

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: January 22, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 18-0237. f.k.a PB File No. 2318. 1854 Bay Road – Naiyara Restaurant.**

An application has been filed requesting a modification to a previously issued conditional use permit for a restaurant exceeding 100 seats. Specifically, this application includes a change of ownership.

RECOMMENDATION

Approval with conditions

HISTORY

April 19, 2016: A Conditional Use Permit was issued for the operation of a restaurant exceeding 100 seats.

ZONING / SITE DATA

Legal Description:

Purdy Ave Commercial Condo Island View Subdivision
Plat Book 6-115 Lots 5 Thru 8 Block 14 & All of Lot 1 & 2
Less N4Ft Of The E 1/2 of Lot 2 Block 14 A of Plat Book 9-
144 Island View Addition As Described In Declaration

Zoning:

CD-2, Commercial Medium Intensity Zoning District

Future Land Use Designation:

CD-2, Commercial Medium Intensity Zoning District

Surrounding Uses:

North	Office, retail and restaurant uses
East:	Industrial and retail uses
South:	Multifamily and office uses
West:	Multifamily and office uses

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

UPDATE

The applicant has submitted an updated disclosure that reflects the new ownership. No changes to the plans or operation conditions are proposed.

THE PROJECT

As previously approved, the subject business located on the ground floor of the Sunset Harbour Garage currently contains 131 seats on private property. As a reference, the applicant also shows the sidewalk café seats on public property, but those seats are not part of the application for this Conditional Use Permit (CUP). The restaurant does not have entertainment, which is not permitted in the Sunset Harbour neighborhood.

STAFF ANALYSIS

The City Code requires that restaurants in the Sunset Harbour Neighborhood with over 100 seats and an occupant content of more than 125 persons, but less than 199 persons and a floor area in excess of 3,500 square feet obtain a CUP. The subject property has 131 seats, which requires Conditional Use approval. 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.*

As required by the City Code, and indicated in the existing Conditional Use Permit, the outdoor portion of the restaurant is required to close by midnight, and the remainder of the restaurant must close by 2:00 AM.

As of the writing of this report there are no open violations. A citation was issued on 10/2/17 (closed on 7/31/18) for the operation of a sidewalk café without proper disclosure of an automatic service charge, and full disclosure of menu prices.

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



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

PROPERTY: 1854 Bay Road

FILE NO. PB18-0237 f.k.a. PB File No. 2318

IN RE: An application has been filed requesting a modification to a previously issued conditional use permit for a restaurant exceeding 100 seats. Specifically, this application includes a change of ownership.

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: April 19, 2016; January 22, 2019

MODIFIED CONDITIONAL USE PERMIT

The applicant, Aiyara, LLC, filed an application with the Planning Director pursuant Section 118, Article IV and 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 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 a Modified the Conditional Use Permit be GRANTED, as provided below. Underlining denotes new language and ~~striketrough~~ denotes stricken language from the previously issued Conditional Use Permit:

1. The Planning Board shall maintain jurisdiction of this Modified 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 Modified Conditional Use Permit is issued to Aiyara, 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. ~~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. 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.
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. A high-level trash/garbage compacting device may be located in the air-conditioned trash/garbage holding room within the facility.
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. Delivery vehicles shall only be permitted to make deliveries from 8:00 AM to 2:00 PM.
 - c. 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 restaurant and bar shall close by 2:00 AM, seven days per week. 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.
 - c. The patron occupant content shall be a maximum of 140 persons, or as determined by the Fire Marshall, whichever is lower.
 - d. The number of seats within the confines of the property shall not exceed 131.
 - e. Entertainment shall be prohibited at all times.
 - f. Special events pursuant to the Miami Beach City Code, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
 - g. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - h. 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.
 - i. 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.
 - j. 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.
13. This Modified Conditional Use Permit shall be recorded in the Public Records of Miami Dade County at the applicant's expense. ~~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 Modified 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 _____ day of _____, 2019.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, 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:
Print Name
Notary Public, State of Florida
My Commission Expires:
Commission Number:

{NOTARIAL SEAL}

Approved As To Form:
Legal Department ()

Filed with the Clerk of the Planning Board on _____ ()