MIAMI BEACH
PLANNING DEPARTMENT
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 26, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB 23-0611 a.k.a. PB 17-0113 a.k.a. PB 16-0066 f.k.a. PB File No. 1929. 1601 Drexel Avenue – South Beach Food Hall.**

An application has been filed requesting a modification to a previously conditional use permit. Specifically, the applicants are requesting to change the name of the owner/operator, pursuant to Chapter 2, Article V, Section 2.5.2 of the Miami Beach Resiliency Code.

RECOMMENDATION
Approval with conditions.

BACKGROUND

July 28, 2009 The Planning Board granted a Conditional Use Permit (CUP) to build a parking structure with commercial/retail uses on the ground floor.

January 24, 2017 The Planning Board continued the item to the February 28, 2017 meeting, as requested by the applicant.

February 28, 2017 The Planning Board approved a modification to the approved CUP to incorporate a Neighborhood Impact Establishment (NIE) located at the commercial/retail use on the ground floor of the existing parking structure to increase the number of approved seats.

May 23, 2017 The Planning Board approved a modification to the approved Conditional Use Permit for a NIE located at the commercial/retail use on the ground floor of the existing parking structure to reduce the hours of operation.

May 22, 2018 The Planning Board approved a Conditional Use Permit PB17-0138 which abandoned the CUP for the main use garage over 50,000 square feet as it was to be incorporated into a unified development site with the property at 1600 Washington Avenue, and made the CUP for the Time Out Market NIE and Outdoor Entertainment Establishment a standalone CUP.

ZONING / SITE DATA

Legal Description: Lots 6, 7, 8, 9, and 10, Block 53, Pine Ridge Subdivision Plat Book 6, Page 34 of the Public Records of Miami-Dade County Florida

Zoning: CD-3, Commercial High Intensity Zoning District.

Project site size: 16,150 Square Feet approximately

Land Uses: See zoning/site map at the end of the report

Subject Site: Commercial/retail with a parking structure above.
North: Commercial building
South: Residential apartment building
East: Commercial building
West: Residential apartment buildings

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 Modified Conditional Use Permit is issued to 420 Lincoln Road Development, Inc. as owner of the property. ~~Time Out Market~~ 420 Restaurant Market LLC as tenant and operator of this Neighborhood Impact Establishment consisting of a restaurant and alcoholic beverage establishment, with an occupant content of over 300 persons.

In order to be consistent with recent CUP approvals, staff is recommending the following additional conditions:

A. That the requirement for change of ownership/operator 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.*

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



PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 1601-1619 Drexel Avenue
~~Time Out Market~~ South Beach Food Hall

FILE NO. PB 23-0611, a.k.a PB 17-0113**,** a.k.a.PB16-0066, f.k.a. PB File No. 1929

IN RE: The applicant, 420 Lincoln Road Development, LLC, requested a modification to a previously issued Conditional Use Permit for the operation of a Neighborhood Impact Establishment, pursuant to Section 118, Article IV of the City Code.

LEGAL DESCRIPTION: Lots 6, 7, 8, 9, and 10, Block 53, Pine Ridge Subdivision Plat Book 6, Page 34 of the Public Records of Miami-Dade County Florida

MEETING DATE: July 28, 2009, February 28, 2017, May 23, 2017, May 22, 2018, and September 26, 2023

MODIFIED CONDITIONAL USE PERMIT

The applicant, 420 Lincoln Road Development, LLC, filed an application with the Planning Director to modify a previously approved Conditional Use Permit (CUP) a Neighborhood Impact Establishment, pursuant to Chapter 2, Article V of the Miami Beach Resiliency 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 and the staff report and analysis, which are adopted herein, including the recommendations, that the Conditional Use Permit be modified as requested, upon the following conditions to which the applicant has agreed: Underlining denotes new language and ~~strikethrough~~ denotes stricken language from the previous Order dated ~~May 23, 2017~~ May 22, 2018.

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR for the ground floor venue. 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 Modified Conditional Use Permit is issued to 420 Lincoln Road Development, Inc. as owner of the property. ~~Time Out Market~~ 420 Restaurant Market LLC as tenant and operator of this Neighborhood Impact Establishment consisting of a restaurant and alcoholic beverage establishment, with an occupant content of over 300 persons. Any change of operator or 50% (fifty percent) or more stock ownership~~, partnership interest, or the equivalent, 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 to affirm their understanding of the conditions listed herein~~ 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 patron occupant load shall be determined by the Fire Marshall. The applicant shall obtain a final occupant load from the City before the issuance of a Business Tax Receipt. This Modified Conditional Use Permit authorizes a total of approximately 440 seats (320 interior and 120 exterior).

4. The conditions of approval of this Conditional Use Permit are binding on the applicant, the property owners and all successors in interest and assigns.

5. Reserved.

6. Prior to the issuance of a CO or BTR for the uses approved herein, the applicant shall obtain a building permit and complete the following:

    a. All windows at the first level of the structure shall be fixed and non-operable.

    b. Double-Door vestibules shall be required for the southwest and northwest patron access points, as denoted in the plans submitted and reviewed by the Planning

Board. As long as the Fire department agrees, and it does not pose a life safety threat, the center set of doors, shall ONLY be utilized as an emergency exit during all times that entertainment is operating, unless a double door vestibule is provided for that entrance. Double-Door vestibules shall be required for any additional patron access doors.

c. In order to minimize noise within the venue, acoustic absorbing materials shall be placed in the ceiling.

d. The location of deliveries and trash collection shall be indicated on the Building Permit plans, subject to the review and approval of staff.

e. Entrance and double-door vestibules shall not be left open (propped open) during operating hours.

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. A complete business/operation plan that includes all details of the operation, as well as security and crowd control, shall be submitted to staff for review and approval prior to the CO or issuance of the BTR, whichever occurs first.

b. Any "wet T-shirt," "thong", "bikini" or similar type of events shall be prohibited.

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

d. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property at all times. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.

e. The applicant shall submit to Planning staff for review and approval a delivery plan and waste removal plan, including the hours of operation, which does not negatively impact the residents across the street, prior to the issuance of a building permit. No trash pick-up shall be permitted before 8:00 AM or after 6:00 PM.

f. All trash containers shall utilize rubber wheels, as well as a path consisting of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.

g. All trash rooms shall be air conditioned and sound-proofed in a manner to be approved by staff. The doors to the trash rooms shall remain closed and secured when not in use and all trash dumpsters shall be closed at all times except when in use.

h. Except as may be required for fire or building code/Life Safety Code purposes, no speakers of any kind, shall be affixed to, installed, or otherwise located on the exterior of the premises within the boundaries of the project.

i. The hours of operation for the interior shall be limited to the following:

Sundays through Thursdays: 7:00 AM to 11:00 PM
Fridays, Saturdays, eve of national holidays, and citywide sponsored special events: 7:00 AM to 2:00 Midnight (12:00 AM)

The above hours may be reduced; however a cooking facility shall remain open during all hours of operation.

j. The sidewalk café on Drexel Avenue shall not exceed 120 seats, or such less number as may be approved by the City, and the hours of operation shall be limited to the following:

Sundays through Thursdays: 8 AM to 10:00 PM
Fridays, Saturdays, eve of national holidays and citywide sponsored special events: 8 AM to 11:00 PM

A clear path of seven (7') feet shall be required along the public sidewalk, clear of any obstructions.

k. Entertainment shall be limited to a DJ and/or music played at a volume exceeding normal conversation, and shall only occur within the interior of the property. Live musical performances shall not be permitted. Hours of entertainment shall be limited to the following:

Sundays through Thursdays: 7:00 PM to 10:00 PM
Fridays, Saturdays, eve of national holidays, and citywide sponsored special events: 7:00 PM to Midnight (12:00 AM)

l. No dance floor shall be permitted.

m. Security staff shall monitor patron circulation and occupancy levels during the hours of operation.

n. No patrons shall be allowed to queue on the sidewalk or public right-of-way.

o. Once the exterior operations have closed, the tables and chairs shall be removed and/or secured in a fashion that they are not usable by passersby.

p. Bussing stations shall not be permitted on the exterior of the premises.

q. 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 closing and 7:00 AM.

r. All trash pick-up shall occur from the designated area adjacent to the trash room on the east alley.

s. Delivery and service operations will not be conducted from the street. The alley/driveway on the east side of the property will be used only for operations related to the servicing of Block 53. The private alley on the north side of the property will be used only for operations related to the servicing of Block 53. Signs will be posted at the access points of both the east alley/drive and the north private alley to advise the general public of these restrictions.

t. All deliveries and garbage pickup shall be conducted directly on site and not on the street. The trash/garbage container shall have rubber wheels and shall not be permitted to be wheeled to curbside for pick-up. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility. Garbage pickup shall be between 8:00 a.m. and 6:00 p.m.

u. Entry to and exit from the parking garage shall be on 16th Street, through a driveway with three lanes: one for entry, one for exit, and one that can be reversed when necessary. Entry shall be obtained by a push-button ticket dispenser and arm gate.

v. A “Do Not Block Sidewalk” sign shall be posted and maintained at the entrance of the garage; directional signs shall be posted at each of the access points of the north alley and east service corridor; pedestrian and bicycle path warning signs shall be posted at the garage exit, the north alley exit, and the east service corridor exit; and signs prohibiting tire-screeching and unnecessary horn-honking shall be posted at the garage entrance. All such signage shall be subject to staff review and approval.

w. 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. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Prior to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and the City’s sound study peer reviewer, to ensure that all aspects of the system’s performance comply with the design intent and recommendations of the sound system study submitted as part of this application.

x. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR. Additionally, 60 days after the issuance of a BTR, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review demonstrating that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application.

y. Any person or entity operating pursuant to this conditional use permit shall post the operating conditions identified in the permit or the full conditional use permit in a conspicuous place in or about the premises where it may be seen upon inspection by any official of the city. For failure to do so, such person or entity may be issued a notice of violation and fined as if it were operating without the conditional use permit, as if it were not issued.

8. 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. 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 City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division shall make the determination of the project's fair-share mitigation cost. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.

10. The applicant shall obtain a Certificate of Occupancy prior to the issuance of a Business Tax Receipt.

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. Without in any manner limiting the general rights of the Planning Director or the Planning Board to recall the owner or operator or to modify this Conditional Use Permit, 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.

13. Within 60 days of the meeting in which this modification was approved, the applicant shall submit a complete Transportation Demand Management (TDM) plan for the review and approval of the Transportation Department and the City's transportation peer reviewer.

14. 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 of the modified plans.

15. A sight distance review in relation to the proposed wall to be located on the east side of the 16th Street service corridor shall be provided prior to the issuance of a building permit, as well as a brief memorandum of the engineering review by the traffic consultant as to what effect it would have on providing adequate visibility for exiting driveway traffic looking east.

16. Reserved.

17. Reserved.

18. Reserved.

19. Eating and drinking establishments that may be proposed for this site may include a full service restaurant, ice cream shop or coffee shop or similar; however the aggregate number of seats, including sidewalk café seating shall be limited to 440 seats.

20. Reserved.

21. Reserved.

22. The applicant shall submit an MOT (Method of Transportation) 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.

23. A landscape plan for the entire site, prepared by a Professional Landscape Architect, inclusive of street trees in accordance with the City of Miami Beach Master Street Tree Plan, shall be submitted to and approved by staff prior to the issuance of a building permit. The landscaping that may be proposed for the edge along the low wall to be located on the east side service corridor shall be reviewed as part of the landscape plan.

24. 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.

25. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the parking facility.

26. The Planning Board shall retain jurisdiction to call the operators back before them without the requirement of a modification hearing as provided for in Section 118-194(c) and impose new conditions, modify the hours of operation, and noise conditions should there be issuance of written warnings and/or notices of violation (as determined by Code Compliance) about loud, excessive, unnecessary noise.

27. 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.

28. 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.

29. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a Building Permit

30. 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.

31. 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.

32. 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.

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, 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:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

[NOTARIAL SEAL]

Approved As To Form:
Legal Department _____ ( )

Filed with the Clerk of the Planning Board on _____ ( )