

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 21, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB17-0158. 1060 Ocean Drive- Ilov305 - Progress Report**

RECOMMENDATION:

Discuss the item, including the timing of any future progress reports.

BACKGROUND

January 23, 2018 The applicant, ILOV305 I, LLC obtained a Conditional Use approval for a Neighborhood Impact Establishment (NIE) with an occupant content of 200 or more persons, pursuant to Section 142, Article V.

January 24, 2019 A Business Tax Receipt (BTR) was issued for the establishment (BTR004632-08-2018.)

PROGRESS REPORT

The applicant is before the Board pursuant to Condition No. 1 and Condition 6(A)(v) of the CUP as follows:

1. 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. 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).

6.(A)(v) 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. 60 days after opening, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed.

Please see attached sound system confirmation report.

As of the writing of this report, there is one open violation (CC2019-01726) which has been appealed to the Special Master (SMA2019-01945) regarding the failure to disclose an automatic gratuity on the menu.

STAFF RECOMMENDATION

Staff recommends that the Board discuss the timing and nature of future progress reports after hearing from the applicant and any members of the public.

April 10, 2019

City of Miami Beach Planning Department
Attn: Michael Belush, Planning and Zoning Chief
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

**Re: Planning Board File No. PB17-0158
ILOV305 I, LLC ("ILOV305") Sound System Confirmation Report
1060 Ocean Drive, Miami Beach, Florida 33139**

Dear Michael:

Enclosed please find the Sound System Confirmation Report as required under Condition No. 6(A)(v) of the Conditional Use Permit ("CUP") dated January 23, 2018, verifying the sound system at the above referenced location is operating in compliance with the CUP and as designed.

Should you require any additional information, please contact the undersigned.

Very truly yours,

GREENSPOON MARDER LLP

/s/ James E. Rauh

James E. Rauh, Esq.
For the Firm

Enclosure(s)

DAS AUDIO
6900 NW 52nd Street
Miami, Florida 33137
(305) 436-0521

April 10, 2019

Michael Belush, Chief
Planning and Zoning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

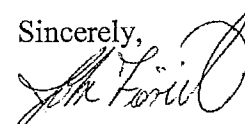
Re: Planning Board File No. PB17-0158
ILOV305 I, LLC ("ILOV305") Sound System Confirmation Report
1060 Ocean Drive, Miami Beach, Florida 33139

Dear Michael,

This correspondence provides certification with regard to Condition No. 6(A)(v) of the Conditional Use Permit ("CUP") dated January 23, 2018 that the sound system at the above referenced location is operating in compliance with the CUP and as designed. I oversaw the installation of the sound system, and visited the establishment on numerous occasions to test and verify the sound system is operating as designed. I believe that the ILOV305 sound system as installed will comply with the CUP and City of Miami Beach, Florida Code of Ordinances relating to noise.

Should you and/or City Staff have any questions relating to this correspondence, please do not hesitate to contact me at jfiorito@dasaudio.com.

Sincerely,



John Fiorito

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

PROPERTY: 1060 Ocean Drive

FILE NO. PB 17-0158

IN RE: The applicant, ILOV305 I, LLC, requested Conditional Use approval for a Neighborhood Impact Establishment, with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code.

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DESCRIPTION: Lot 1, Block 15, "Ocean Beach Addition No.2", according to the plat thereof, as recorded in Plat Book 2 at page 56 of the public records of Miami-Dade County, Florida.

MEETING DATE: January 23, 2018

CONDITIONAL USE PERMIT

The applicant, ILOV305 I, LLC, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code. 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 MXE, Mixed-Use Entertainment 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.

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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, that the Conditional Use Permit be GRANTED, as provided below:

1. 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. 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 ILOV305 I, LLC, as tenant/operator, of this Neighborhood Impact Establishment consisting of a restaurant. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
3. 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.
4. 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.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for the entire facility:
 - A. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 175 interior seats and potential sidewalk café with up to 42 seats, with the criteria listed below:
 - i. The CUP shall have a maximum occupant content for the interior of approximately 232 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor portions of the project may operate:
Sunday through Thursday from 11:00 a.m. to 2:00 a.m.
Sunday on which a holiday falls: 11:00 to 4:00 a.m.
Friday and Saturday from 11:00 a.m. to 4:00 a.m.
 - iii. Entertainment of any kind shall be prohibited in the outdoor porch and sidewalk café area in the front of the building.
 - iv. A sound field test shall be performed before commencement of business operations with staff present to demonstrate that the anticipated audio levels proposed by the applicant with the doors of the venue open and the music

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played at the proposed levels shall not interfere with normal conversation on the exterior of the premises.

- v. 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. 60 days after opening, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed.
 - vi. Televisions shall not be located anywhere in the exterior areas of the property.
 - vii. Exterior speakers, with the exception of those permitted for life safety purposes, shall be prohibited on the exterior of the premises.
- B. The applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive adopted as of the January 23, 2018 meeting date.
 - C. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
 - D. Delivery trucks shall not be allowed to idle in the loading zone.
 - E. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - F. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 AM.
 - G. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
 - H. 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.
 - I. An air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one pick up of garbage per day will be necessary.
 - J. Garbage dumpster covers shall be closed at all times except when in active use.
 - K. A full menu shall be made available during all hours of operation.

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- L. The venue shall not become a stand-alone bar or stand-alone entertainment establishment.
 - M. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
 - N. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
 - O. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
 - P. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - Q. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
 - R. Any future sidewalk café shall be subject to Public Works approval and the Ocean Drive Sidewalk Café Design Guidelines, if applicable. Such approvals shall be granted prior to the installation of any sidewalk café furniture, including but not limited to chairs, tables, and umbrellas.
 - S. The hostess stand, podium and menu board shall be prohibited in the public right of way, and should be placed in the front porch. There shall not be any queuing or a staffed podium in front of 1060 Ocean Drive.
- 7. 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 Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.
 - 8. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Business Tax Receipt.
 - 9. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department prior to the issuance of a Business Tax Receipt.
 - 10. The Developer's Traffic Engineer shall collect all necessary data and conduct a signal warrant analysis no later than 60 days from approval of this application. Such signal

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warrant analysis shall be submitted to the Transportation Department for review and approval.

11. Prior to receiving approval for construction, the applicant shall identify locations, acceptable to the Transportation Department and Public Works Department, for bicycle racks to be installed in the Public Right-of-Way. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.
12. The applicant shall conduct an updated valet parking analysis 60 days after opening of the venue. The updated valet parking analysis shall include weekday peak hour and weekend peak hour analysis.
13. 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.
14. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
15. 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. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
16. 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.
17. 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.
18. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
19. 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.

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20. 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.

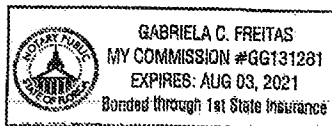
Dated this 30th day of JANUARY, 2018.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, AICP
Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 30th day of January, 2018, by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



Gabriela C. Freitas
Notary:
Print Name Gabriela C. Freitas
Notary Public, State of Florida
My Commission Expires: 8-3-21
Commission Number: GG131281

{NOTARIAL SEAL}

Approved As To Form: [Signature] 11/29/18
Legal Department

Filed with the Clerk of the Planning Board on [Signature] (11/30/18)

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