

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA****PROPERTY:** 200 S Pointe Drive – Catch restaurant**FILE NO.** PB22-0542, a.k.a. PB20-0392**IN RE:** Modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment. Specifically, the applicant is requesting modifications to the ownership/operator, to expand the hours of operations and introduce recorded background music played at a level that does not interfere with normal conversation on the roof terrace, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.**LEGAL
DESCRIPTION:** See Exhibit "A"**MEETING DATE:** September 20, 2022 ~~November 17, 2020~~**CONDITIONAL USE PERMIT**

The applicant, ~~Ocho Miami, LLC~~, 200 S. Pointe Hospitality Group, 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 R-PS4, residential performance standard, high density 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

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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 ~~Ocho Miami~~, LLC, 200 S. Pointe Hospitality Group, LLC, as ~~owner~~/operator of the subject Neighborhood Impact Establishment, with an occupancy load exceeding 199 and including indoor 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. A progress report shall be scheduled within 60 days followed by the submission and acceptance of the affidavit.
2. The Board hereby imposes and the Applicant agrees to the following operational conditions for all permitted and accessory uses, and the applicant 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. The project authorized by this Conditional Use Permit includes the development and operation of the proposed restaurant, subject to the criteria listed below:
 - i. The hours of operation noted herein shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage establishments.
 - ii. The ground floor shall be limited to the following hours of operation:

a. Monday – Sunday:	11:00 AM to 2:00 AM (indoors)
	<u>11:00 AM to 12:00 AM (outdoor)</u>

The ground floor outdoor area shall close no later than 12:00 AM each night.
 - iii. The rooftop shall be limited to the following hours of operation:

a. Monday – Sunday:	11:00 AM to 8:00 PM
a. <u>Sunday - Wednesday:</u>	<u>11:00 a.m. to 11:00 p.m. (with an additional 30 minutes for cessation of operations)</u>
<u>Thursday – Saturday:</u>	<u>11:00 a.m. to 12:00 a.m. (with an additional 30 minutes for cessation of operations)</u>
 - iv. The maximum occupancy load for the ground floor shall not exceed 450, or such lesser number as approved by the Fire Marshall.

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- v. The maximum occupancy load for the roof top shall not exceed 250, or such lesser number as approved by the Fire Marshall.
- vi. Entertainment, as defined in City Code Section 114-1, shall be strictly prohibited in all indoor and outdoor areas. Recorded background music, played at a level that does not interfere with normal conversation, may be permitted provided that a sound system with directional speakers and a digital tamper-resistant sound level limiter is used on the open level above the ground floor to minimize impacts to adjacent properties.
- vii. Televisions and projectors shall not be located anywhere in the exterior areas of the property.
- viii. 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 the establishment's closing time and 8:00 AM.
- ix. Special event permits shall be prohibited.
- b. The maximum patron-occupant load for the open level above the ground floor shall not exceed 250 individuals. The patron-occupant load shall be determined by the Fire Marshall.
- c. The roof top plan shall be revised and approved by the Fire Marshall to comply with the maximum patron occupant load of 250. All charts, plans, and zoning data shall be updated prior to the issuance of a BTR.
- d. Deliveries may only occur between 8:00 AM and 12:00 PM each day.
- e. Delivery trucks shall only be permitted to load and unload within the designated freight loading zones.
- f. Delivery trucks shall not be allowed to idle in loading zones, including the service road.
- g. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- h. Trash collections may occur during the following hours only:
 - Monday – Friday: 8:00 AM to 12:00 PM
 - Saturday – Sunday: 9:00 AM to 12:00 PM
- i. The building permit plans shall indicate that adequate trash room space, air conditioned and noise baffled, is provided on site, 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.
- j. 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

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will not be necessary.

- k. Garbage dumpster covers shall be closed at all times except when in active use.
 - l. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors shall be contained within the premises. Applicant agrees to install an exhaust system, if required by code, for the kitchens 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 footprint of the building in order to reduce noise levels at the exhaust outlet substantially in compliance with the plans as approved.
 - m. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - n. Any host/hostess desk shall be located on private property.
 - o. Patrons shall not be allowed to queue on any public rights-of-way or on the exterior of the premises. Staff shall monitor any crowds to ensure that they do not interfere with the free flow of pedestrians on the public sidewalk.
 - p. Applicant / Operator(s) 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 and Transportation Department to submit a comprehensive Transportation Demand Management (TDM) Plan to the Transportation Department for review and approval prior to receiving a Temporary Certificate of Occupancy.
 - 4. 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.
 - 5. The applicant shall comply with the following Transportation Demand Management requirements:
 - a. The applicant has provided a Transportation Demand Management (TDM) manager to coordinate TDM measures. An implementation plan for TDM strategies shall be presented at the time of Business Tax Receipt (BTR) application. Annual TDM progress reports shall be submitted to the City concurrently with the request for BTR renewal.
 - b. Transit Passes: The applicant shall participate in the Miami-Dade Transit Corporate Discount Program and offer a transit subsidy to interested employees.

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- c. Bike-Share Passes: The applicant shall coordinate with Citibike or any other City-sponsored bike-share vendor to provide bike-share passes to interested employees.
 - d. Other Strategies: The applicant shall coordinate with South Florida Commuter Services to identify other TDM strategies, including van-pool, car-pool, and incentive parking for inclusion in the TDM plan.
 - e. The Developer shall conduct an updated valet utilization study incorporating the rideshare demand within 60 days after opening of the proposed development. The updated analysis shall include weekday peak hour and weekend peak hour analysis. Prior to commencement of the post-opening valet/ride-share analysis, the Developer's Traffic Engineer shall coordinate with the Transportation and Mobility Department.
6. The applicant shall address the following Concurrency and Parking requirements, as applicable:
 - a. A Maintenance of Traffic plan (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 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.
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 for the first restaurant to obtain such. Details of the loading operations, including size and frequency of vehicles, as well as full utilization details of the valet operation, shall be submitted for review as part of this progress report. 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).

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9. 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.
10. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, other than modification to the roof top plan required to comply with Condition 2(c), may require the applicant to return to the Board for approval.
11. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
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. 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.
14. 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.
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.
16. 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.
17. The modifications to the CUP approved herein, which relate to the operation of the outdoor portions of the venue above the ground floor area later than 8:00 pm, including the allowance of ambient-level, recorded music within the outdoor areas, shall be subject to adoption of an LDR amendment currently pending before the City Commission. As specified in the hold harmless letter provided by the applicant, in the event that such LDR Amendment is not adopted by the City Commission, or is modified in a manner that conflicts with any part of the approval herein, the applicant shall be required to return to the Planning Board for an additional modification to the CUP, prior to the issuance of any building permit, certificate of use, or BTR for the venue.

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Dated 10/31/2022 | 1:04 PM EDT

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

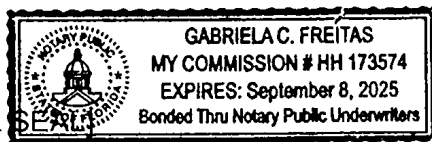
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Rogelio Madan
BY: Rogelio Madan, AICP
Chief of Chief of Community Planning & Sustainability
FOR THE CHAIRMAN

STATE OF FLORIDA
)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 31st day of October, 2022, by Rogelio Madan, Chief of Community Planning & 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]



Notary:

Print Name: Gabriela C. Freitas

Notary Public, State of Florida

My Commission Expires: Sept. 08, 2025Commission Number: HH173574Approved As To Form:
Legal Department

DocuSigned by:

(10/31/2022 | 11:09 AM EDT

Filed with the Clerk of the Planning Board on

DocuSigned by:

Jessica Gonzalez

(10/31/2022 | 1:15 PM EDT

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EXHIBIT "A"**Legal Description**

Commence (P.O.C.) at the Southeasterly corner of Biscayne Street (formerly Biscayne Avenue) and Washington Avenue, as said Street and Avenue are shown on the SOUTH BEACH PARK SUBDIVISION, recorded in Plat Book 6, Page 77, of the Public Records of Miami - Dade County, Florida, and run South $10^{\circ} 47' 35''$ West, along the Easterly line of said Washington Avenue, a distance of 6.16 feet to a point on the Southerly line of a 6.00 foot Roadway Dedication, said Dedication recorded in Official Records Book 12566, Page 2914, of the Public Records of Miami - Dade County, Florida; thence run North $87^{\circ} 38' 57''$ East, along the Southerly line of said 6.00 foot Dedication, along the existing Southerly line of Biscayne Street, as expanded by said 6.00 foot Dedication, a distance of 566.28 feet to the Point of Beginning of the following described parcel of land; thence continue North $87^{\circ} 38' 57''$ East, along the last described course, for a distance of 69.34 feet to a point; thence run South $01^{\circ} 10' 37''$ West for a distance of 212.06 feet to a point; thence run South $04^{\circ} 09' 08''$ West for a distance of 25.56 feet to a point; thence run North $85^{\circ} 50' 52''$ West for a distance of 4.33 feet to a point; thence run South $04^{\circ} 09' 08''$ West for a distance of 15.63 feet to a point; thence run South $62^{\circ} 18' 04''$ West for a distance of 15.52 feet to a point; thence run South $27^{\circ} 41' 56''$ East for a distance of 4.33 feet to a point; thence run South $62^{\circ} 18' 04''$ West for a distance of 36.38 feet to a point; thence run North $27^{\circ} 41' 56''$ East for a distance of 68.49 feet to a point; thence run North $62^{\circ} 18' 04''$ East for a distance of 2.00 feet to a point; thence run North $27^{\circ} 41' 56''$ West for a distance of 8.33 feet to a point; thence run North $26^{\circ} 10' 10''$ East for a distance of 60.35 feet to a point; thence run North $02^{\circ} 21' 03''$ West for a distance of 154.92 feet to the Point of Beginning.

Said lands lying and being in Section 10, Township 54 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.