner restaurant and evening entertainment establishment, with 146 seats and 199 occupant content, both inside the building and outside in the courtyard. The approved development program included the renovation of the building and the construction of a new 3-story building in the rear with a 3-story atrium connecting the existing and the new buildings. The atrium was to have a retractable glass skylight.

*May 22, 2012* The applicant, 1906 Collins LLC, was granted a modification the Conditional Use Permit, to operate Baoli, a dinner restaurant and evening entertainment establishment, with an occupant content of approximately 343 persons to replace the Baoli Vita.

#### **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 Conditional Use Permit is issued to ~~1906 Collins LLC~~ Trademark Miami, Inc. as

tenant/operator of the property where the venues constituting a Neighborhood Impact Establishment is located. ~~Any change of operator or ownership or 50% (fifty percent) or more stock 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.~~

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



**MIAMI BEACH**  
PLANNING DEPARTMENT

1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139 P 305.673.7550 [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

0 20 40 80 120 160 200 Feet



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

**PROPERTY:** 1908 Collins Avenue

**FILE NO.** PB22-0560. fka File No. 1988. 1908 Collins Avenue.

**IN RE:** An application has been filed requesting a modification to a previously modified conditional use permit. Specifically, the applicants are requesting to change the name of the owner/operator, pursuant to Section 118, Article IV of the City Code.

### **LEGAL**

**DESCRIPTION:** The north 57.5 feet of the south 62.50 feet of lots 1, 2 and 3, Block D of "Miami Beach Improvements Co. Ocean Front property amended" according to the plat thereof, as recorded in Plat Book 5, page 7 of the Public Records of Miami-Dade County, Florida.

**MEETING DATE:** ~~May 22, 2012~~, January 24, 2023

### **MODIFIED CONDITIONAL USE PERMIT**

The applicant, Trademark Miami, INC, filed an application with the Planning Director pursuant to City Code for a Modification to an existing Conditional Use Permit. 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 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 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: (Strikethrough signifies deletions; Underlining signifies new language)

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 1906 Collins LLC as tenant/operator of the property where the venues constituting a Neighborhood Impact Establishment is located. ~~Any change of operator or ownership or 50% (fifty percent) or more stock 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. 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. 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 hours of operations shall be as proposed by the applicant:
  - a. Dining Hours: 7:00 p.m. until 2:00 a.m., seven days a week, inside and outside.
  - b. Entertainment and dancing: 12:00 a.m. until 5:00 a.m., seven days a week, inside only, after the Nana wall is closed.
6. 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.
7. Any queuing of patrons shall occur inside the building, as proffered by applicant.
8. 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 AM inside and outside and anytime the Nana wall is open. Music constituting entertainment shall only be played inside after 12:00 AM, only after the Nana wall is closed.

9. Commercial use of any rooftop throughout the property shall be prohibited, as proffered by applicant.
10. All exits, except emergency only exits, to Collins Avenue shall be equipped with a double door vestibule.
11. The ground floor windows facing Collins Avenue shall be sufficiently transparent to afford views of the interior of the facility.
12. The occupant load shall be limited to no more than 343 patrons, as proposed by the applicant, or as determined by the Fire Marshal. The Fire Department staff shall validate the patron occupant load, for all the areas in the venue prior to the approval of any Certificate of Occupancy, Certificate of Completion or Business Tax Receipt, whichever occurs first.
13. The installation plan for the sound system, both outside and inside, 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.
14. Baoli employees or security personnel shall be stationed in front of the venue to direct patrons to the sole entrance. Security cameras shall monitor the entrance and exit during operating hours. 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.
15. Refuse shall be collected on 20<sup>th</sup> Street via a private alley owned by the Greystone Hotel where the trash room, which is located at the rear of the property, can be accessed. The applicant shall contract with a waste collection company to pick up 6 days a week, or as necessary, between the hours of 8:00 AM and 9:00 AM.
16. 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.
17. 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 the Certificate of Occupancy.
18. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
19. 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.



20. 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 complaints or issuance of written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual noise.
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 shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit.
23. Within a reasonable time after applicant's receipt of this Conditional Use Permit, as signed and issued by the Planning Director, the applicant shall record it in the Public Records of Miami-Dade County at applicant's expense and then return the recorded instrument to the Planning Department. No building permit, certificate of use, certificate of occupancy, certificate of completion or business tax receipt shall be issued until this requirement has been satisfied.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.

Dated \_\_\_\_\_

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
Rogelio A. Madan, AICP  
Development and Resiliency Officer  
for Chairman

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

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:  
[NOTARIAL SEAL] 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 \_\_\_\_\_ ( )