

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA****PROPERTY:** 1717 - 1731 Collins Avenue**FILE NO.** PB22-05544**IN RE:** An application has been filed requesting a conditional use permit for a Neighborhood Impact Establishment and the introduction of outdoor entertainment to the existing outdoor restaurant use located in the rear yard, 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, Chisholm Properties So Beach Inc, requested a Conditional Use Permit for a Neighborhood Impact Establishment with outdoor entertainment, and an occupant content exceeding 300 persons. Specifically, the applicant is requesting the introduction of Entertainment for the existing outdoor restaurant use located in the rear yard, 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 RM-3 Residential Multifamily, High Intensity District zoning district; and

That the use is consistent with the Comprehensive Plan for the area in which the property is located; and

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; and

That structures and uses associated with the request are consistent with the Land Development Regulations; and

That the public health, safety, morals, and general welfare will not be adversely affected; and

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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, as approved by the Planning Board, and accepted by the applicant, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions:

1. This Conditional Use Permit is issued to Chisholm Properties So Beach Inc, as owner/operator of the Sagamore Hotel for a Neighborhood Impact Establishment with outdoor entertainment and an occupant content exceeding 200 persons. 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 Business Tax Receipt.
2. 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 operation of a Neighborhood Impact Establishment with Outdoor Entertainment in connection with the existing outdoor restaurant use located in the rear yard subject to the criteria listed below:
 - i. The only type of entertainment allowed under this Conditional use permit is a DJ with ambient music (i.e. music played at a volume level that does not interfere with normal conversation).
 - ii. The High Tide Beach Bar and Grill restaurant will only operate from 10:00 am to 8:00 p.m.
 - iii. The DJ will operate no earlier than 12:00 p.m. and shall cease by 4:00 p.m. on Friday, Saturday and Sunday.
 - 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. Up to 170 seats may be located in the rear yard and the rear yard shall have a maximum occupant content of 957 persons or any lesser such occupant content as determined by the Fire Marshal.

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- vi. Entertainment shall be permitted in the outdoor areas subject to the following regulations:
- a) Only the Applicant's house sound system, 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 DJs as to the requirements of this conditional use permit relating to entertainment.
 - b) Prior to the issuance of a certificate of use for entertainment, the Applicant's sound engineer shall revise the sound study to ensure that sound levels do not exceed ambient volume levels within the outdoor venue, subject to review by the City's peer reviewer, and the review and approval of staff. The Applicant shall be responsible to cover the fees of the City's peer reviewer.
 - c) The house sound system shall be calibrated and set in such manner as to limit the acoustical output to ambient volume levels within the entire rear yard.
 - d) The house sound system shall have password protected security on all controls at all times in accordance with the design intent and recommendations of the revised sound study and the conclusions of Staff and the City's peer review.
 - e) Per applicant's consultant and operational plan, a sound level limiter shall be installed and maintained on the sound system and staff shall have decibel readers to ensure that the sound levels are within ambient volume levels.
 - f) 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, 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.
 - g) Sound from the entertainment establishment shall not exceed an ambient volume level from the Beachwalk and northern right-of-way line of 17th Street.
 - h) Speakers shall be brought in closer to the center of the venue and pointed inward in order to minimize sound heard from the Beachwalk in a manner to be reviewed and approved by staff.

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- i) Before the issuance of a certificate of use, a field visit with the applicant's sound engineer and Planning staff shall be required to verify the sound system operations.
 - j) A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.
 - k) 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.
- vii. Full meals shall be available during all hours that entertainment is present.
- b. Deliveries may only occur between 8:00 AM and 5:00 PM on weekdays. On weekends, deliveries may only be permitted on Saturday between the hours of 9:00 AM and 1:00 PM.
 - c. Delivery trucks shall not be allowed to idle in the loading zones.
 - d. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - e. Trash collections may occur daily between 7:00 AM and 9:00 AM.
 - f. Garbage dumpster covers shall be closed at all times except when in active use.
 - g. Exterior speakers for fire, life safety purposes and background ambient music played at a volume that does not interfere with normal conversation may be permitted.
 - h. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - i. As proposed by the applicant, security staff and management staff shall be onsite during hours in which entertainment is taking place. Rope and stanchion sets shall be in place dividing the pool area from the rear yard where the venue covered under this Conditional Use Permit is located. Security staff shall monitor patron circulation and occupancy levels in order to ensure compliance with occupant load limits.
 - j. Patrons shall not be allowed to queue on any public rights-of-way or the exterior premises. Security staff shall monitor the crowds to ensure that they do not interfere with the free flow of pedestrians on the public sidewalk or the beach walk.
 - k. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.

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3. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about valet operations and loud, excessive, unnecessary, or unusual noise.
4. 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. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
 - c. The developer shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit.
5. 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.
6. 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 for the outdoor entertainment located on the rear yard. 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).
7. 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.
8. 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.
9. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
10. 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

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approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

11. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
12. 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.
13. 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.
14. 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 3/13/2023 | 1:48 PM EDT

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
Rogelio Madan
BY: CB1ED35D154E4AE
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, 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.

Miriam Herrera
Notary:
Print Name: Miriam Herrera

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[NOTARIAL SEAL]



Notary Public, State of Florida
 My Commission Expires: 12-16-23
 Commission Number: 66940469

Approved As To Form:
 Legal Department

DocuSigned by:

Nick Kelley

8D8G888CGAB8469

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

Filed with the Clerk of the Planning Board on

DocuSigned by:

Jessica Gonzalez

0FC3F3E906547A5

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

Exhibit A – Legal Description

(Per application and survey submitted by the applicant)

LEGAL DESCRIPTION:**PARCEL I:**

Lots 3 and 18 and the South 40 feet of Lots 4 and 17, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida.

PARCEL II:

Beginning at the Southeast corner of Lot 3, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida, run in a Northerly direction along the East line of Block 28, a distance of 91.26 feet to a point; thence run in an Easterly direction along a line parallel to and 10 feet South of the North line of Lot 4, Block 28 produced, to High Water Line of the Atlantic Ocean; thence run in a Southerly direction, meandering said High Water Line a distance of 91.26 feet plus or minus to a point; thence run in a Westerly direction along the South line of Lot 3, Block 28 produced, to the Point of Beginning.

PARCEL III:

The South half of: North 10.00 feet of Lots 4 and 17; all of Lots 5 and 16, and the South 40 feet of Lots 8 and 15, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida; together with the land lying to the East thereof, to the high water mark of the Atlantic Ocean.