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CFN: 20240235193 BOOK 34154 PAGE 819
DATE:03/27/2024 04:03:25 PM
JUAN FERNANDEZ-BARQUIN
CLERK OF THE COURT & COMPTROLLER
MIAMI-DADE COUNTY, FL

PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 801 South Pointe Drive – Gaia Restaurant

FILE NO. PB22-0563

IN RE: An application has been filed requesting a conditional use permit for a Neighborhood Impact Establishment for a restaurant located at two of the existing ground floor commercial spaces of this building, (CU-2A and CU-2B2), pursuant to Section 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: See exhibit "A"

MEETING DATE: March 28, 2023

CORRECTED CONDITIONAL USE PERMIT

The applicant, Gaia Miami Beach, 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 C-PS-1 Commercial Performance Standard limited mixed use.

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:

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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 Gaia Miami Beach, LLC, 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 review and approval by the Planning Board as a modification to this Conditional Use Permit.

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 ~~228~~ 237 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 388 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 2:00 AM and the outdoor seating areas shall close by 12:00 AM. These hours shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage and/or entertainment establishments.

      iii. Entertainment, as defined in City Code Section 114-1, shall be strictly prohibited in all indoor and outdoor areas, except that recorded background music, played at a level that does not interfere with normal conversation, may be permitted, provided that a sound system with directional speakers and a digital tamper-resistant sound level limiter is used to minimize impacts to adjacent properties.

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iv. Plans shall be modified to ensure that the entirety of the sidewalk is fully activated, the floor plans must comply with the following conditions subject to the review and approval from the Planning Department.

a. No new window treatments of any kind, including decorative panels, opaque glass and lighting against the glass shall be permitted along Washington Avenue and South Pointe Drive unless approved by the Design Review Board, or staff in accordance with the Design Review Criteria, as applicable.

b. The proposed outdoor seats and planters shall be setback a minimum of five (5') feet from the property line.

v. The venue shall comply with the following sound isolation and construction methods related conditions:

a. A (2) layer 5/8" type X gypsum board (GWB) ceiling on 1" deflection spring isolation hangers with 6" sound attenuating batts infilled in the cavity with a minimum 12" airspace.

b. The ceiling may be increased from (2) layers of 5/8" type X gypsum board to (4) layers if the structural loading and budget permits.

c. The acoustic ceiling cannot be penetrated in any manner except for sprinklers. A secondary "finish" ceiling would need to be installed below to conceal the MEP and incorporate interior design.

d. The ceiling should not be penetrated by loudspeakers or light fixtures (minimize and seal penetrations).

e. Existing structural walls and columns shall be covered with two layers of 5/8" GWB (with insulation) connected via an approved, non-rigid mounting system such as:
   i. Stud wall connected via isolated sway brace
   ii. Isolated hat channel clip such as Kinetics ISOMAX

f. The plumbing penetrating the second level slab may need to be wrapped with a sound isolation lagging in addition to the acoustic ceiling.

g. A corridor or secondary wall shall be utilized along the demising wall between the Lounge Bar and Kosushi.

vi. Sound generated from the venue, including, but not limited to, recorded music and patron conversations or entertainment, shall not be plainly audible from or beyond any public rights of way adjacent to the subject property. Public rights of way shall include, but not be limited to, South Pointe Drive and Washington Avenue.

vii. No exterior speakers shall be permitted except those necessary for fire and life safety purposes.

viii. Televisions and projectors shall not be located anywhere in the exterior areas of

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the property.

ix. No dancehall shall be permitted on the site.

x. Special event permits shall be prohibited.

xi. 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 may only occur between 8:00 AM and 12:00 PM each day

C. Deliveries must be conducted via designated loading zones or loading areas on private property. No deliveries shall be made from undesignated loading areas on Alton Road, South Pointe Drive, Jefferson Avenue or Washington Avenue. Additionally, at no time shall delivery or service vehicles block any portion of the public right-of-way, including, but not limited to the bicycle lanes on Alton Road and South Pointe Drive, and the bus stop on Washington Avenue.

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. Deliveries and waste collections may occur daily between 9:00 AM and 5:00 PM, or as specified by the City approved loading zones in the vicinity.

G. 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.

H. 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.

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.

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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.

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.

C. The applicant shall coordinate with the Parking Department to provide valet parking at existing valet parking ramps. The applicant will provide text-to-order valet parking services to limit crowding on the exterior of the venue.

D. All valet parking operations shall be conducted within the rented on-street parking space(s) for the valet ramp and shall not block, at any time, the bicycle lanes on South Pointe Drive.

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 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

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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.

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 3/25/2024 | 3:47 PM EDT

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
BY: Rogelio Madan
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 27 day of March, 2024, 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.

Notary:
Print Name: Miriam Herrera
Notary Public, State of Florida
My Commission Expires: 12-16-27
Commission Number: HH470768

[NOTARIAL SEAL]

MIRIAM HERRERA
Notary Public - State of Florida
Commission # HH 470768
My Comm. Expires Dec 16, 2027
Bonded through National Notary Assn.

Approved As To Form:
Legal Department 3/25/2024 | 2:55 PM EDT

Filed with the Clerk of the Planning Board on DocuSigned by: Jessica Gonzalez 3/25/2024 | 9:07 PM EDT

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RM

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EXHIBIT "A" – Legal description

Address: 801 S Pointe Drive Unit: CU-2

Folio No. 02-4203-368-0320

Legal Description

Condominium Parcel No CU-2 of MAREA, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 29810, page 2526, of the Public Records of Miami-Dade County, Florida and all amendments thereto, together with its undivided share in the common elements.

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