

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 22, 2018

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 18-0190. 4701 North Meridian Avenue.
Accessory Restaurant to an Apartment Building**

The applicant, 4701 North Meridian LLC, is requesting a Conditional Use Permit to operate an outdoor restaurant as an accessory use to an apartment building in a RM-1 zoning district, pursuant to Chapter 118, Article IV and Chapter 142, Article II, Division 3, Subdivision V of the City Code.

RECOMMENDATION:

Approval with conditions

HISTORY

On January 8, 2013, the Design Review Board (DRB) approved the partial demolition, renovation, and adaptive re-use of the former Miami Heart Institute Hospital site as a new multifamily residential development with 122 units and 318 parking spaces (File No. DRB 22942). Subsequent design modifications have reduced the proposal to 110 units and 242 parking spaces.

On January 17, 2018, the City Commission approved Ordinance 2018-4166, which created subsection 142-153(c) in the Land Development Regulations. This new subsection allows for restaurants in a limited capacity as an accessory use in the RM-1 district as follows:

- (c) *For apartment buildings located north of 41st Street with a minimum of 100 apartment units, a restaurant serving alcoholic beverages shall require conditional use approval and shall comply with the following:*
 - (1) *The restaurant shall only be open to residents of the apartment building and their invited guests. All invited guests shall be required to park on the subject property.*
 - (2) *The kitchen shall be limited to a maximum size of 500 square feet.*
 - (3) *The conditional use application for a restaurant with outdoor seating and outdoor dining areas shall specify the proposed maximum number of seats, and locations of seating in the outdoor areas, which shall be subject to Planning Board review and approval.*
 - (4) *A hall for hire, dance hall, open-air entertainment establishment, outdoor entertainment establishment or entertainment establishment shall be prohibited.*

- (5) *There shall only be one restaurant on the subject property.*
- (6) *The hours of operation of the Restaurant may be from 8 a.m. to midnight (no orders to be taken after 11 p.m.) and for any exterior areas then only until 11 p.m. (no orders to be taken after 10 p.m.)*
- (7) *Without limiting the foregoing, in the outdoor areas of the restaurant there shall not be any entertainment or Special Events.*

ZONING / SITE DATA

Legal Description:

Lots 1 through 16, Block 10 and Lots 11 thru 17, Block 13, of "NAUTILUS ADDITION OF MIAMI BEACH BAY SHORE CO." according to the plat thereof, as recorded in Plat Book 8, Page 130, of the Public Records of Miami-Dade County, Florida.

Zoning District:

RM-1 Residential Multifamily Low Intensity

Future Land Use Designation:

Low Density Multi Family Residential Category (RM-1)

Land Uses:

East: Surprise Lake
North: Surprise Waterway
South: Single Family Residential
West: Single Family Residential

THE PROJECT:

The applicant has submitted plans entitled "Ritz Carlton Residence" as prepared by Stantec and dated March 5, 2018.

The applicant is proposing a restaurant with 42 outdoor seats as an accessory to a residential building with 110 residential units and 242 parking spaces. The building is the former site of the Miami Heart Institute and is currently undergoing a renovation to establish the residential units.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Article 4, 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 – Since the use is an accessory use, the proposed restaurant is consistent with the goals, objectives, and policies of 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 result in an impact that will exceed the thresholds for the levels of service, as the restaurant is limited to the use of residents and their guests.

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

Consistent – The proposed use would occupy a pool deck, therefore there are no additional structures being proposed.

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

Consistent – The project should not adversely affect the public health, safety, morals and general welfare.

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

Consistent – The restaurant is limited to residents and their guests, therefore the parking for the residential uses, which includes guest parking is sufficient. Additionally, 52 bike racks are being provided.

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

Consistent – Several safeguards are in place to provide protection to surrounding property. The restaurant will not be open to the public nor will it be accessible from the street. Additionally, the condominium does not allow short-term rentals limiting the use of the restaurant to permanent residents that are less likely to cause nuisances. The ordinance allowing for accessory restaurants also includes several safeguards, such as hours of operation and prohibition on special events.

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.

Consistent – The site is surrounded by single family residences, therefore there are no opportunities for similar uses.

COMPLIANCE WITH ADDITIONAL CONDITIONAL USE CRITERIA IN THE RM-1 DISTRICT

For apartment buildings located north of 41st Street with a minimum of 100 apartment units, a restaurant serving alcoholic beverages shall require conditional use approval and shall comply with the following:

(1) The restaurant shall only be open to residents of the apartment building and their invited guests. All invited guests shall be required to park on the subject property.

Consistent – The restaurant shall only be open to residents and their guests. All guests will be required to valet their vehicles or park their bicycles on the subject property.

(2) The kitchen shall be limited to a maximum size of 500 square feet.

Consistent – The kitchen will only be 315 square feet.

(3) The conditional use application for a restaurant with outdoor seating and outdoor dining areas shall specify the proposed maximum number of seats, and locations

of seating in the outdoor areas, which shall be subject to Planning Board review and approval.

Consistent – The attached plans indicate the maximum number of seats, locations of seating in the outdoor areas for consideration by the Planning Board.

- (4) **A hall for hire, dance hall, open-air entertainment establishment, outdoor entertainment establishment or entertainment establishment shall be prohibited.**

Consistent – The applicant will not be permitted to apply for such uses, nor is the applicant seeking such uses.

- (5) **There shall only be one restaurant on the subject property.**

Consistent – The plans indicate that there will only be a single restaurant on the subject site.

- (6) **The hours of operation of the Restaurant may be from 8 a.m. to midnight (no orders to be taken after 11 p.m.) and for any exterior areas then only until 11 p.m. (no orders to be taken after 10 p.m.)**

Consistent – The applicant has indicated that their hours of operation will be consistent with the hours permitted in the ordinance.

- (7) **Without limiting the foregoing, in the outdoor areas of the restaurant there shall not be any entertainment or Special Events.**

Consistent - The applicant is not requesting entertainment and will not apply for special events permits. Additionally, a Declaration of Restrictive Covenants prohibits such uses.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.

Not Applicable

- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

Not Applicable

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

Not Applicable

- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

Not Applicable

- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional

Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

Not Applicable

- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

Not Applicable

- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

Not Applicable

- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

Not Applicable

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Not Applicable

- (10) Where feasible and appropriate, water retention systems shall be provided.

Not Applicable

ANALYSIS

The applicant is proposing a 42 seat outdoor restaurant as an accessory use to 110 unit residential building. The outdoor restaurant would surround the building's pool deck, which is located on the rooftop of the 6-story parking structure.

The use of the restaurant would be limited to residences and their guests. Subsection 142-153(c) contains the following safeguards, which must be complied with:

1. Guests must park on-site;
2. Limitation on kitchen size;
3. A limit of one restaurant;
4. A prohibition on halls for hire, dance halls, and entertainment;
5. Prohibition on special events in outdoor areas.
6. Because the restaurant is outdoors, its hours of operation would be limited from 8 am to 11 pm, with no orders taken after 10 pm.

With the aforementioned safeguards, no significant impacts are expected from the proposed use on the surrounding single-family residential areas.

STAFF RECOMMENDATIONS

In view of the foregoing analysis, staff recommends the Conditional Use Permit be approved, subject to the conditions enumerated in the attached Draft Order.

TRM/MB/RM

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ZONING/SITE MAP



PLANNING BOARD CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 4701 North Meridian Avenue, Miami Beach, Florida

FILE NO. PB 18-0190

IN RE: The applicant, 4701 North Meridian LLC, requested a Conditional Use Permit to operate an outdoor restaurant as an accessory use to an apartment building in a RM-1 zoning district, pursuant to Chapter 118, Article IV and Chapter 142, Article II, Division 3, Subdivision V of the City Code.

LEGAL DESCRIPTION: Lots 1 through 16, Block 10 and Lots 11 thru 17, Block 13, of "NAUTILUS ADDITION OF MIAMI BEACH BAY SHORE CO." according to the plat thereof, as recorded in Plat Book 8, Page 130, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: May 22, 2018

DRAFT CONDITIONAL USE PERMIT

The applicant, 4701 North Meridian LLC, requested a Conditional Use Permit to operate an outdoor restaurant as an accessory use to an apartment building in a RM-1 zoning district, pursuant to Chapter 118, Article IV and Chapter 142, Article II, Division 3, Subdivision V 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-1 Residential Multifamily Low 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.

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.
5. The permissible commercial use in this structure shall be a restaurant with 42 outdoor seats or less.
6. The applicant agrees to the following operational conditions prospectively for the restaurant operations (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. The restaurant shall close for business no later than 11:00 PM. No orders shall be taken after 10:00 PM. The restaurant shall commence business no earlier than 8:00 AM.
 - b. Special events pursuant to the Miami Beach City Code, associated with the outdoor portions of the restaurant, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
 - c. The restaurant shall not be used to provide catering services or food for sale off the premises.
 - d. 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.
 - e. Garbage dumpster covers shall be closed at all times except when in active use.
 - f. Garbage pickups and service deliveries shall not take place between 7:00 PM and 7:00 AM. Trash service shall be required on days that the restaurant is open.

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 shall be prohibited.
8. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building.
9. Prior to 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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

18. 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.

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