

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA****PROPERTY:** 723 North Lincoln Lane**FILE NO.** PB21-0435, aka PB 19-0310, aka PB 18-0239

IN RE: An application for a modification to a previously issued conditional use permit for a Neighborhood Impact Establishment with Entertainment and an occupant content in excess of 200 person. Specifically the applicant requested to include outdoor entertainment on the rooftop, pursuant to chapter 118, Article IV and Chapter 142, Article V of the City Code. On April 25, 2023, the Planning Board held a public hearing to consider a revocation, modification, or imposition of additional conditions on the existing Conditional Use Permit due to code violations and complaints.

LEGAL**DESCRIPTION:**

Parcel C:

The South 37 ½ feet of Lot 4 and all of Lot 3, in Block 35, of AMENDED PLAT OF GOLF COURSE SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, at Page 26, of the Public Records of Miami-Dade County, Florida;

And

A strip of land thirty (30) feet wide and marked "BRIDLE PATH", adjacent to and lying East of North thirty-one and one quarter (31-1/4) feet of Lot 3 and the South thirty-seven and one-half (37-1/2) feet of Lot 4, Block 35, of AMENDED PLAT OF GOLF COURSE SUBDIVISION, according to the plat thereof, as recorded in Plat Book 6, at Page 26, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: September 24, 2019; October 26, 2021; and April 25, 2023**MODIFIED CONDITIONAL USE PERMIT**

The applicant, PPF 723 Lincoln Lane, LLC, requested a Conditional Use Permit, pursuant to Chapter 118, Articles IV and V, for a Neighborhood Impact Establishment (NIE) with a combined maximum occupant content in excess of 200 persons with entertainment, 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 CD-3, Commercial High Intensity District zoning 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: Underlining = new language; ~~Strikethrough = deleted language~~.

1. This Conditional Use Permit is issued to PPF 723 Lincoln Lane, LLC, as owner/operator of the Lincoln Eatery for a Neighborhood Impact Establishment, consisting of an over 200 seat food service establishment with entertainment. Any change of operator or fifty percent (50%) or more stock ownership 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.
2. 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 443 seat restaurant with the criteria listed below:
 - i. The indoor and outdoor areas may operate until 2 AM daily.

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- ii. Up to 110 seats may be located in the indoor area, as proposed. The occupancy load for the interior area of the ground floor shall not exceed 385 persons, as identified by the applicant, or such lesser number as determined by the Fire Marshal.
- iii. Up to 177 seats may be located in the outdoor area fronting Meridian Avenue and Lincoln Lane North, as proposed.
- iv. Up to 156 seats may be located in the rooftop area, as proposed. The occupancy load of the rooftop shall not exceed 222 persons, as proposed by the applicant or such lesser number as determined by the Fire Marshal.
- v. Background music played at a volume that does not interfere with normal conversation may be permitted in the outdoor areas including the ground level and the rooftop. Entertainment shall not be permitted on the ground level outdoor areas and rooftop.
- ~~vi. Entertainment shall be permitted on the rooftop outdoor areas. The rooftop sound system shall be subject to the following regulations:~~
 - ~~(1) The entertainment shall be limited to a volume that does not interfere with normal conversation.~~
 - ~~(2) The entertainment may consist of DJ's, live performances, and televisions; live music shall be prohibited, as described by the applicant.~~
 - ~~(3) The entertainment may operate from 10:00 AM to 11:00 PM, Sunday thru Thursday, and 10:00 AM to 2 AM, Friday thru Saturdays and legal long weekends and legal holidays.~~
 - ~~(4) The Outdoor Speaker System shall require the deployment of multiple small, closely spaced speakers driven at low individual volumes. The system design shall physically distribute sound uniformly within the listening area.~~
 - ~~(5) All outdoor speakers shall be oriented in such a way as to minimize sound propagation towards nearby residential areas.~~
 - ~~(6) Only the Applicant's approved outdoor speakers, as approved by this Conditional Use Permit, shall be used. All performers, including, but not limited to, DJ's, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's as to the requirements of this conditional use permit related to outdoor sound.~~
 - ~~(7) 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 in accordance with the design intent and recommendations of the sound system study submitted as part of~~

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~~this application and the conclusions of the City's peer review.~~

~~(8) At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.~~

~~(9) Before a certificate of use is issued for entertainment on the rooftop, a field visit with the applicants and Planning staff shall be required to verify the sound system operations.~~

~~(10) A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.~~

vii. A DJ, live performance, live music and televisions may play music in the indoor portions of the restaurant only. The indoor music may start at 10:00 AM and shall not operate past 11:00 PM, Sunday-Wednesday, and 10:00 AM to 2:00 AM, Thursday thru Saturdays and legal long weekends and legal holidays.

viii. Full meals shall be available during all hours that entertainment is present.

ix. Speakers may not be installed within twenty (20) feet of the main entrance, within the interior.

x. 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.

xi. All operable windows shall be closed at all times that there is entertainment.

xii. Televisions shall not be located anywhere in the ground exterior areas of the property.

xiii. Televisions shall be permitted on the rooftop; however, shall not be located closer than 6 feet from the rooftop parapet wall. Televisions shall be limited

to a volume that does not interfere with normal conversation.

- xiv.** After normal operating hours the establishment shall remain closed and no patrons or other persons, other than those employed by the establishment, shall remain therein between closing and 7 am.
- b. Deliveries may only occur between 7:00 AM and 5:00 PM, daily.
 - c. Delivery trucks shall only be permitted to park within the loading dock on Meridian Court.
 - 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 7:00 AM and 5:00 PM.
 - 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. Exterior speakers for fire, life safety purposes and background ambient music played at a volume that does not interfere with normal conversation may be permitted.
 - l. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

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- m. As proposed by the applicant, a security guard shall be onsite between 5 pm. and 2 am. Security staff shall monitor 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.
- 3. The applicant shall coordinate with the Parking Department to designate a minimum of two (2) spaces for passenger loading.
 - 4. The Applicant shall coordinate with the Parking Department to submit an updated comprehensive Transportation Demand Management (TDM) Plan to the Transportation Department for review and approval prior to receiving a BTR for the expanded uses of the rooftop.
 - 5. The Applicant shall assign personnel to manage loading operations to reduce potential conflicts with pedestrians in crosswalks.
 - 6. 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.
 - 7. The applicant shall address the following Concurrency and Parking requirements, as applicable:
 - a. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
 - b. 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 may be determined as determined by the Concurrency Management Division.
 - c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - d. Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of

Occupancy or Business Tax Receipt, whichever comes first. If required, a one-time fee in lieu of providing the required parking on site, as determined by staff, shall be paid prior to the issuance of the Certificate of Occupancy.

8. 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.
9. 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 for the expanded use of the rooftop. 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).
10. 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.
11. 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.
12. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
13. 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.
14. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
15. 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.
16. 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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17. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit (not private residences or hotel rooms) for inspection by the City (i.e. Planning Department, Code Compliance Department, Building Department, and Fire Department staff), to ensure compliance with the terms and conditions of this Conditional Use Permit. Failure to provide access may result in revocation of the Conditional Use Permit.

Dated 5/26/2023 | 4:01 PM EDT

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:
Rogelio Madan
BY: Rogelio A. Madan, AICP
Chief of Community Planning and Sustainability
for Chairman

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 30 day of May, 2023, by Rogelio A. Madan, Chief of Community Planning and Sustainability for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL] MIRIAM TERESA HERRERA
Notary Public - State of Florida
Commission # GG 940469
My Comm. Expires Dec 16, 2023
Bonded through National Notary Assn.

Miriam Herrera
Notary:
Print Name: Miriam Herrera
Notary Public, State of Florida
My Commission Expires: 12-16-23
Commission Number: 66940469

Approved As To Form:
Legal Department Nickalleg (5/26/2023 | 3:40 PM EDT)

Filed with the Clerk of the Planning Board on Jessica Gonzalez (5/26/2023 | 4:43 PM EDT)

DS
RM