



CFN 2012R0540104  
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HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

## PLANNING BOARD CITY OF MIAMI BEACH, FLORIDA

**PROPERTY:** 1681 Lenox Avenue

**FILE NO.** 2069

**IN RE:** The application by Yard House USA, Inc. requesting Conditional Use approval pursuant to Sections 118-192 and 142-1362 of the City Code, to operate a restaurant selling alcohol with an approximate total of 403 seats - 355 indoors, and 48 outdoors - and an occupant content above 299 persons. There would be no dancing, or entertainment, and music would be played at background level only.

**LEGAL DESCRIPTION:** Lots 16 and 17, Block 38, Palm View subdivision, according to the plat thereof, as recorded in Plat Book 6, page 29 of the Public Records of Miami-Dade County, Florida

**MEETING DATE:** July 24, 2012

### CONDITIONAL USE PERMIT

The applicant, Yard House USA, Inc., filed an application with the Planning Director for a Conditional Use Permit pursuant to 118-192 and 142-1362 of the Land Development Regulations of the City Code of Miami Beach. 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 Zoning District

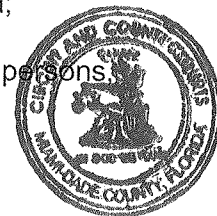
That the use is consistent with the Comprehensive Plan for the area in which the property is located;

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 recommendation, 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. If deemed necessary, at the request of the Planning Director, the applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the 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 Conditional Use Permit is issued to Yard House USA, Inc., or any of its "Yard House" subsidiaries or affiliates, as tenant/operator of the property. Subsequent owners and operators shall be required to appear before the Board, within 90 days of change of ownership or operator to affirm their understanding of the conditions listed herein.
3. The conditions of approval for this Conditional Use Permit are binding on applicant, the property's owners, and all successors in interest and assigns.
4. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Conditional Use Permit.
5. The hours of operations shall be as proposed by applicant, 11:00 AM through midnight, Sunday through Thursday; and 11:00 AM through 2:00 AM, Friday and Saturday.
6. Any queuing of patrons shall occur within the property only, as proposed by the applicant.
7. In the event there is queuing of people to gain entrance to the establishment, restaurant or security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrians on the public sidewalk.
8. Should the applicant choose to provide valet service in the future, the applicant shall submit a valet circulation and drop off/pick up plan to staff for review and approval.
9. Applicant shall not play music, whether amplified or live, at a volume that constitutes entertainment under the Code of the City of Miami Beach at any time, indoors or outdoors, as proposed.
10. The installation plan for the sound system, both outside and inside, including the location of all the speakers and sound system controls, shall be as recommended by the Audio Bug, Inc., in the sound report dated May 24, 2012. Location of speakers and controls shall be shown on the plans and submitted to staff for review and approval prior to obtaining a building permit.
11. When the sound system is completely installed, but before the Business Tax Receipt has been issued, it shall be tested under the supervision of a qualified acoustical consultant acceptable to

Planning staff, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound study and that the sound does not adversely affect the neighbors. A final report issued by such acoustical consultant shall be submitted to staff.

12. Commercial use of the rooftop throughout the property shall be prohibited.
13. The occupant load shall be as determined by the Fire Marshal, and an occupancy capacity certificate shall be issued prior to the approval of any Certificate of Occupancy, Certificate of Completion or Business Tax Receipt, whichever occurs first.
14. Restaurant staff or security personnel shall monitor the two access points in and out of the facility and shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation. A violation of this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
15. The applicant shall contract with a waste collection company to collect refuse, with pickup 7 days a week, between the hours of 7:00 AM and 9:00 AM, except Sunday pickup schedule will be between 9:00 AM and 11:00 AM, as proposed.
16. Deliveries shall be made 6 days a week between the hours of 7:00 AM and 9:00 AM, as proposed.
17. The applicant shall submit an MOT (Method of Transportation) 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.
18. Prior to the issuance of a Certificate of Occupancy, 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. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt.
19. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter on Lenox Avenue and around the perimeter of the property in excellent condition, keeping these areas clean and free of all refuse at all times.
20. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation or the occupant should there be complaints or issuance of written warnings and/or notices of violation about loud, excessive, unnecessary, or unusual noise.
21. 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.
22. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit.

23. 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.
24. Non-compliance with any of the conditions specified herein shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code, including but not limited to revocation of this Permit.
25. 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.
26. 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 114-7 of the 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 permit.
27. 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 27th day of July, 2012.

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: 

Richard G. Lorber, Acting Planning Director, AICP,  
LEED AP  
For Chairman

STATE OF FLORIDA           )  
COUNTY OF MIAMI-DADE   )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2012, by Richard G. Lorber, AICP, LEED AP, 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.



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

[NOTARIAL SEAL]

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

(Weld 7-27-12)

STATE OF FLORIDA, COUNT OF DADE

I HEREBY CERTIFY that this is a true copy of the  
original filed in this office on \_\_\_\_\_ day of

AUG 09 2012, A D 20 \_\_\_\_\_

WITNESS my hand and Official Seal.

HARVEY RUVIN, CLERK, of Circuit and County Courts

By Tanashia Arnold D.C.

**TANASHIA ARNOLD 1144**

