

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 27, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB23-0588 - 924 71st Street– Black Cat Cigar Lounge.**

An application has been filed requesting a conditional use permit for an alcoholic beverage establishment for a cigar/hookah bar located in an existing commercial building, pursuant to Chapter 118, Article IV and Chapter 142, Article II of the City Code.

RECOMMENDATION

Approval with conditions.

ZONING/SITE DATA

Legal Description:

See exhibit "A"

Zoning District:

CD-2 Commercial medium intensity

Future Land Use Designation:

Medium Intensity Commercial (CD-2)

Surrounding Uses:

North:	Commercial Establishments
South:	Residential Multifamily
West:	Commercial Establishments
East:	Commercial Establishments

THE PROJECT

The applicant, Daniel Matteo, has submitted plans entitled "BLACK CAT CIGAR LOUNGE", prepared by Beilinson Gomez Architects dated 02-22-23. The proposal is for a cigar/hookah bar with alcohol service, to occupy an existing commercial space fronting 71st Street. The plans depict a lounge/bar area with 45 seats and an occupancy load of 83 persons.

Within the North Beach Neighborhood (north of 65th Street), the CD-2 district requires all alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals) to obtain a CUP, regardless of the occupancy.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

- 1. The Use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

Consistent – The request is consistent with the permissible uses in the CD-2 Commercial medium intensity as designated on the Future Land Use Map within the Comprehensive Plan.

2. The intended Use or construction would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan

Consistent – The proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

3. Structures and uses associated with the request are consistent with these Land Development Regulations.

Consistent – Alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals); are permitted as a conditional use within the *North Beach neighborhood* in the CD-2 zoning district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Building Permit.

4. Public health, safety, morals and general welfare would not be adversely affected.

Consistent – The proposed establishment may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. The facility would have to comply with all applicable laws and regulations for licensure.

5. Adequate off-street parking facilities would be provided.

Consistent – The property is located in parking district No. 4 and there is no parking requirements for this use. Additionally, there are public parking facilities and on-street parking adjacent to the site.

6. Necessary safeguards would be provided for the protection of surrounding property, persons, and neighborhood values.

Consistent – Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighborhood.

7. The concentration of similar types of uses would not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.

Consistent – This is the only establishment proposed as an alcoholic beverage establishment (not also operating as a full restaurant with a full kitchen, serving full meals) or that does not have entertainment in the vicinity. It is also the first such establishment that will require a conditional use permit (CUP) since the requirement for alcoholic beverage establishments without a full kitchen to obtain a CUP was put in place for the CD-2 district in North Beach. Therefore, staff does not foresee any negative impacts on the surrounding neighborhood.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

1. A recycling or salvage plan for partial or total demolition shall be provided.

Satisfied. The applicant shall provide a recycling or salvage plan as part of any building permit.

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

Satisfied. Windows will be hurricane impact windows.

3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

Per letter of intent, The Applicant will provide, where feasible, passive cooling systems.

4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

Satisfied. Per letter of intent, all landscaping will be Florida friendly and resilient.

5. Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

Satisfied.

6. The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

Not Applicable.

7. Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

Satisfied. All critical mechanical and electrical systems will be located above BFE.

8. Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

Not applicable. Per letter of intent, the building is existing and was developed in 1939.

9. When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Not Applicable.

10. Where feasible and appropriate, water retention systems shall be provided.

Not Applicable.

11. Cool pavement materials or porous pavement materials shall be utilized.

Satisfied. Per letter of intent, Cool pavement materials or porous pavement materials will be utilized where possible.

12. The design of each project shall minimize the potential for heat island effects on-site.

Not Applicable.

ANALYSIS

Project Description and Operations

The proposal is for the renovation of an existing commercial space to operate a cigar/hookah bar which serves alcoholic beverages. The establishment is proposed to have a total occupancy load of 83 persons and 45 seats.

The plans depict a seating area located on the front area of this space and a bar area located at the rear. Behind the bar area there is a bathroom, an office and access to rear of the property where a concrete and gravel area contains the mechanical equipment, trash, and loading area facing the alley (Beatriz Court).

Proposed Hours: Monday-Sunday: Indoors until 12:00 AM
Outdoor seating: Sidewalk café until 12:00 AM*

The applicant did not mention a proposed opening time. Staff is proposing that the establishment not open before 10:00 AM.

*The applicant mentioned in the letter of intent that they would be seeking a sidewalk seating area. This area is not on identified on the plans nor is there an expected number of seats. Any proposed sidewalk cafe would be subject to the review and approval of the Public Works Department.

Sound

The applicant is proposing to play indoor ambient background music, played at a level that does not interfere with normal conversation.

Deliveries and Sanitation

The operations plan indicates that all deliveries and refuse collection will take place at the rear of the property facing the existing alley (Beatriz Court).

The Operations Plan indicates that loading will occur between 9:00 AM to 5:00 PM and refuse collection will be from 8:00 AM to 5:00 PM. Staff is recommending that the refuse collection not take place prior to 9:00 AM in order to be consistent to other approvals and to avoid morning rush hours. Additionally, staff recommends that deliveries and trash pick-ups not occur after 4:00 PM in order to avoid evening rush hours.

Security and Crowd Control

The operational plan that there will be cameras to monitor the facilities. The plan also indicated that the patron age limitations will be enforced by floor staff. The operations plan is silent on queueing and crowd control on the premises. Staff has recommended conditions in the attached draft order to address this.

STAFF RECOMMENDATION

In view of the foregoing, staff recommends the application be approved, subject to the conditions in the attached draft order.

ZONING/SITE MAP

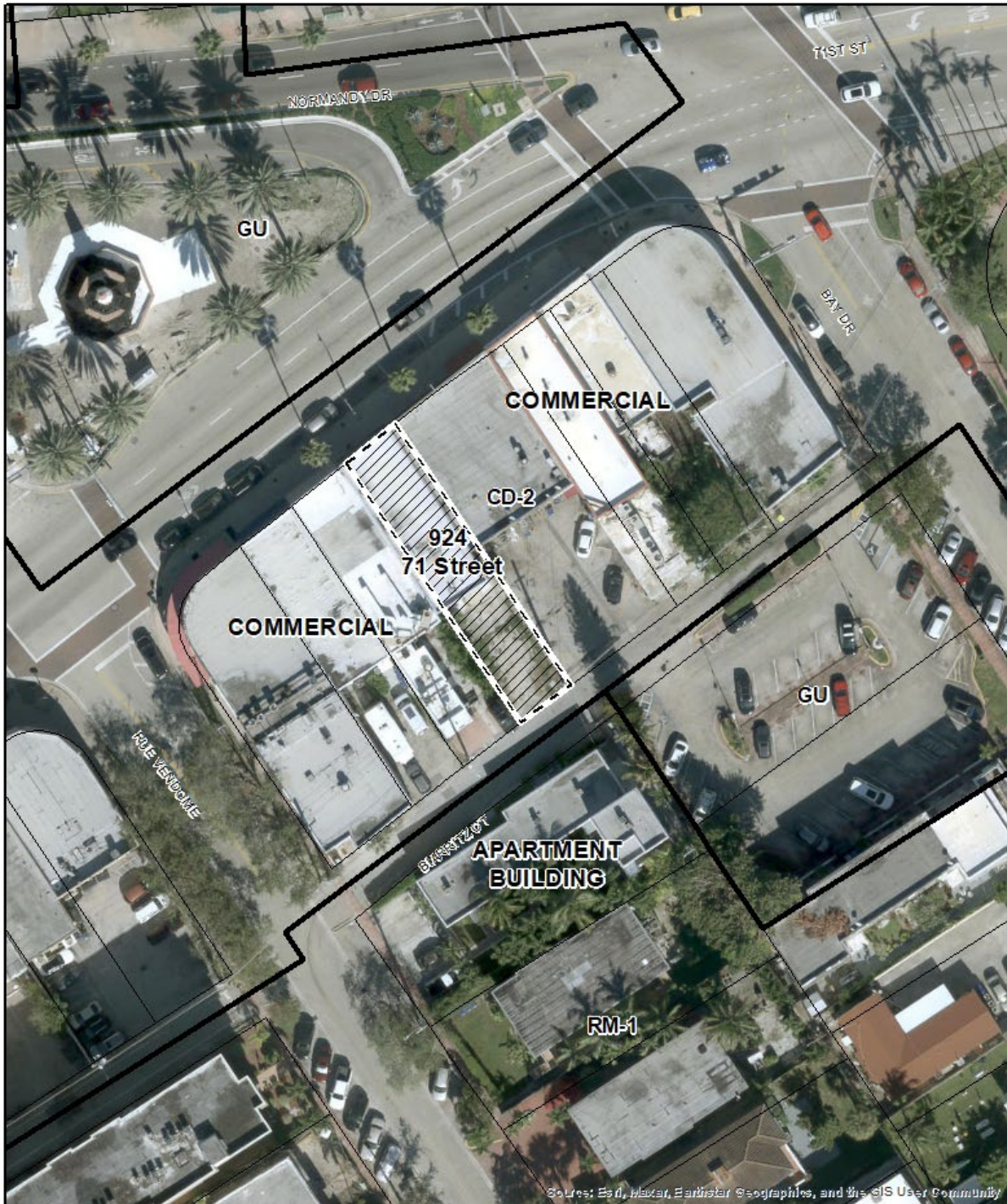


EXHIBIT "A"

Legal description

Lot 4, in Block 5, of "OCEAN SIDE SECTION OF ISLE OF NORMANDY", according to the Plat thereof, recorded in Plat Book 25, at Page 60, of the Public Records of Miami-Dade County, Florida, more commonly known as 924 71st Street, Miami Beach FL 33141.

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

PROPERTY: 924 71st Street – Black Cat Cigar Lounge.

FILE NO. PB23-0588

IN RE: An application has been filed requesting a conditional use permit for an alcoholic beverage establishment for a cigar/hookah bar located in an existing commercial building, pursuant to Chapter 118, Article IV and Chapter 142, Article II of the City Code.

LEGAL DESCRIPTION: See exhibit “A”

MEETING DATE: June 27, 2023

CONDITIONAL USE PERMIT

The applicant, Daniel Matteo, 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-2 Commercial medium intensity.

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

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 Daniel Matteo, as tenants and operators of the Neighborhood Impact Establishment consisting of a restaurant and bar. 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. The project authorized by this Conditional Use Permit includes the creation and operation of the proposed 45 seat establishment, subject to the criteria listed below:
 - i. The cigar/hookah bar subject to this CUP shall have a maximum occupant content of 83 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor portions of the establishment may operate from 10:00 AM until 12:00 AM.
 - iii. These hours shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage and/or entertainment establishments.
 - iv. Entertainment, as defined in City Code Section 114-1, shall be strictly prohibited in all areas.

- v. Recorded background music, played at a level that does not interfere with normal conversation is permitted only in the interior of the property, provided that a sound system with directional speakers and a digital tamper-resistant sound level limiter is used to minimize impacts to adjacent properties.
 - vi. Outdoor music and speakers are not permitted.
 - vii. Televisions and projectors shall not be located anywhere in the exterior areas of the property.
 - viii. No dancehall shall be permitted on the site.
 - ix. After normal operating hours, the establishment shall remain closed and no patrons or other persons, other than those employed by the establishment, shall remain therein between the establishment's closing time and 8:00 AM.
- B. Deliveries and waste collections may occur daily between 9:00 AM and 4:00 PM, or as specified by the City in approved loading zones in the vicinity.
 - C. Deliveries must be conducted via the loading area at the rear of the property on Beatriz Court. No deliveries shall be made from undesignated loading areas on 71st Street. Additionally, at no time shall delivery or service vehicles block any portion of the public right-of-way.
 - D. Delivery trucks shall not be allowed to idle in the loading zone.
 - E. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - 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.
 - I. Garbage dumpster covers shall be closed at all times except when in active use.
 - J. 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.
 - K. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
 - L. 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
 - M. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

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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.
 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.
 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 before the Board 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

EXHIBIT "A"

Legal description

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