MIAMI BEACH
PLANNING DEPARTMENT

Staff Report & Recommendation — PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: March 28, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB21-0446, a.k.a. PB20-0391, a.k.a. PB18-0253. 800 Lincoln Road – Mila Restaurant.**
Progress Report.

BACKGROUND

October 13, 2015 The Historic Preservation Board (HPB) reviewed and approved a Certificate of Appropriateness (COA) for the partial demolition, restoration and renovation of the existing 'Contributing' structure on the site and the construction of a new 1-story rooftop addition and new 3-story ground level addition, including variances to reduce the required rear pedestal setback and not provide the minimum required parking for off-street loading spaces (HPB 7550.)

December 13, 2016 The HPB approved a COA for modifications to a previously approved COA for additional interior demolition and design modifications to the ceiling (HPB 16-0066.)

February 26, 2019 The Planning Board approved a conditional use permit for a Neighborhood Impact Establishment.

March 11, 2019 The HPB approved a COA for improvements at the roof level and the introduction of a rooftop outdoor bar counter, landscape features and mechanical equipment, including variances to exceed the allowable hours of operation for an accessory outdoor bar counter, to exceed the maximum sign area and for the installation of a sign along a frontage that does not provide direct access from the street.

October 13, 2020 The HPB approved a COA for modifications to the previously issued Certificate of Appropriateness. Specifically, the applicant requested approval for the installation of additional canopy structures at the rooftop outdoor dining area including the deletion of condition I.C.1.d. of the Final Order.

December 14,2020 The Planning Board approved a modification to the previously approved Conditional Use Permit for outdoor entertainment for a disk jockey playing recorded music at a volume that does not interfere with normal conversation.

July 27, 2021 The Planning Board approved a modification to the previously approved Conditional Use Permit to allow for the introduction of Entertainment on the second-floor expansion. The Planning Board continued the portion of the item as it relates to hours of operation to the September 28, 2021 meeting.

September 28, 2021 At the request of the applicant, the Planning Board continued the item to the October 26, 2021 meeting.

October 26, 2021 At the request of the applicant, the Planning Board continued the item to the November 30, 2021 meeting.

November 30, 2021 At the request of the applicant, the Planning Board continued the item to the December 21, 2021 meeting.

December 21, 2021 Due to the Planning Board hearing lack of quorum, this Item was continued to January 25, 2022.

January 25, 2022 The Planning Board approved the portion of the application related to hours of operations.

PROGRESS REPORT

As mentioned in the background section of this report, on January 25, 2022, the Planning Board approved a modification to the Conditional Use Permit to allow for a second story expansion to Mila Restaurant, located at 800 Lincoln Road. The approved CUP contains the following condition:

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, 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).*

On November 23, 2022, a Certificate of Use (CU22-3609) was issued to the establishment and on December 6, 2022, the establishment was issued a Business Tax Receipt (BTR 13169-11-2022) for the operation of a restaurant serving alcohol, bar and lounge, with dancing and entertainment, until 4:00 a.m. at the second floor. This progress report is for compliance with condition 1 of the approved CUP, which requires that there be a progress report within 90 days following the issuance of a BTR.

STAFF ANALYSIS

There are no open noise violations as of the writing of this progress report. Since the establishment was issued a BTR, there was one written warning notice issued to the establishment on December 17, 2022. There have been no other noise complaints or violations since that date.

Given that there are no open noise violations or recent code complaints, staff recommends that Planning Board discuss the conditions of the CUP and that the progress report be concluded. Staff will continue to monitor the operation and should issues arise in the future, staff can issue a cure letter and call the applicant back to the Planning Board for a progress report.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the conditions of the CUP and conclude the progress report.

DocuSign Envelope ID: 9E6CB50D-CA8D-4C00-B971-08A79AC0037B

CFN: 20220277141 BOOK 33109 PAGE 3995
DATE:04/05/2022 09:54:15 AM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 800 Lincoln Road

FILE NO. PB21-0446 a.k.a. PB20-0391 a.k.a. PB18.0253

IN RE: An application has been filed requesting modifications to a previously issued 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 on the second-floor expansion. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: Lots 7 and 8, Block 49 of Lincoln Subdivision, according to the plat thereof recorded in Plat Book 9, Page 69 of the public records of Miami Dade County, Florida.

MEETING DATE: January 25, 2022 ~~July 27, 2021~~.

CONDITIONAL USE PERMIT

The applicant, Mila Florida LLC, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact 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 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

DS
RM

CFN: 20220277141 BOOK 33109 PAGE 3996
DocuSign Envelope ID: 9E6CB50D-CA8D-4C00-B971-08A79AC0037B

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, 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 Mila Florida LLC, as tenants and operators of the Neighborhood Impact Establishment consisting of a restaurant and bar with an accessory outdoor bar on the roof deck. 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. Final design and details of the rooftop area shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Historic Preservation Board.

6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.

7. 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 386 seat Neighborhood Impact Establishment, subject to the criteria listed below:

        i. The restaurant and bar subject to this CUP shall have a maximum occupant content of approximately 669 persons or any lesser such occupant content as determined by the Fire Marshal.

DS
RM

DocuSign Envelope ID: 9E6CB50D-CA8D-4C00-B971-08A79AC0037B

ii. ~~The~~ On the third floor, indoor and outdoor portions of the establishment may operate from 7:00 AM until 2:00 AM. The accessory outdoor bar counter shall not be operated or utilized between midnight and 8:00 AM, unless a variance for extended hours is granted by the Historic Preservation Board.

iii. On the third floor, entertainment of any kind shall be prohibited at all times, except for disc jockeys playing recorded music at a volume that does not interfere with normal conversation.

iv. On the second floor, entertainment that exceeds an ambient volume level (i.e. a volume that does not interfere with normal conversation) shall only be permitted between 10:00 AM and ~~1:00~~ 4:00 AM. During all other hours, entertainment shall not exceed an ambient volume level.

v. Televisions shall not be located anywhere in the exterior areas of the property.

vi. The use of the second floor lounge shall be limited to primate members and their invited guests or private events.

vii. This establishment shall at all times comply with the alcohol hours of sale regulations set forth in the City Code, and shall be subject to all future amendments to the City's alcohol hours of sale regulations.

B. Delivery trucks shall only be permitted to make deliveries from City authorized and designated commercial loading zones.

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.

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.

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.

DS
KM

CFN: 20220277141 BOOK 33109 PAGE 3998
DocuSign Envelope ID: 9E6CB50D-CA8D-4C00-B971-08A79AC0037B

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 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

N. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

O. 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.

P. Private security personnel shall be posted outdoors, adjacent to the establishment during all hours of operation. The security personnel shall ensure that patrons do not congregate on the exterior of the property.

Q. The applicant shall submit an operational plan, that incorporates a valet plan and rideshare plan, to minimize the congregation of patrons at the exterior of the establishment, subject to the review and approval of staff. The plan shall be presented to the Planning Board at the time of the progress report.

R. Prior to the issuance of a Certificate of Use, the applicant shall use best efforts to contact residents or property managers in nearby residential buildings within the line of sight of the establishment and provide the establishment's contact information to address any concerns that may arise.

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.

9. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Business Tax Receipt.

10. Within ninety (90) days after obtaining the Business Tax Receipt the tenant shall update the Traffic Demand Management (TDM) study and submit the report to the Transportation Departments. At that time, the Transportation Department may impose additional conditions to address possible problems and to determine the timing and need for future updates to the TDM.

DS

CFN: 20220277141 BOOK 33109 PAGE 3999

DocuSign Envelope ID: 9E6CB50D-CA8D-4C00-B971-08A79AC0037B

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.

17. 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.

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 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.

DS

DocuSign Envelope ID: 9E6CB50D-CA8D-4C00-B971-08A79AC0037B

Dated: 3/29/2022 | 5:54 PM EDT.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
BY: Rogelio Madan
Rogelio A. Madan, AICP
Chief of Community Planning & Sustainability
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 29th day of March, 2022, by Rogelio Madan, Chief of Community Planning & Sustainability of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.

GABRIELA C. FREITAS
MY COMMISSION # HH 173574
EXPIRES: September 8, 2025
Bonded Thru Notary Public Underwriters

{NOTARIAL SEAL]

Notary:
Print Name Gabriela C. Freitas
Notary Public, State of Florida
My Commission Expires: Sept. 8, 2025
Commission Number: HH 173574

Approved As To Form:
Legal Department (DocuSigned by: 8D8CB88CCAB8460) 3/29/2022 | 5:52 PM EDT

Filed with the Clerk of the Planning Board on DocuSigned by: Jessica Gonzalez 10FC3F3E9D654A5 3/30/2022 | 9:18 AM EDT

DS RM