

MIAMI BEACH

PLANNING DEPARTMENT

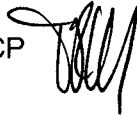
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: November 27, 2018

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 18-0229. 336 21st Street – The Plymouth Hotel**

The applicant, Plymouth Hotel LLC, is requesting Conditional Use approval for an Outdoor Entertainment Establishment and to exceed the Neighborhood Impact Establishment thresholds as defined in Section 142-1361 pursuant to Chapter 118, Article IV, and Chapter 142, Article III of the City Code.

RECOMMENDATION

Approval with conditions

ZONING/SITE DATA

Legal Description:

Lots 5 and 7, of Block E, of the amended map of the ocean front property of the Miami Beach Improvement Company, according to the Plat Book 5, Pages 7 and 8, of the Public Records of Miami-Dade County Florida.

Zoning District:

RM-2 (Residential multifamily, medium intensity)

Future Land Use Designation:

RM-2 (Residential multifamily, medium intensity)

Surrounding Uses:

North: Government use (the Bass Museum)
South: Residential use
West: Hotel use
East: Hotel use
(See Zoning/Site map at the end of the report)

THE PROJECT

The applicant has submitted copies of the original life safety plans for the project entitled "Plymouth" as prepared by Kobi Karp, PA, which were last revised on March 22, 2016. This proposal does not affect the floor plan from the original permitted plans. The area where the entertainment is proposed is the outdoor area around the pool. The entire project includes an 89 room hotel, a 159 seat restaurant, a lobby bar, and a pool deck area. The total number of occupants for the venue as determined by the Fire Marshall is 326 persons.

As a point of clarification, while the RM-2 zoning district normally prohibits entertainment establishments, outdoor entertainment establishments, and NIE's, recent legislation made outdoor entertainment possible in the Collins Park Arts District Overlay with Planning Board approval of a CUP and other code restrictions. Indoor entertainment establishments are still prohibited.

Additionally, although the advertisement for this application included a request for an NIE as well as for an outdoor entertainment establishment, on further review of Section 142-856 (b) and (d), the Planning Board does not have the ability to approve an NIE in the RM-2 zoning district.

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 permissible uses in the Medium Intensity Residential Multifamily (RM-2) as designated on the Future Land Use Map within the Comprehensive Plan.

- 2. The intended Use or construction would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan**

Consistent – As the letter of intent (LOI) states that the entertainment proposed is intended to augment the existing hotel's services and not become a separate venue or a destination, a traffic study was not required and staff does not anticipate that it exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

- 3. Structures and uses associated with the request are consistent with these Land Development Regulations.**

Consistent – Outdoor Entertainment Establishments are permitted as conditional uses in this overlay district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Building Permit.

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

Consistent – The proposed outdoor entertainment establishment may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. Staff accepts the conclusion of the sound consultants that there will not be any resulting adverse impacts. The facility would have to comply with all applicable laws and regulations for licensure.

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

Consistent – The site is located in the Museum Historic district, and as such, does not have parking requirements. All operational off-street parking for the site already occurs through valet parking on a 24 hour basis. Valet vehicle storage is located two blocks away at the parking garage located at 237 20th Street.

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

Consistent – Staff is recommending conditions to mitigate any potential adverse impacts from noise and other issues on the surrounding neighbors.

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

Consistent – There are other restaurants and nightclubs within the vicinity, however due to the nature of this request, negative impacts are not anticipated through the concentration of 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 Project

The hotel and restaurant has a Business Tax Receipt for an 89 room hotel and a 159 seat restaurant serving alcohol until 5:00 AM. The applicant outlines in the LOI that they want to augment their current operation with the ability to have groups of hotel guests book events on the pool deck with a DJ or string instrument. The Collins Park Arts District overlay limits the type of outdoor entertainment to ambient levels (which means at a volume that does not interfere with a normal conversation,) but when a DJ is present or an instrument is played, even at ambient levels, it is considered entertainment by the Land Use Regulation (LDR's.)

At the time of the building permit, there were many passive areas approved as lounge areas for hotel guests that were not open to the general public. These areas included a porch at the front, a conference room, and the pool deck. Although there was a 326 occupant content issued by the Fire Chief for the whole property, certain passive areas are not counted for the purposes of determining whether the venue constitutes a Neighborhood Impact Establishment (NIE). After further review, the applicant is proposing entertainment on the pool deck which is passive area open only to hotel guests. The pool deck area has 161 occupants according to the Fire Department occupant content certificate.

Operation

The applicant provided a description of the entertainment proposed for the outdoor pool deck in the LOI. They plan to have a DJ or a string instrument with speakers throughout the pool deck playing music at ambient level. The proposed hours of operation of the pool deck are as follows:

1. Beginning at 11:00 AM and finishing by 12:00 AM Sundays to Thursdays.
2. Beginning at 11:00 AM and finishing by 2:00 AM Fridays and Saturdays.

The applicant's proposed hours for events at the pool deck do not contradict the LDR's, but the hours of the entertainment are limited in Section 142-856 (b) to earlier closing times. The entertainment hours are limited to Sundays to Thursdays closing at 10:00 PM, and to Friday and Saturdays closing at 12:00 AM.

Please note that the indoor portions of this project, currently operated as Blue Ribbon Sushi and Grill are not allowed to have entertainment and have a current Business Tax Receipt (BTR) for a 5:00 AM closing time.

Sound

A Sound Study was prepared by Edward Dugger + Associates (ED+A). The study concluded that the existing sound system and sound levels at the pool deck are appropriate for hotel guests and neighboring properties. Also, because background music is provided at the pool currently, that the applicants proposal to have a DJ playing background music or a non-amplified string instruments, would not add to the existing acoustic output of with current sound system.

A peer review was not required, because the applicant proposes ambient level music and non-amplified string instruments or a vocalist.

Security and Crowd Control

The applicant is proposing outdoor entertainment for the enjoyment of its hotel guests, they are not proposing a change of operation into a separate venue or nightclub. Patrons enter the pool area only through the main entrance and lobby. There is a large foyer just inside the front door where patrons typically wait to be seated in the restaurant and the program for that area is proposed to remain the same. The LOI states that each event will have a minimum of three (3) security guards to control the event. Staff recommends that the security guards be tasked with the duty of keeping the pool deck free of persons that are not hotel guest.

All other operations outlined in the LOI and operations plan remain the same as the existing operations of the hotel, and staff has not found any of those operations problematic.

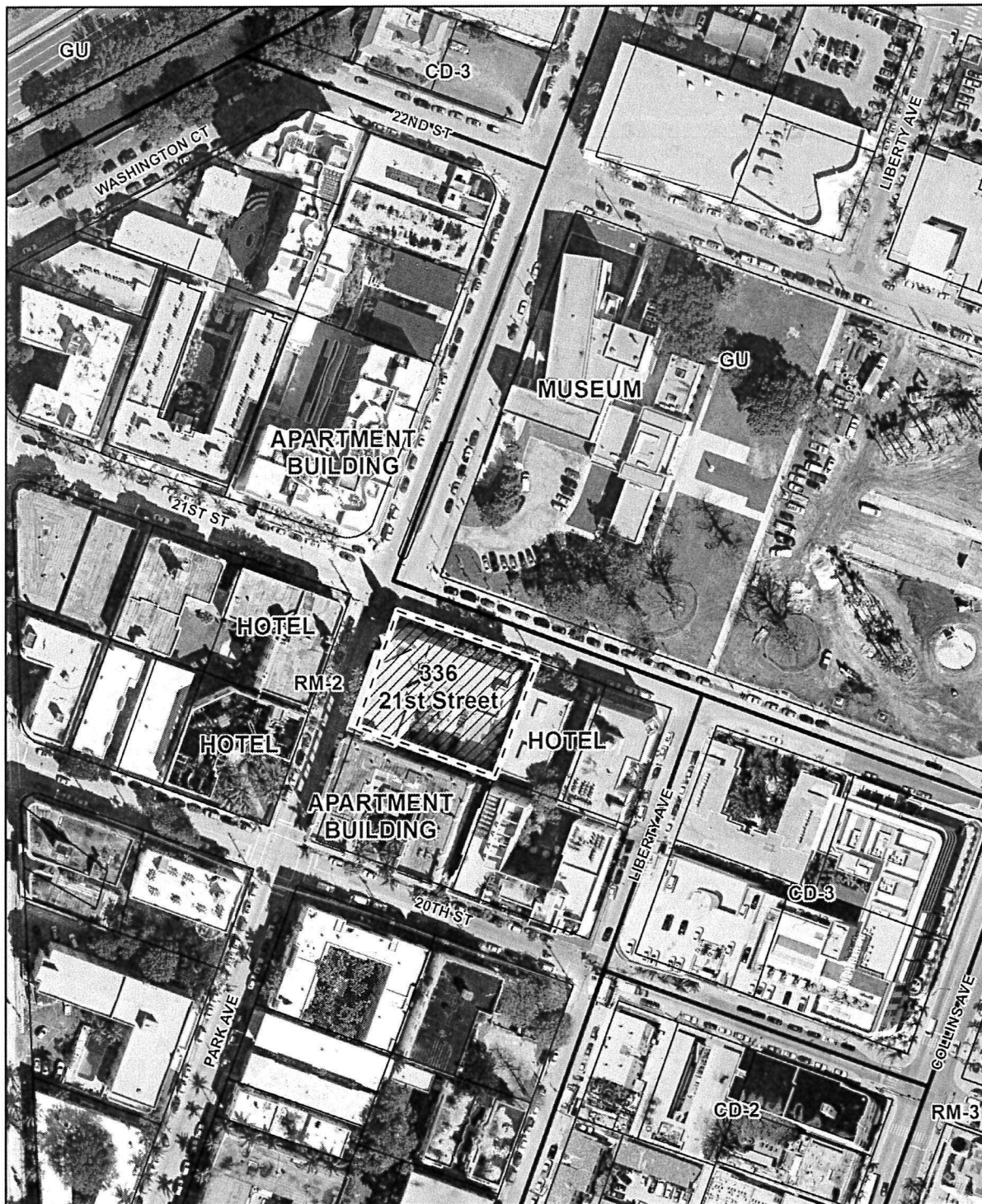
STAFF RECOMMENDATION

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

TRM/MAB/TUI

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ZONING/SITE MAP



0 30 60 120 180 240 300
Feet



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

PROPERTY: 336 21st Street

FILE NO. PB 18-0229

IN RE: The applicant, Plymouth Hotel LLC, is requested Conditional Use approval for an Outdoor Entertainment Establishment as defined in Section 142-1361 pursuant to Chapter 118, Article IV, and Chapter 142, Article III of the City Code.

LEGAL DESCRIPTION: Lots 5 and 7, of Block E, of the amended map of the ocean front property of the Miami Beach Improvement Company, according to the Plat Book 5, Pages 7 and 8, of the Public Records of Miami-Dade County Florida.

MEETING DATE: November 27, 2018

CONDITIONAL USE PERMIT

The applicant, Plymouth Hotel LLC, requested a Conditional Use Permit, pursuant to Chapter 118, Articles IV and V, for an Outdoor Entertainment Establishment, pursuant to Section 142, Article V. 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 RM-2, Residential Multifamily Medium Intensity zoning district within the Museum Historic District; and

That the use is consistent with the Comprehensive Plan for the area in which the property is located; and

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; and

That structures and uses associated with the request are consistent with the Land Development Regulations; and

That the public health, safety, morals, and general welfare will not be adversely affected; and

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, as approved by the Planning Board, and accepted by the applicant, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions:

1. This Conditional Use Permit is issued to Plymouth Hotel LLC, as owner and operator of an Outdoor Entertainment Establishment consisting of a hotel, restaurant, bar, and pool deck area. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
2. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property applicants, operators, and all successors in interest and assigns. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest or equivalent, shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Business Tax Receipt.
3. 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. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed outdoor entertainment establishment with the criteria listed below:
 - i. The indoor restaurant and bar area may operate until 5:00 AM, seven (7) days per week, as currently authorized on the hotel's Business Tax Receipt (BTR.)
 - ii. Up to 160 seats may be located in the indoor area.
 - iii. Up to 56 seats may be located in the outdoor seating area on the pool deck.

That number does not include the sunbathing type recreation chairs shown on the plans around the pool.

- iv. All outdoor room service or event operations shall cease by 12:00 AM Sundays to Thursdays, and 2:00 AM Fridays and Saturdays.
 - v. Entertainment, as defined by City Code, shall not be permitted in the indoor areas.
 - vi. Ambient background music, played by a DJ. or non-amplified live performances by string instruments are allowed on the pool deck only. All other outdoor areas are not allowed to have entertainment. The music may start at 10:00 AM and shall not operate past 10:00 PM, Sunday-Thursday, and 10:00 AM to 12:00 AM, Fridays and Saturdays.
 - vii. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Before entertainment is approved and added to the Business Tax Receipt (BTR), a field visit with the applicants sound engineer and Planning staff shall verify that the volume limits on the sound system are set at a level that is not audible at the edges of the property that abut residential properties.
 - viii. Televisions shall not be located anywhere in the exterior areas of the property.
- b. Deliveries may only occur between 5:00 AM and 8:00 PM, seven days per week.
 - c. Delivery trucks shall only be permitted to park within the loading areas authorized by the parking Department.
 - d. Delivery trucks shall not be allowed to idle in the loading zone area.
 - e. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - f. Trash collections may occur daily between 8:30 AM and 10:00 AM.
 - a. 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.
 - g. 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.

- h. 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. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
 - i. Garbage dumpster covers shall be closed at all times except when in active use.
 - j. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors shall be contained within the premises. Owner agrees to install an exhaust system, if required by code, for the kitchens of any commercial restaurants on the premise that will substantially reduce grease and smoke that would otherwise escape to the surrounding area. This may include the installation of a fan in connection with kitchen exhaust systems within the interior of the building in order to reduce noise levels at the exhaust outlet substantially in compliance with the plans as approved or in the alternative any such exhaust system shall be located along the west side of the property not directly adjacent to the southernmost or northernmost property lines.
 - k. Restaurant 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. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - m. As proposed by the applicant, a minimum of three (3) security staff shall be posted at the patron entrance and exit points to the pool deck. Security staff shall monitor whether the patrons are guest at the hotel, patron circulation, and occupancy levels in order to adjust crowds according to occupant loads.
 - n. Patrons shall not be allowed to queue on any public rights-of-way or the exterior premises. Security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrians on the public sidewalk.
 - o. The Operator shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.
4. A contract with a valet operator shall be submitted to the Planning Department for review and approval prior to obtaining a final Certificate of Occupancy or Business Tax Receipt, whichever occurs first.
5. 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 restaurant, as well as modifications to

the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about valet operations and loud, excessive, unnecessary, or unusual noise.

6. The applicant shall address the following Concurrency and Parking requirements, as applicable:
 - a. Prior to the issuance of a Business Tax Receipt (BTR), the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.
 - b. A final concurrency determination shall be conducted prior to the issuance of a BTR. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any BTR for outdoor entertainment.
7. 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.
8. 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).
9. 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.
10. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
11. 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.
12. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.

