

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

PROPERTY: 1437–1441 Washington Avenue

FILE NO: PB 17-0149 fka1724

IN RE: The applicant, Gideon/Espanola Partners, LLC, requested modifications to a previously issued Conditional Use Permit for a Neighborhood Impact Establishment. Specifically, the applicant proposes to subdivide the 1st and 2nd floors into separate establishments, in order to operate the second floor as a stand-alone entertainment establishment with an occupant content in excess of 200 persons, not operating as a restaurant, and not serving full meals, pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: The West 12.5 feet of Lot 3, and Lots 4 & 5 of Block 2B, Espanola Villas Subdivision, plat book 7, page 145 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: February 26, 2013, November 19, 2013, October 24, 2017

MODIFIED CONDITIONAL USE PERMIT

The applicant, Gideon/Espanola Partners, LLC., filed an application with the Planning Director for a modification to a previously approved Conditional Use Permit for a Neighborhood Impact Establishment (NIE) in order to subdivide the 1st and 2nd floors into separate establishments, in order to operate the second floor as a stand-alone entertainment establishment with an occupant content in excess of 200 persons, not operating as a restaurant, and not serving full meals and retain the operator of the second floor establishment, Kemp Capital Corp.

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 record for this matter:

That the subject property is located CD-2, Commercial Medium Intensity Zoning District;

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 Ordinance;

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 if the following conditions are met.

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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 are adopted herein, including the staff recommendation, that the modification to the previously approved Conditional Use Permit as requested and set forth above be GRANTED, subject to the modified conditions listed below indicated by underlining (new language) and ~~strike through~~ (deleted language):

1. The Planning Board shall maintain jurisdiction on 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 Board reserves the right to modify this Modified Conditional Use approval at the time of the progress report in a non-substantive manner, to impose additional conditions to address problems, and to determine the timing and need for future progress reports. This Modified Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Gideon/Espanola Partners, LLC, as owner, and Kemp Capital Corp., as operator for this Neighborhood Impact Establishment. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent of the ownership 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, in advance, to affirm their understanding of the conditions listed herein.
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. ~~The applicant shall cure any and all violations that are outstanding, as stated in the cure letter sent by the Planning Director on February 8, 2013.~~
5. The applicant shall comply with the following ~~nightclub~~ operational conditions:
 - a. The occupant content of the second floor shall not exceed 580 persons or a lesser number as determined by the Fire Marshall.
 - b. A double door vestibule shall be ~~constructed~~ maintained at the front entrance to the first floor and another double door vestibule shall be ~~constructed~~ maintained at the top of the staircase and elevator landing on the second floor, ~~in a manner to be reviewed by staff.~~ As a point of clarification, the second floor is not the mezzanine. Both of these double door vestibules shall be maintained as long as the use continues.
 - c. The applicant shall provide staff documents verifying the service of a valet parking operator which also specifies the locations where vehicles will be stored. Valet storage of vehicles shall not be permitted in public facilities. These documents shall be submitted to staff for review and approval prior to the approval of a Building Permit, Certificate of Use, or Business Tax Receipt, whichever occurs first (~~formerly condition 5~~).
 - d. The hours of operation shall be as requested by the applicant:

- 1) ~~Restaurant:~~ Thursday to Saturday and Monday from 5:00 p.m. to 5:00 a.m.
- 2.) ~~Nightclub:~~ Thursday to Saturday and Monday from 10:00 p.m. to 5:00 AM
(formerly condition 6).
- e. All "wet T-shirt," "thong" or "bikini" events shall be prohibited (formerly condition 7).
- f. The applicant shall take all reasonable measures to ensure that the surrounding establishments are not affected by the sound levels within the facility. If reasonably necessary, the applicant shall install all necessary sound absorption devices, including ceiling and wall panels in the interior of the facility to assist in containing sound levels. All performances shall be limited to the interior of the establishment; no speakers shall be permitted on any exterior wall of the building. A vestibule/double doorway shall be ~~constructed~~ maintained at the front entrance to the first floor and second floor entrances of the venue. The plans shall be submitted to Historic Preservation staff for review and approval before installation (formerly condition 8).
- g. Street flyers and handouts shall not be permitted, including handbills from third-party promotions (formerly condition 10).
- h. Before beginning operations and before the issuance of a Business Tax Receipt, the applicant shall submit to staff for review and written approval a sanitation plan that complies in all respects with the requirements of Code Section 142-1362(6), including without limitation, a copy of the fully signed contract between the applicant and the waste removal company, which specifies removal of trash and garbage seven days a week and the approximate times of waste removal. All deliveries and trash removal shall be undertaken from the alley to the east, not from Washington Avenue. The overhead rolling door leading to the trash and garbage dumpsters shall be kept completely closed at all times except when waste removal operations are actually taking place (formerly condition 12).
- i. Window treatments of any kind, including, but not limited to, curtains, blinds, film, tint, graphics or adhesive, shall be prohibited on the inside and outside of all storefront glass facing Washington Avenue. Very sheer drapes might be appropriate subject to staff review and approval. The applicant shall provide an activated space, at least 15 feet in depth from the front windows, which is clearly visible from the sidewalk, subject to staff review and approval (formerly condition 16).
- 6. 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.
- 7. Business identification signs shall be limited to sign copy indicating the name of the establishment only on the storefront windows, and submitted to Historic Preservation staff for review and approval prior to obtaining a building permit, Certificate of Use, or Business Tax Receipt, whichever occurs first (formerly condition 9).

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8. Any substantial change to the plans shall be reviewed by the Planning Board prior to installation (~~formerly condition 11~~).
9. 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. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy or Certificate of Completion. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt (~~formerly condition 14~~).
9. 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 (~~formerly condition 16~~).
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 (~~formerly condition 17~~).
11. 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. Additionally, as proffered by the Applicant, the Applicant shall maintain in a clean condition the alley behind the entire length of the building in which the Applicant is a tenant, by picking up all trash, disposing of it appropriately, and at the end of the business day, sweeping and hosing down that portion of the alley (~~formerly condition 18~~).
12. In the event that there is any queuing of people on Washington Avenue, stanchions shall be placed to control crowds. Security personnel shall ensure that patrons do not restrict or block pedestrian flow on public sidewalks. The placement of the stanchions shall be shown on a site plan that shall be submitted to staff for review and approval prior to the approval of a Building Permit, Certificate of Use, or Business Tax Receipt, whichever occurs first (~~formerly condition 19~~).
13. 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 Business Tax Receipt to operate this entertainment establishment (~~formerly condition 20~~).
14. 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 (~~formerly condition 21~~).
15. ~~Within a reasonable time after applicant's receipt of t~~This Modified Conditional Use Permit as signed and issued by the Planning Director, the applicant shall be recorded it in the

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Public Records of Miami-Dade County at applicant's expense, and then return the recorded instrument to the Planning Department. A building permit or, certificate of completion (CC), CU, or BTR shall not be issued until this requirement has been satisfied.

16. 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 (formerly condition-23).
47. 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 (formerly condition-24).

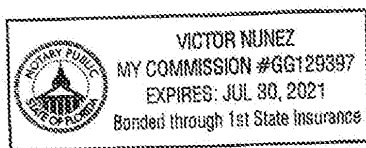
Dated this 21st day of FEBRUARY, 2018.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush
Chief of Planning and Zoning
For The Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 21 day of February, 2018, by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



{NOTARIAL SEAL}

Victor Nunez
Notary:
Print Name
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department [Signature], 2/21/18

Filed with the Clerk of the Planning Board on (2/21/18)

Jessica Chumy

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