

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 8, 2025

FROM: Thomas R. Mooney, AICP
Planning Director

^{DS}


For TRM

SUBJECT: **PB21-0488. 235 23rd Street.** Progress report as required by the Conditional Use Permit for a Neighborhood Impact Establishment with entertainment.

RECOMMENDATION

Review the issues of non-compliance and continue the progress report to a date certain of May 6, 2025.

BACKGROUND

June 27, 2006: The Planning Board approved a Conditional Use Permit for a Neighborhood Impact Establishment with entertainment.

November 17, 2009: The Planning Board approved a modification to the previously approved Conditional Use Permit for a change of ownership and operator.

July 27, 2010: The Planning Board approved a modification to the previously approved Conditional Use Permit to allow an outdoor café without entertainment and without dancing in the adjacent existing surface parking lot.

July 27, 2021: The Planning Board modifications to the ownership/operator and the relinquishment of the previously approved outdoor café.

February 24, 2025: BTR (Business Tax Receipt) was issued to the new operator.

STAFF ANALYSIS

On July 27, 2021, a Modified Conditional Use Permit (CUP) was issued to Miami Loud Holdings, LLC, as operator of the Neighborhood Impact Establishment (CUP attached). Condition 2 of the modified CUP allows the submission of an affidavit to transfer approval to a new operator or owner, and requires that a progress report be scheduled prior to the applicant's submission and staff's acceptance of the affidavit. The applicant requested that a progress report be scheduled before the Planning Board on December 30, 2024. On February 24, 2025 a BTR was issued to the new operator.

As part of the progress report review, the Board is advised of any citations and complaints issued by the Code Compliance Department regarding the operation of the venue:

1. 12/6/2024 –CC2024-19054

Code Compliance Officer Merisier received a complaint via email about 235 23rd Street operating without a current 2025 BTR under the new entity named Baraca. Upon arrival, CCO Merisier met with Florian, the Director of Operations, BB, and Marco who are owners of the establishment. CCO Merisier requested their current BTR, and Florian provided (BTR011932-05-2022 for MIAMI LOUD HOLDINGS LLC), doing business as GALA. CCO Merisier inquired if the establishment had changed its business name. The parties present claimed they were all the same owner, but the DBA for the entity had changed. During the encounter, CCO Merisier was shown several additional documents including a conditional use permit under the business name Mokai. At this point, CCO Merisier contacted ACCA Russell, who arrived minutes later with CCO Negrón. Upon their arrival, a fourth individual named Hyde, presenting himself as an additional owner, began communicating directly with ACCA Russell. ACCA Russell informed all parties that they lacked an active BTR to operate the business and instructed them to cease operations immediately. Hyde claimed his lawyer, Micky Marrero, had filed all paperwork with finance to avoid any issues. During this encounter, Ray Breslin, President of the Collins Park Neighborhood, interjected, questioning the reason Code Compliance were asking the establishment to cease operating. He later contacted Blake Govan from the Mayor's office. Breslin urged ACCA Russell to speak with Govan to obtain contact information for the supervisor on duty, to bypass the investigation and to prevent the cessation of operations. ACCA Russell declined to speak with Govan as he needed to go through proper channels to contact the department. Later, ACCA Russell spoke with Micky Marrero, the attorney for the owners who inquired about the reason for the visit and the necessity to halt operations until they could consult with the finance department to resolve the issue. The owners complied after exhausting all of their resources, they then ensured that all parties vacated the premises promptly. ACCA Russell, CCO Merisier and CCO Negrón conducted a walkthrough of the establishment to confirm that all patrons had departed from the business. Violation Issued. All interactions were captured on body worn camera.

- **Appealed to Special Magistrate**

02/24/2025 SM HEARING -

APPEAR: MICKEY MARRERO, ESQ.; OFC. MARIO MERISIER.

1. The Appeal is DENIED.

2. The Petitioner is hereby adjudicated guilty of the 1st offense.
3. The fine of \$1,000.00 is hereby imposed and is payable to Code Enforcement by March 26, 2025.
4. The administrative court cost shall not be returned to Petitioner.

2. 3/15/2025 – CC2025-19826

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

REF: Operating as a promoter for "Bacara Club" for the weekend of March 14th-16th without a City of Miami Beach business tax receipt.

(RockstarLifestyleEnt)

1st Offense

\$1000 Fine

BWC was not activated as this was internet research.

3. **3/22/2025 – CC2025-19896:**

Section 6-3 (9). Any qualifying alcoholic beverage establishment in the City must provide the Police Chief or designee with written notification with the disclosure requirements for alcoholic beverage establishments of this section.

REF: Failing to provide written notification (at least 96 hours prior to the start of a promoted event within the city) to the Miami Beach Police Department Chief or designee for 50 Cent performance on March 21, 2025.

1st Offense

\$1000.00 Fine

4. **3/22/2025 – CC2025-19897:**

(1) Section 82-443. Failing to comply with the measures imposed during the High Impact Period REF: Failing to provide written notification (at least 96 hours prior to the start of a promoted event within the city) to the Miami Beach Police Department Chief or designee for 50 Cent performance on March 21, 2025 during a high impact period.

1st Offense

The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted violations and warnings:

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The Board reserves the right to modify this Modified 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 Modified 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 Miami Loud Holdings, LLC, Mokai Lounge, LLC as operator of this Neighborhood Impact Establishment, ~~including Mokai Lounge and Mokai Café. Subsequent owners and operators shall be required to appear before the Board, , within 90 days of the change of ownership or operator to affirm their understanding of the conditions listed herein and to obtain a Modification to this Modified Conditional Use Permit. Any change of operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new operator or owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Certificate of Use/Business Tax Receipt. A progress report shall be scheduled prior to the submission and acceptance of the affidavit.~~
3. The conditions of approval for this Modified Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
17. The Planning Board shall retain jurisdiction to call the operators back before them and impose new conditions, modify the hours of operation, other noise conditions, or the occupant load should there be issuance of written warnings and/or notices of violation (as determined by Code Compliance) about loud, excessive, unnecessary or unusual noise.

24. 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.
25. 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.

Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues noted herein, and initiate modification/revocation proceedings, this matter may be placed on the June 10, 2025 agenda of the Board as a modification/revocation hearing. If a future public hearing is set, the board may consider the issues of noncompliance and the possible modification or revocation of the approval. Based on substantial competent evidence, the board may consider revoking the approval, modifying the conditions thereof, or imposing additional or supplemental conditions.

At this time, staff recommends that the Board hear testimony from the applicant, and continue the progress report to May 6, 2025, in order to monitor the operations.

STAFF RECOMMENDATION

Staff recommends that the Board hear testimony from the applicant and the public, and continue the progress report to May 6, 2025.

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

PROPERTY: 235 23rd Street.
Neighborhood Impact Establishment

FILE NO: PB21-0448 a.k.a. File No 1764

IN RE: An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment with Entertainment. Specifically, the applicant is requesting modifications to the ownership/operator and to relinquish the previously approved outdoor Cafe, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: The west 10 feet of Lot 2, and all of Lots 4, 5, & 6 Block 3 of Ocean Front Property of Miami Beach Improvement Co., according to the Plat thereof, as recorded in Plat Book 5, Page 7 of the public records of Miami-Dade County, Florida.

MEETING DATE: July 27, 2021 ~~July 27, 2010~~

MODIFIED CONDITIONAL USE PERMIT

The applicant, Mokai Lounge, LLC, filed an application with the Planning Director for a modification to a previously approved Conditional Use Permit. Notice of the request for Conditional Use 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 record for this matter:

That the property in question is located in the CD-3, Commercial High Intensity Zoning District;

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 Ordinance;

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 if the following conditions are met.

PB21-0448 a.k.a. File No 1764 - 235 23rd Street.

July 27, 2021.

Page 2 of 5

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 recommendation, that the modification to the previously approved Conditional Use Permit as requested and set forth above be GRANTED, subject to the modified conditions listed below indicated by underlining (new language) and ~~striking through~~ (deleted language):

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The Board reserves the right to modify this Modified 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 Modified 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 Miami Loud Holdings, LLC, Mokai Lounge, LLC as operator of this Neighborhood Impact Establishment, ~~including Mokai Lounge and Mokai Café. Subsequent owners and operators shall be required to appear before the Board, , within 90 days of the change of ownership or operator to affirm their understanding of the conditions listed herein and to obtain a Modification to this Modified Conditional Use Permit. Any change of operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new operator or owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Certificate of Use/Business Tax Receipt. A progress report shall be scheduled prior to the applicant's submission and staff's acceptance of the affidavit.~~
3. ~~The occupancy load shall be as proposed by the applicant, 171 persons with 151 seats, or as determined by the Fire Marshall.~~
3. The conditions of approval for this Modified Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. The applicant shall provide staff documents verifying the service of a valet parking operator which also specifies the locations where vehicles will be stored. The applicant shall also be required to provide and maintain evidence of valet storage facilities. These documents shall be submitted to and approved by staff prior to the approval of a Certificate of Use /Business Tax Receipt.
5. The hours of operation shall be as proposed by the applicant—from 10:00 p.m. until 5:00 a.m., 7 days a week, for Mokai Lounge indoors ; and close at 2:00 a.m. 7 days a week for Mokai Café outdoors.
6. All entertainment shall be limited to the interior of the establishment; no outdoor entertainment shall be permitted.
7. ~~Entertainment, live music, and dancing shall be prohibited in the Mokai Outdoor Café. Only ambient background music at a level that does not interfere with normal conversation shall be permitted. Small speakers shall be distributed throughout the whole café.~~

PB21-0448 a.k.a. File No 1764 - 235 23rd Street.

July 27, 2021.

Page 3 of 5

8. The installation plan for the sound system for Mokai Cafe, including the location of all speakers and sound system controls, shall be submitted to staff for review and approval prior to obtaining a building permit.
9. Once the sound system is completely installed, but before the Modified Certificate of Use/Business Tax Receipt has been approved, the system shall be tested under the supervision of an acoustical consultant acceptable to staff to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. A final report issued by said acoustical consultant shall be submitted to staff for review and approval.
10. Business identification signs shall be submitted to Design Review staff for review and approval before installation.
11. The applicant shall require patrons to queue inside the property. No queuing shall occur on the sidewalk or any public right-of-way.
12. Break-away tension stanchions shall be placed to control crowds and allow for the free-flow of pedestrian on public sidewalks, and shall be manned by the establishment's security personnel. The placement of the stanchions shall be provided on the modified site plan and submitted to staff for review and approval.
13. All deliveries and trash removal shall be undertaken from Liberty Avenue via the parking lot to the northwest of the site, adjacent to the trash room, and **not** from 23 Street. The applicant shall submit to staff evidence or documents that verify the applicant's contract with a waste removal company.
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 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.
15. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
16. A final certificate of completion or certificate of occupancy, whichever may apply, including an occupant load certificate for the space, shall be obtained before an application is made for a Certificate of Use/Business Tax Receipt.
17. The Planning Board shall retain jurisdiction to call the operator back before the Board and impose new conditions, modify the hours of operation, other noise conditions, or the occupant load should there be issuance of written warnings and/or notices of violation (as determined by Code Compliance) about loud, excessive, unnecessary or unusual noise.
18. The receipt of a written warning or a notice of violation of section 46-158, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, shall be deemed a violation of this Conditional Use Permit

*PB21-0448 a.k.a. File No 1764 - 235 23rd Street.
July 27, 2021.*

Page 4 of 5

and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.

19. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") or Section 46-152, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.
20. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the approval of an occupational license a Modified Certificate of Use/Business Tax Receipt to operate a Neighborhood Impact Establishment.
21. 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.
22. This Modified Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a modified certificate of use.
23. The applicant agrees and shall be required to provide access to areas subject to this CUP (not including private residences) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the terms and conditions of this CUP.
24. 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.
25. 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.

PB21-0448 a.k.a. File No 1764 - 235 23rd Street.
July 27, 2021.

Page 5 of 5

Dated: 8/15/2021 | 6:59 PM EDT

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

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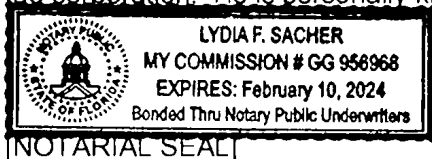
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BY: _____
Rogelio Madan, AICP
Chief of Chief of Community Planning & Sustainability
FOR THE CHAIRMAN

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 15th day of August, 2021, 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.



Notary:

Print Name: Lydia F. Sacher

Notary Public, State of Florida

My Commission Expires: February 10, 2024Commission Number: 607956968Approved As To Form:
Legal Department

8/15/2021 | 11:35 AM EDT

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Filed with the Clerk of the Planning Board on 8/20/2021 | 1:26 PM EDT

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