

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

**PROPERTY:** 959 West Avenue, Miami Beach, Florida

**FILE NO.** PB 17-0167 f.k.a. 1488

**IN RE:** The applicant, Pleasant Ways Inc., d/b/a Oliver's Bistro, requested a modification to a previously issued Conditional Use Permit in order to operate a full service restaurant in Bay 15 that exceeds the number of seats currently allowed and to remove the provision allowing beer and wine sales only, pursuant to Section 118, Article IV of the City Code.

**LEGAL DESCRIPTION:** Lots 8 through 15 inclusive, Block 3, amended plat of Fleetwood Subdivision, as recorded in PB 28-34, of the Public Records of Miami-Dade County, Florida

**MEETING DATE:** February 27, 2018

**MODIFIED CONDITIONAL USE PERMIT**

The applicant, Pleasant Ways Inc., d/b/a Oliver's Bistro, requested a modification to an existing Conditional Use Permit previously issued to Gumenick Family Investments #2 Ltd pursuant Chapter 118, Article IV, "Conditional Use Procedure," of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for a Conditional Use Permit 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 RM-2, Multi-Family 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 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.

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PB17-0167 f.k.a. PB 1488, 959 West Avenue  
February 27, 2018

Page 2 of 5

**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 recommendation, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the conditions below, which have been accepted by the applicants:

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 give a written progress report to the Board. The Board reserves the right to modify the Conditional Use approval at the time of the 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. 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.
3. Prior to the issuance of a building permit, 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.
4. The permissible commercial and retail uses in this structure shall be neighborhood services type businesses, or similar in nature as determined by the Planning Director, such as but not limited to the following uses: art galleries, bakery, barber/beauty parlor, convenience store, dry cleaning (no cleaning on premises), sales of newspapers/magazine, bank branches, and professional offices. Prohibited uses in the structure shall be neighborhood impact establishments, entertainment establishments, outdoor bars, tattoo parlors, liquor stores, gun dealers, kennel services, and the retail sales or rental of adult materials.
5. Food and beverage establishments shall be permitted, with 30 seats or less, and which close for business no later than 11:00 PM with the exception of the following:
  - a. Bay 1, located at the northwest corner of the structure, shall be permitted to have a coffee shop with a maximum of 54 seats, inclusive of outdoor seating. Any outdoor seating for the 54-seat coffee shop shall not exceed 16 seats and shall close by 11:00 PM. In addition, no alcoholic beverages shall be sold or served in this establishment.
  - b. Bays 8-10, as indicated in the CUP file, shall be permitted to have a restaurant with a maximum 105 seats, inclusive of outdoor seating. Any outdoor seating for the 105-seat restaurant shall not exceed 32 seats and shall close by 10:00 PM. In addition, only a 2-COP (Beer and Wine) alcoholic beverage license may be permitted at this establishment.
  - c. Bay 15, located at the southwest corner of the structure, shall be permitted to have one full service restaurant with a maximum of 59 85 seats, inclusive of outdoor seating may be permitted. Any outdoor seating for the 59 85-seat restaurant shall not exceed ~~46~~ 44 seats. This full service restaurant shall close no later than 12:00 AM midnight. In addition, ~~only a 2-COP (Beer and Wine)~~ a full liquor alcoholic

MAB

PB17-0167 f.k.a. PB 1488, 959 West Avenue  
February 27, 2018

Page 3 of 5

- beverage license may be permitted at this establishment. All liquor sales to patrons sitting outside shall be limited to patrons who are also ordering food.
- d. The operational conditions of this Conditional Use Permit in relation to Bay 15 are predicated on Pleasant Ways Inc., d/b/a Oliver's Bistro, as tenant/operator, of the restaurant. Any change of tenant/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.
6. The Applicants agree to the following operational conditions prospectively for all permitted and accessory uses (due to new leases, changes in tenants, etc) 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 future/modified contract or assignment:
- a. 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.
- b. Air conditioned 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.
- c. Garbage dumpster covers shall be closed at all times except when in active use.
- d. Garbage pickups and service deliveries shall not take place between 7:00 PM and 7:00 AM. Daily trash service shall be required.
- e. The outdoor umbrellas associated with all new establishments shall be reviewed and approved by staff before a building permit is issued and inspected before the certificate of occupancy or business tax receipt, whichever comes first.
7. In the outdoor seating area, only pre-recorded background music played at a volume that does not interfere with normal conversation shall be allowed. Any other form of entertainment including a DJ shall be prohibited both inside and outside the building.
8. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the parking facility.
9. The operator shall be responsible for operating this facility in an orderly, clean and quiet manner so that neighboring residents are not disturbed. The sounding of car alarms, automobile horns and screeching of tires shall be prohibited. Two signs, one addressing City Code provisions regarding car alarms, and one prohibiting the screeching of tires and sounding of horns (see attached examples), shall be posted on the site so they are plainly visible by users of the facility.

MB

PB17-0167 f.k.a. PB 1488, 959 West Avenue  
February 27, 2018

Page 4 of 5

10. ~~Prior to the issuance of a Temporary Certificate of Occupancy (TCO) or Certificate of Occupancy (CO), signature of Planning staff on the State alcohol beverage license application, the operational conditions as referenced above (to be determined by staff), shall be posted on site, in a location and manner to be reviewed and approved by staff. Additionally, staff shall inspect the premises for compliance with the maximum number of seats, both indoors and outdoors prior to said signature.~~
11. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the accessory restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise.
12. Delivery trucks under 10,000 pounds shall only be permitted to make deliveries from the alley (Alton Court). Delivery trucks larger than 10,000 pounds shall be made in accordance with the City's parking and loading requirements.
13. The applicant, operator and/or owner, both now and in the future, shall abide by all the documents and statements submitted with this application, as well as all conditions of this Order.
14. Any substantial modifications to the plans submitted and approved as part of this 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. 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.
16. 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, of the City Code.
17. Within a reasonable period of time after receipt of the executed Conditional Use Permit, the applicant, at its sole expense, shall record it in the Public Records of Miami-Dade County, and return the recorded instrument to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
18. 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

PB17-0167 f.k.a. PB 1488, 959 West Avenue  
February 27, 2018

Page 5 of 5

- 19. 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 permit.
- 20. 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.

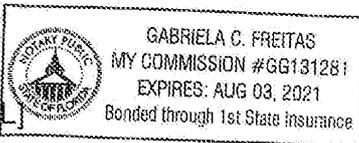
Dated this 5<sup>th</sup> day of MARCH, 2018.

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush  
Michael Belush, AICP,  
Chief of Planning & Zoning  
For Chairman

STATE OF FLORIDA       )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of March, 2018, by Michael Belush, Chief of Planning & 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] 

Gabriela C. Freitas  
Notary:  
Print Name: Gabriela C. Freitas  
Notary Public, State of Florida  
My Commission Expires: 8-3-21  
Commission Number: GG131281

Approved As To Form:  
Legal Department [Signature] ( 3/5/18 )

Filed with the Clerk of the Planning Board [Signature] ( 3/5/18 )

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