

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA****PROPERTY:** 1111 Lincoln Road, 4th Floor.**FILE NO.** PB22-0549**IN RE:** An application has been filed requesting a conditional use permit for open air entertainment and outdoor entertainment to the proposed bar/restaurant located on the 4th floor at this site. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.**LEGAL****DESCRIPTION:** See exhibit A at the end of this document.**MEETING DATE:** December 20, 2022**CONDITIONAL USE PERMIT**

The applicant, Golden Apollo Garden, LLC, filed an application with the Planning Director requesting a Conditional Use approval for open air entertainment and outdoor entertainment 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 CD-3, Commercial 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 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

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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 Conditional Use Permit is issued to Apollo Garden, LLC, as tenants and operators of the Neighborhood Impact Establishment consisting of a restaurant on the fourth floor. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators 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 following the applicant's submission and staff's approval of the affidavit.
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. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
 - A. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 146 seat Establishment, subject to the criteria listed below:
 - i. The restaurant and bar subject to this CUP shall have a maximum occupant content of 197 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor portions of the establishment may operate from 11:00 AM until 5:00 AM subject to the following:
 - a. Entertainment shall be limited to recorded music and/or one DJ.

Doorways to the outdoor terrace shall remain fully closed when the outdoor terrace is not operating.
 - b. The Operator shall comply with the requirements of Section 46-152 and

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- shall not cause any unreasonably loud, excessive, unnecessary, or unusual noise (as defined in Sec. 46-152 of the City Code), which is plainly audible at a distance of 100 feet from the building.
- c. The NanaWall shall be fully closed when the outdoor portions of the establishment are not operating.
- iii. The outdoor portions of the establishment may operate from 11:00 AM until 2:00 AM on Friday and Saturday, and from 11:00 AM until 12:00 AM Sunday through Thursday, subject to the following:
- a. Music shall not exceed ambient levels, (i.e. a volume that does not interfere with normal conversation) at any time.
 - b. Entertainment shall be limited to a DJ.
 - c. No outdoor bar counter shall be located on the outdoor terrace.
 - d. After hours of operation, only staff of the establishment may be on the outdoor terrace.
 - e. Noise reducing materials shall be installed in the outdoor area in a manner to be reviewed and approved by staff.
- iv. These hours shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage and/or entertainment establishments.
- v. All entertainment permitted by this CUP shall be subject to the following:
- a. Only the Applicant's approved speakers, as approved by this Conditional Use Permit, shall be used. DJs 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 relating to 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 and City's staff.
 - 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,

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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 generated from the venue, including, but not limited to, recorded music, patron conversations or entertainment, shall not be plainly audible at a distance of 100 feet from the building.
 - e. Before the issuance of a certificate of use is issued for entertainment, a field visit with the applicant's sound engineer, the City's sound consultant and Planning staff shall be required to verify the sound system operations. The applicant shall be responsible to cover the fees of the City's peer reviewer.
 - f. A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.
 - g. Audio from the subject property, including any vibrations of a low-frequency or greater, shall not be plainly audible or felt within the interior of any residential unit or home, at any time.
 - h. No dance hall shall be permitted within the establishment.
- vi. Televisions shall not be located anywhere in the exterior areas of the property.
- B. Delivery trucks shall only be permitted to make deliveries from the private alley as proposed by the applicant.
 - C. Delivery trucks shall not be allowed to idle in the loading zone.
 - D. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - E. Deliveries and waste collections may occur daily between 8:00 AM and 5:00 PM, or as specified by the City approved loading zones in the vicinity.
 - F. 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.
 - G. Adequate trash room space, 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.

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- I. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
 - J. Garbage dumpster covers shall be closed at all times except when in active use.
 - K. 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.
 - L. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
 - M. The applicant shall provide a security guard at the ground level during operating hours to maintain orderly pedestrian access and queuing and maintaining the exterior clear from queues.
 - N. 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
 - O. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - P. 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.
 - Q. There shall be security outdoors, adjacent to the establishment during all hours of operation. The security shall ensure that patrons do not congregate on the exterior of the property.
7. The applicant shall address the following Transportation, Mobility, Concurrency and Parking requirements, as applicable:
- a. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.
 - b. The applicant shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit.
8. 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.

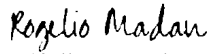
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9. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
10. 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 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.
11. 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.
12. 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.
13. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
14. 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.
15. 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.
16. 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.

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Dated 3/13/2023 | 1:48 PM EDTPLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDABY: 
Rogelio A. Madan, AICP
Development and Resiliency Officer
for Chairman

STATE

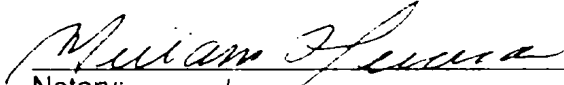
OF

FLORIDA

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 13 day of March, 2023, by Rogelio A. Madan, Development and Resiliency Officer 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: Miriam Herrera
Notary Public, State of Florida
My Commission Expires: 12-16-23
Commission Number: 06940469

Approved As To Form:
Legal Department

DocuSigned by:



(3/13/2023 | 1:38 PM EDT

Filed with the Clerk of the Planning Board on

DocuSigned by:



(3/13/2023 | 2:23 PM EDT

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TABLE 1: EVIDENCE OF A POSITIVE EFFECT OF EXPERIENCE ON MINUTE EARNINGS AS FULL-TIME

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TABLE 1. IDENTICAL BUT DIFFERENT EAST-BERLINER COMMUNIST LEADERSHIP AT FULLON.

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 OF SAID LOT 1, A DISTANCE OF 454 FEET; THENCE NORTH 89°03'00" WEST, A DISTANCE OF 1500 FEET TO THE
 POINT OF BEGINNING; THENCE SOUTH 89°01'56" WEST, A DISTANCE OF 1500 FEET; THENCE NORTH
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 454 FEET; THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 454 FEET; THENCE NORTH 89°03'56" EAST, A
 DISTANCE OF 1500 FEET; THENCE SOUTH 89°01'56" EAST, A DISTANCE OF 1500 FEET; THENCE NORTH 89°03'56"
 EAST, A DISTANCE OF 454 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 454 FEET TO THE POINT OF
 BEGINNING.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 05-11-2011 BY 60322 UCBAW/STP/STP

LAND REFORMATION IN ETHIOPIA

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LAURENCE J. P. 100 100 100 100

TABLE 1:

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EL 2:

[illegible]

2. EL :

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EL

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