

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 26, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 17-0112 fka File No. 2287. 1787 Purdy Avenue – Tackle Box**

The applicant, TB Purdy Restaurant, LLC., is requesting a modification to a previously issued Conditional Use Permit. Specifically, the applicants are requesting to change the structure of the ownership as stipulated in the final order, pursuant to Chapter 118, Article IV, and Chapter 142, Article II of the City Code.

RECOMMENDATION

Approval with conditions

HISTORY

December 15, 2016 The Planning Board approved a Conditional Use Permit (CUP) for the expansion of a restaurant with over 100 seats in the Sunset Harbor area.

January 15, 2016 An application to the Design Review Board for the rooftop area, the exterior staircase, and elevator was heard and was approved with some design modifications and operational conditions.

May 24, 2016 The application for modifications was continued to a date certain of June 28, 2016, as requested by the applicant.

June 28, 2016 The Planning Board approved a Modified Conditional Use Permit (MCUP) that modified the plans and operational conditions previously approved by the Board.

ZONING / SITE DATA

Legal Description:

Western ½ of Lot 9 of Block 16, of "Island View Subdivision", according to Plat thereof as recorded in Plat Book 6, Page 115, of the Public Records of Miami-Dade County.

Zoning:

CD-2, Commercial Medium Intensity Zoning District

Future Land Use Designation:

CD-2, Commercial Medium Intensity Zoning District

Surrounding Uses:

North

Surface parking lot

East: Restaurant
South: Retail
West: Surface parking lot (City Park)

(See Zoning/Site map at the end of the report)

UPDATE

The applicant submitted an updated disclosure that restructured the ownership interest. Neither the plans nor the operational conditions have changed in any way.

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 Comprehensive Plan.

2. **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**

Consistent – The proposed use is not anticipated to degrade the Levels of Service (LOS) for the surrounding area below the thresholds that have been established.

3. **Structures and uses associated with the request are consistent with this Ordinance.**

Consistent – Restaurants with accessory outdoor bars are permitted in the CD-2 zoning district.

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

Partially Consistent – The submitted sound specification letter recommends certain controls to limit the acoustical impact of the outdoor areas on the neighbors. However, the proposed ambient music may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. Staff is recommending measures so that any resulting adverse impact is mitigated.

5. **Adequate off-street parking facilities will be provided.**

Consistent – There is not any parking on site but public parking is available at the parking garage located a block to the north of the property. The applicant also proposes to provide valet parking to its patrons. Furthermore, many patrons may walk, arrive by taxi, or hired car service.

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

Consistent – Staff will recommend conditions to mitigate any adverse impacts from sound on the surrounding neighbors.

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

Partially Consistent – There are several restaurants with bars in the area. Adverse impacts are not anticipated.

STAFF ANALYSIS

The City Code requires that restaurants in the Sunset Harbour area with over 100 seats and an occupant content of more than 125 persons obtain a CUP. The subject property has had a 100 seat restaurant on the site since 1998, but the increase to 138 seats (not including the 12 sidewalk café seats, which although shown on the site plan, are subject to a Public Works annual sidewalk café application and could vary) requires CUP approval. Additionally, the projected occupant content for the project is 177 persons, as represented by the applicant. The section of the code that pertains to this requirement is below:

Sec. 142-303. - Conditional uses.

(b) Sunset Harbour Neighborhood. In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the Sunset Harbour neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard shall also include the following:

- (1) Main use parking garages;*
- (2) Restaurants with alcoholic beverage licenses (alcoholic beverage establishments) with more than 100 seats or an occupancy content (as determined by the fire marshal) in excess of 125, but less than 199 persons and a floor area in excess of 3,500 square feet.*

RECOMMENDATION:

In view of the forgoing analysis, staff recommends approval of the modified Conditional Use Permit, in accordance with the conditions in the attached draft MCUP order.

ZONING AND LOCATION MAP



City of Miami Beach Planning Board
PB 17-0112 f.k.a. PB File No. 2287
1787 Purdy Avenue



The applicant, TB Purdy Restaurant LLC, is requesting a modification to a previously issued conditional use permit. Specifically, the applicants are requesting to change the structure of the ownership as stipulated in the final order, pursuant to section 118, Article IV of the City Code.

MIAMI BEACH
PLANNING DEPARTMENT

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

PROPERTY: 1787 Purdy Avenue

FILE NO. PB 17-0112 fka File No. 2287

IN RE:

The applicant, TB Purdy Restaurant, LLC., requested a modification to a previously issued Conditional Use Permit to modify the plans and operational conditions previously approved by the Board, pursuant to Chapter 118, Article IV, and Chapter 142, Article II of the City Code..

LEGAL

DESCRIPTION: Western ½ of Lot 9 of Block 16, of "Island View Subdivision", according to Plat thereof as recorded in Plat Book 6, Page 115, of the Public Records of Miami-Dade County.

MEETING DATE: December 15, 2015, June 28, 2016, September 26, 2017

MODIFIED CONDITIONAL USE PERMIT

The applicant, TB Purdy Restaurant, LLC., filed an application with the Planning Director to modify the plans and operational conditions . to a previously approved Conditional Use Permit by the Board pursuant Section 118, Article IV and Section 142, Article V. Notice of the request was given for a modification 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 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 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. Underlining

denotes added language, and ~~striketrough~~ denotes stricken language from the ~~December 15, 2015~~
June 28, 2016 Conditional Use Permit:

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 Business Tax Receipt (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 TB Purdy Restaurant, LLC, as operator, for a restaurant with alcoholic beverages. The subject establishment shall always be licensed as a single restaurant serving full meals at all times, and no physical subdivision of any portion of the dining areas shall be allowed. Any change of operator or 50% (fifty percent) or more stock ownership shall require 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. Prior to the issuance of a Building Permit for the improvements proposed herein, the applicant shall submit a revised site plan and floor plan. At a minimum, such plans shall include the following:
 - a. An air conditioned trash room(s) / garbage room(s), which shall be large enough or sufficient in number so that more than one pick up of garbage per day will not be necessary. The location, dimensions and access points of such trash/garbage room(s) shall be subject to the review and approval of staff.
 - b. The route of all refuse containers from the trash / garbage room(s) to the sidewalk.
 - c. A high-level trash/garbage compacting device may be located in the air-conditioned trash/garbage holding room within the facility.
 - d. 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.
 - e. Garbage dumpster covers shall be closed at all times except when in active use.
5. Prior to the issuance of a building permit for the improvements proposed herein, the applicant shall submit a detailed valet parking and delivery plan, which shall be subject to the review and approval of the Parking Department. At a minimum, such plan shall include the following:
 - a. The valet drop off shall be located in a designated off-street parking space, subject to the approval of the Parking Department.
 - b. The locations for all delivery vehicles shall be clearly delineated on a revised loading plan, and shall be subject to the review and approval of the Parking Department.

- Delivery vehicles shall only be permitted to make deliveries from designated loading zones and spaces approved by the Parking Department.
- c. Delivery vehicles and sanitation services shall only be permitted to make deliveries or pick up from 8:00 AM to 2:00 PM.
 - d. Delivery trucks shall not idle in the loading zone.
6. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, 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 hours of operation shall be within the hours of 11:30 AM to 12:00 AM on Sundays through Thursday and from 11:30 AM to 2:00 AM on Fridays and Saturdays. The outdoor portion shall close by 12:00 AM (midnight) daily.
 - b. At all times the establishment is open, food service with a full menu and operating kitchen shall be required throughout the venue, including the roof-top area. At the discretion of the operator, the roof-top area may cease operations prior to the closing of the venue, and while the first level is operational.
 - c. The roof-top area shall be limited to restaurant service only, and shall only be open and operational when the first level of the establishment is open. The rooftop area shall not become a stand-alone drinking establishment or bar at any time.
 - d. The patron occupant content shall be a maximum of 199 persons, or as determined by the Fire Marshall, whichever is lower.
 - e. The number of seats within the confines of the property shall not exceed 140 and the number of seats on the adjacent sidewalk, if approved, shall not exceed 15.
 - f. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound system specifications submitted in the application for both the outdoor areas and the interior areas. A final sound transmission report which includes the performance of sound systems and sound attenuation devices shall be submitted to staff for review and approval prior to a Certificate of Use or Business Tax Receipt.
 - g. Entertainment shall be prohibited at all times. On the rooftop, sidewalk, and any exterior portion of the project, the sound system shall be turned off entirely by 10:00 PM Sunday thru Wednesday, 11:00 PM Thursdays and 12:00 AM (midnight) on Fridays and Saturdays. The roll-up door located at the front façade on the first level shall be closed by 10:00 PM daily.
 - h. Alcohol service shall not be permitted from that portion of the counter directly abutting the roll-up door while the door is open.

- i. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
 - j. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - k. Any queuing of patrons shall occur within the property or inside the restaurant only. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
 - l. Security staff shall monitor patron circulation and occupancy levels and shall take measures to strictly enforce patron age restrictions in the City Code at all times.
 - m. 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. 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.
7. The applicant shall submit a Transportation Demand Management (TDM) Plan for employees of the restaurant. This plan shall encourage the utilization of alternative modes of transportation to commute to and from work. The restaurant shall designate a staff person to coordinate the development and implementation of the TDM Plan with the city. The TDM Plan should include a reporting system to be able to track the effectiveness of the Plan and make adjustments for improvements as necessary.
 8. The applicant shall provide to the City an evaluation of the valet parking operation of the site after six (six) months of the opening date. The evaluation shall include a valet parking analysis. Depending on the outcome of the review, the City may impose some specific mitigation measures as necessary.
 9. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a BTR to operate this entertainment establishment.
 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.
 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.

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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.

MB

13. Within a reasonable time after applicant's receipt of this Conditional Use Permit as signed and issued by the Planning Director, the applicant shall record it in the Public Records of Miami-Dade County at applicant's expense and then return the recorded instrument to the Planning Department. No building permit or certificate of completion shall be issued until this requirement has been satisfied.
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.

Dated this 30th day of September, 2016.

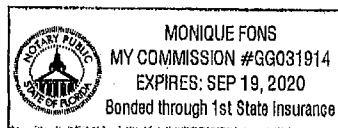
PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush

Michael Belush, Planning and Zoning Manager
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 30th day of September, 2016, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



Notary: [Signature]

Print Name MONIQUE FONS

Notary Public, State of Florida

My Commission Expires: 9/19/2020

Commission Number: _____

[NOTARIAL SEAL]

Approved As To Form:
Legal Department

[Signature] 9/29/16

MB