

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

PROPERTY: 1426A Alton Road (a.k.a. 1218 14th Court)

FILE NO. 2058

IN RE: The Request by Foxhole Bar, LLC for Conditional Use approval, pursuant to Section 142-1362 of the Land Development Regulations of the City Code, for a Neighborhood Impact Establishment consisting of an alcoholic beverage establishment, also operating as an entertainment establishment, with an occupant content above 199 persons.

LEGAL

DESCRIPTION: Lots 6 And 7, Block 78-A, Commercial Subdivision, According To The Plat Thereof As Recorded In Plat Book 6, Page(S) 5, Public Records Of Miami-Dade County, Florida.

MEETING DATE: March 27, 2012

CONDITIONAL USE PERMIT

The applicant, Foxhole Bar, LLC, filed an application with the Planning Director pursuant to Section 142-1362 of the Land Development Regulations of the City Code, for a Neighborhood Impact Establishment consisting of an alcoholic beverage establishment, also operating as an entertainment establishment. 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 staff recommendations, as modified by the Planning Board, that a Conditional Use Permit as requested and set forth above, be GRANTED subject to the following conditions to which the applicant has agreed:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report in 60 days from the date of this public hearing. 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 Conditional Use Permit is issued to Foxhole Bar, LLC as operator of this Neighborhood Impact Establishment consisting of an alcoholic beverage establishment, with entertainment and an occupant content in excess of 200 persons. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
3. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. 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.
5. The hours of operation shall be as proposed by the applicant, 12:00 noon to 5:00 a.m. seven days a week.
6. As recommended by the sound consultant, The Audio Bug, Inc., the applicant shall install acoustical panels inside the vestibule to help deaden this area and further attenuate sound passing through this space, as described in the report, dated March 6, 2012.
7. The applicant shall post security personnel on Thursdays, Fridays and Saturdays, as well as on days when "entertainment," as defined, is advertised or a special event is planned, such as, but not limited to significant sports event or planned gatherings when music or noise may exceed the level of normal conversation or background music.
8. The applicant shall investigate the possibility of having the main entrance door facing the alley, to open in the opposite direction of how it currently opens – open to exit towards the south direction.
9. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
10. All "wet T-shirt," "thong" or "bikini" events shall be prohibited.

11. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to staff review and approval.
12. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
13. The City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division shall make the determination of the project's fair-share mitigation cost. A final concurrency determination shall be conducted and mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any modified Business Tax Receipt,
14. 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 area 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.
15. In the event that there is queuing of people to gain entrance to the establishment, stanchions shall delineate the area to allow for the free-flow of pedestrians. Security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrian on the public sidewalk.
16. Security staff shall monitor patron circulation and occupancy levels during the hours of operation.
17. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this entertainment establishment.
18. 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.
19. 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.
20. 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.
21. 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, certificate of use, certificate of occupancy, certificate of completion or business tax receipt shall be issued until this requirement has been satisfied.

22. 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.
23. 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 12th day of MAY, 2012

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
Richard G. Lorber, AICP, LEED AP
Acting Planning Director
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 12th day of MAY, 2012, by Richard G. Lorber, Acting Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[NOTARIAL SEAL]

TERESA MARIA
MY COMMISSION # DD 928148
EXPIRES: December 2, 2013
Bonded Thru Budget Notary Services

[Signature]
Notary:
Print Name: TERESA MARIA
Notary Public, State of Florida
My Commission Expires: 12-2-13
Commission Number: DD 928148

Approved As To Form:
Legal Department (9/15-3-12)



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

PLANNING DEPARTMENT
Tel: 305-673-7550 Fax: 305-673-7559

May 8, 2012

James E. Rauh, Esq.
Terminello & Terminello, P.A.
1111 Lincoln Road, Suite 400
Miami Beach, FL 33139

Re: File No. 2058 – 1426A Alton Road – Foxhole Bar

Dear Mr. Rauh:

Attached please find the Conditional Use Permit for Foxhole Bar, LLC, executed by Richard G. Lorber, Acting Planning Director, on behalf of the Chairperson of the Planning Board of the City of Miami Beach. The Conditional Use Permit must be recorded at your expense, at the earliest possible time, at the Office of Public Records of Miami-Dade County, which is located at 22 N.W. First Street, Miami, Florida. After recordation, please send the Original Recorded document to the Planning Department.

As a reminder, pursuant to a condition of approval of the Permit, this applicant is due for a progress report at the May 22, 2012 meeting of the Planning Board. Should you not be able to have the original recorded Conditional Use Permit by then, please provide a certified copy from the Recorder's Office.

Should you have any questions, please do not hesitate to call me.

Sincerely,

Mercy Lamazares, AICP
Principal Planner

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