

MIAMIBEACH

PLANNING DEPARTMENT Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: June 25, 2019

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB 19-0270 – 1000 – 1030 Collins Avenue – Fairwind Hotel**

An application has been filed requesting Conditional Use Approval for a Neighborhood Impact Establishment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V, Division 6 of the City Code.

RECOMMENDATION

Approval with conditions

BACKGROUND

March 14, 2006:

A Certificate of Appropriateness for the partial demolition, renovation and restoration of the existing 3-story Fairwind Hotel, including a single story roof-top addition, as well as the renovation and substantial demolition of the two (2) existing 2-story multifamily buildings and the construction of one (1) new 5-story building along the alley was approved by the HPB. (HPB file No. 3434)

January 14, 2014:

Modifications to the previously issued Certificate of Appropriateness were approved by the HPB including the construction of an open air pedestrian bridge between the buildings located at 1020 and 1030 Collins Avenue.

ZONING / SITE DATA

Legal Description:

Lots 5-8, Block 30 of Ocean Beach Addition No. 2, According to the Plat Thereof, as Recorded in Plat Book 2, Page 56, of the Public Records of Miami-Dade County, Florida.

Zoning:

MXE (Mixed-Use Entertainment)

Future Land Use Designation:

MXE (Mixed-Use Entertainment)

Surrounding Uses:

North: 12-story apartment building
West: Institutional and Commercial uses
South: Hotel
East: Hotel, Commercial uses and parking garage
(See Zoning/Site map at the end of the report)

THE PROJECT

The applicant has submitted plans entitled "Fairwind Hotel" as prepared by Shulman + Associates, dated April 22, 2019. The applicant is seeking a conditional use permit in order to

operate the existing space with a proposed total occupancy of 358 persons, not including the guest rooms.

The proposed entertainment component will consist of both a DJ and live entertainment which will take place both indoors and outdoors around the bar and the restaurant located on the ground level courtyard at 1000 Collins Avenue.

Entertainment is also being proposed in the basement, within an enclosed space with an entrance from 10th street.

All other venues in the hotel propose to play background music including the Roof top area; however the roof-top will close at 8pm nightly.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Section 118, Article IV, Sec. 118-191 and Sec. 118-192 (a):

- 1. The use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

Consistent – The request is consistent with the Comprehensive Plan. The MXE future land use category allows eating and drinking establishments. Outdoor entertainment is only allowed as a conditional use.

- 2. 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.**

Consistent – The proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

- 3. Structures and uses associated with the request are consistent with this Ordinance.**

Consistent – Entertainment, Outdoor Entertainment and Neighborhood Impact Establishments are permitted as conditional uses in the MXE Zoning District and are consistent with the Land Development Regulations. These comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Planning Department prior to the issuance of a Business Tax Receipt (BTR).

- 4. Public health, safety, morals and general welfare will not be adversely affected.**

Partially Consistent – The proposed project may adversely affect the general welfare of nearby residents and businesses if delivery, waste removal, and other operations are not controlled. Staff is recommending conditions to mitigate the potential negative impacts. The facility will have to comply with all applicable laws and regulations prior to the issuance of a Business Tax Receipt.

- 5. Adequate off-street parking facilities will be provided.**

Partially Consistent – There is no parking on-site. Parking for patrons of the venue will

be by self-parking, or patrons can also use valet ramps nearby. See the staff analysis, valet operation routes, and plans in the Traffic Study prepared by Traf Tech Engineering, Inc.

6. **Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.**

Partially Consistent – Staff is recommending conditions to mitigate any adverse impacts on the surrounding neighbors.

7. **The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.**

Consistent – The proposed uses for the project are permitted in the MXE zoning district as conditional uses. While there are other conditional uses and large venues in the area, adverse impacts are not expected from the geographic concentration of such uses, if the impacts are properly controlled.

NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for a neighborhood impact establishment, the Planning Board shall apply the following supplemental review criteria in addition to the standard review guidelines for conditional uses pursuant to chapter 118, article IV:

- (1) **An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.**

Consistent- The LOI and the operations plan submitted with the application detail the proposed operation associated with the project. See analysis.

- (2) **A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, self-park, shared parking, after-hour metered spaces and the manner in which it is to be managed.**

Consistent- There is no parking on site. Parking for the patrons of the venue will be by self-parking and valet parking is also available for the building with the valet station located in front of the property on Collins Avenue.

- (3) **An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises would be controlled.**

Partially Consistent – The response from the applicant to this review criteria indicates that queuing will occur on private property and hotel staff will ensure this is controlled, however staff is concerned with the potential impact of large groups of people waiting to get entry from the access located on 10th street to the basement lounge without queuing or blocking the sidewalk. See analysis.

- (4) **A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.**

Consistent – The applicant proposes that during operations of the four venues, two security staff members will be present, with an emphasis on the basement lounge and courtyard. The hotel also employs a security surveillance system, with 80 cameras around the building and two in the basement lounge. Patron age restrictions will be enforced by security staff.

- (5) **A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.**

Consistent- A Valet operations plan and a Transportation Demand Management (TDM) was provided.

- (6) **A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.**

Consistent- The applicant proposes that trash pick-up would take place from 7:00 AM to 10:00 AM from the existing air-conditioned trash room located at the north west side of the building on Collins Court.

- (7) **A noise attenuation plan which addresses how noise would be controlled to meet the requirements of the noise ordinance.**

Partially Consistent- The applicant provided a sound study prepared by Eduard Dugger + Associates, PA, and a peer review was performed by Arpeggio Acoustic Consulting, LLC. See attached report and analysis.

- (8) **Proximity of proposed establishment to residential uses.**

Partially Consistent- The property abuts a residential building on the north side and is surrounded by other hotels and commercial uses. Staff is recommending conditions to mitigate any potential negative impacts from the operations of this venue on surrounding properties.

- (9) **Cumulative effect of proposed establishment and adjacent pre-existing uses.**

Partially Consistent- There are multiple NIE's and Outdoor Entertainment Establishments within blocks of this property. Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) A recycling or salvage plan for partial or total demolition shall be provided.

Not Applicable

- (2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

Not Applicable

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

Not Applicable

- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

Not Applicable

- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

Not Applicable

- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

Not Applicable

- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

Not Applicable

- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

Not Applicable

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

Not Applicable

- (10) Where feasible and appropriate, water retention systems shall be provided.

Not Applicable

ANALYSIS

Project Description and Operations

The subject Hotel is located at 1000-1030 Collins Avenue, with a collective occupancy load of the bar, restaurants, courtyard and roof-top pool of 358. Removing the rooftop occupancy which is only open to hotel guests, results in an occupancy of 289. An occupancy above 199, with entertainment, is considered a Neighborhood Impact Establishment, which is a Conditional Use in the MXE zoning district. Entertainment is proposed to be located at the basement level and Outdoor Entertainment is proposed at the ground level within the courtyard and bar area.

As per the plans, sound study, letter of intent and operational plan, the breakdown of the areas, the occupancy, the proposed hours, and whether or not entertainment is proposed are as follows:

VENUE	LOCATION	SEATING	OCCUPANCY	PROPOSED HOURS	ENTERTAINMENT
Courtyard & Bar area	1000-1010 Collins Avenue:			Restaurant and Bar area :	YES (OUTDOOR)
	Courtyard tables & chairs		114	12:00 PM to 5:00 AM	
	Courtyar standing room		35	Live entertainment-No DJs:	
	Main bar seating area		32	cease 2:00 AM weekends	
	Main bar standing area		21	cease 12:00 AM weekdays	
	Main bar tables and chairs behind bar area		16	Live entertainment w/percussion instruments	
			2	cease 12:00 AM every day	
Subtotal			220		
Restaurant	1020 Collins Avenue			8:00 AM to 5:00 AM	NO
	Restaurant		22		
	café-bar		27		
	Outdoor Terrace		20		
Subtotal			69		
Basement	1000 Collins Avenue		59	8:00 AM to 5:00 AM	YES
Roof top & Pool deck	1000 Collins Avenue:			10:00 am to 8:00 PM	NO
	Roof top pool deck		50		
	Roof top swimming pool		19		
	Subtotal		69		
TOTAL OCCUPANCY:			358		

The bar located at the rear of the courtyard is considered an accessory outdoor bar counter that is adjacent to a property with apartment units, and as per Section 142-153 (3) of the City Code the following applies:

Accessory outdoor bar counters, pursuant to the regulations set forth in chapter 6, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.

The large openings between the courtyard and the bar will be closed at 8:00pm, and the bar may continue to operate after this time as an interior bar.

Sound

Eduard Dugger + Associates, PA, commissioned by the applicant, conducted a sound study. Arpeggio Acoustic Consulting, LLC, commissioned by the City and paid for by the applicant, conducted a peer review.

The entertainment component will consist of a DJ, entertainment and live outdoor entertainment with outdoor speakers located at the Courtyard. The sound study mentions that the sound output can be controlled by the management and the sound for the entertainment operations presented will be controlled independently.

The Sound study concludes that "... ED+A do not believe that 1040 Collins Avenue will be negatively impacted by Outdoor Entertainment at the Fairwind Hotel". It also states that " As a large portion of the Fairwinds hotel rooms overlook the Courtyard, guests stand to be the most impacted by its Outdoor Entertainment."

Arpeggio agreed with the assertions presented, assuming sound levels are kept to a moderate sound level that might also be deemed compatible with the hotel guestrooms bordering the courtyard.

Arpeggio concluded that "...the report is short on details concerning potential impact on guestrooms with line-of-sight at the Essex House directly across the street. No detail was given on the potential nature of live entertainment at the proposed courtyard or on anticipated associated sound levels (addressing low-frequencies) or the existing acoustic environment at the Essex House. It is easily conceivable that, given loud enough entertainment within the courtyard at Fairwinds Hotel and low enough ambient sound levels in the early-morning hours, sound from the courtyard could be audible at the Essex House façade and, depending on building envelope design, audible within guestrooms."

The response from ED+A, dated May 22, 2019 affirms the assertion from Arpeggio that "low frequency sound is more likely to impact neighboring properties as these sounds are more capable of propagating greater distances and transmitting through panel structures such as windows..." The response concludes by stating that "ED+A agrees that the impact of low-frequency sound generated by the audio system should be evaluated further upon operating in a manner consistent with the Conditional Use Permit to inform the configuration and processing controls set for the audio system by conducting a "test run" of the audio system to determine whether the current limits sufficiently address low frequency sound after its overall output levels have been increased. The most effective means of doing so would involve conducting sound level measurements in the courtyard and across the street (and in Essex House guest rooms, if possible) while entertainment levels including low-frequency sound are generated. Levels could also be measured in the guest rooms surrounding the courtyard to determine how the system should be set to prevent disturbances on the Fairwind Hotel property.

Staff would note that outdoor entertainment is a conditional use, and is not allowed 'as of right'. The Board must review the specific type of entertainment proposed in consideration with the surrounding uses in order to establish the level of entertainment that may or may not be acceptable. In many instances, including on Ocean Drive, the Board has approved live entertainment with the requirement that the audio levels not exceed normal conversation, and the Board has also previously included conditions that sound not be plainly audible from balconies of nearby apartment buildings.

Although it may be true that the applicant's hotel rooms on the property will be most affected by outdoor entertainment within the courtyard, if the hotel fosters an atmosphere with loud music, hotel guests will have a lesser expectation of a quiet sleeping environment. Further it must be pointed out that the windows of the subject property are new impact windows, which will aid greatly in reducing sound levels. However, it appears that the windows and doors of the adjacent apartment building to the north are original, non-impact windows. In addition the apartment building to north, at 12-stories and with balconies facing the subject courtyard, could be more impacted by the entertainment, depending on the sound levels, including bass levels. Staff would also note that hotel guests likely have a higher tolerance of noise at a later hour, compared to residents that may wish to sleep at an earlier time.

In consideration of the applicant's desire to have entertainment within the courtyard at volumes higher than normal conversation level, the consideration for nearby resident's quality of life, and the consideration for hotel guests staying at surrounding hotels along Collins Avenue, staff is recommending the following conditions:

1. Audio from the subject property, including low-frequency vibrations, shall not be plainly audible or felt, within the interior of the apartment units (with the windows and doors closed) of the abutting building to the north, at any time.

2. Audio from the subject property shall not be plainly audible at the southern balconies of the abutting apartment building to the north after 9pm Sunday through Thursday and after 10pm Friday and Saturday.
3. Audio from the subject property, including low-frequency vibrations, shall not be plainly audible or felt, within the interior of the hotel units of the Essex Hotel, after 9pm.

Staff believes that if these conditions cannot be satisfied, the entertainment will have a negative impact on the surrounding neighborhood. Due to the concerns expressed, staff is also recommending that outdoor entertainment hours be limited to 9:00 PM nightly and that music at an ambient volume, which does not interfere with normal conversation, may be played until 5:00 AM, provided that it is not plainly audible from the balconies of the abutting apartment building after 9pm.

Should the Board believe that later hours may be appropriate, staff would recommend that the application be continued so that additional testing can be performed with measurements ideally taken from both inside and outside the residential units to the north, as well as from inside the hotel units of the Essex Hotel to the east, while entertainment level music is played as proposed with the existing sound system.

Valet Parking and Access

During the Saturday peak hour, the development (existing hotel & proposed uses) is anticipated to generate 157 trips after applying the multimodal and internal trip reduction factors. Based on the valet analysis provided by the applicant's traffic engineer, the valet area will require twenty-four (24) valet attendants for drop-off and pick-up operations to accommodate the anticipated demand and available capacity. Based on the concerns with the high number of valet attendants, the Transportation Department is requiring an update to the valet operations analysis after the operation has commenced.

Patrons arriving as passengers in automobiles for valet drop off will use the valet station located on Collins Avenue. Access to the property for pedestrians is from Collins Avenue, and there are three (3) entrances located at 1000 Collins Avenue, the courtyard and at 1030 Collins Avenue.

Deliveries and Sanitation

The refuse collection will take place from the existing enclosed space located on the north west side of the building on Collins Court daily from 7:00 a.m. to 10:00 a.m.

Code Compliance

There are no code cases related to noise at the time of the writing of this report.

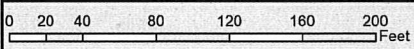
Conclusion

In view of the foregoing, staff recommend in favor of the proposal to add entertainment and outdoor entertainment within the courtyard of the property, in accordance with the conditions in the draft final order.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application for a Conditional Use Permit be approved, subject to the conditions enumerated in the attached draft order, which address the inconsistencies noted in the aforementioned Conditional Use review criteria.

ZONING/SITE PLAN



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

PROPERTY: 1000 – 1030 Collins Avenue – Fairwinds Hotel
FILE NO. PB 19-0270

IN RE: An application for Conditional Use Approval for a Neighborhood Impact Establishment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V, Division 6 of the City Code..

LEGAL DESCRIPTION: Lots 5-8, Block 30 of Ocean Beach Addition No. 2, According to the Plat Thereof, as Recorded in Plat Book 2, Page 56, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: June 25, 2019

CONDITIONAL USE PERMIT

The applicant, MLB Fairwinds 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.

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, including modification to the hours of operation, 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 MLB Fairwinds LLC, any changes in ownership or 50% (fifty percent) or more stock ownership, or the equivalent, shall require the new owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.
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. The CUP shall have a maximum occupant content (including within the interior and exterior portion located on private property) for the following venues: Courtyard and outdoor bar area, restaurant on 1020 Collins Avenue and basement, of less than 300 persons or any lesser such occupant content as determined by the Fire Marshal.
 - b. The courtyard may remain open:
Monday through Sunday from 8:00 a.m. to 5:00 a.m.
 - c. The outdoor bar may remain open:
Monday through Sunday from 8:00 a.m. to 8:00 p.m.
After 8:00 p.m. the roll down storefronts that face the courtyard shall be closed in order to continue to operate as an indoor bar counter.
 - d. All outdoor entertainment authorized as part of this CUP shall cease by 9:00 pm Sunday through Thursday and 10:00 pm Friday and Saturday.
 - e. The restaurant at 1020 Collins Avenue may remain open:
Monday through Sunday from 8:00 a.m. to 5:00 a.m. At all times the establishment is open, food service with a full menu and operating kitchen shall be required.
 - f. Indoor entertainment at the basement venue may operate:

Monday through Sunday from 8:00 a.m. to 5:00 a.m.

- g. The roof top and pool deck may remain open:
Monday through Sunday from 10:00 a.m. to 8:00 p.m.
- h. 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. Within 60 days of this approval, the sound system 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. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.
- i. Entertainment shall be prohibited on the roof top at all times.
- j. Audio from the subject property, including low-frequency vibrations, shall not be plainly audible or felt, within the interior of the apartment units (with the windows and doors closed) of the abutting building to the north, at any time.
- k. Audio from the subject property shall not be plainly audible at the southern balconies of the abutting apartment building to the north (1040 Collins Avenue) after 9pm Sunday through Friday and after 10pm Friday and Saturday.
- l. Audio from the subject property, including low-frequency vibrations, shall not be plainly audible or felt, within the interior of the hotel units of the Essex Hotel at 1001 Collins Avenue, after 10:00 pm nightly.
- m. Televisions shall not be located anywhere in the courtyard and exterior areas of the property.
- n. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- o. Delivery trucks shall not be allowed to idle in the loading zone.
- p. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- q. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 AM.
- r. Loading and deliveries from the alley shall at no time block the passage of any other vehicles along the alley.
- s. 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.

- t. 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.
 - u. 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.
 - v. Garbage dumpster covers shall be closed at all times except when in active use.
 - w. 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.
 - x. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
 - y. 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.
 - z. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - aa. 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.
 - bb. The host/hostess stand, podium and menu board shall be prohibited in the public right of way, and shall be placed on private property, except as may be permitted under the sidewalk café permit to be reviewed and approved by the Public Works department.
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 Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department within 90 days, prior to the issuance of a BTR for the addition of entertainment and include the following:

- a. The applicant shall identify locations, acceptable to the Transportation Department, for bicycle racks to be installed in the public right-of-way and within the proposed development. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.
 - b. The applicant shall coordinate with the South Florida Commuter Services in participating in the transit subsidy program.
 - c. The applicant shall provide an analysis proposing for a drop-off and pick-up area shared with the valet drop-off and pick-up spaces.
 - d. The Developer shall conduct an updated valet utilization study incorporating the rideshare demand 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 Developers' Traffic Engineer shall coordinate with the Transportation Department.
9. 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 with entertainment.
 10. 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.
 11. The Planning Board shall retain the right to call the owner or operator back before the Board 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.
 12. 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.
 13. 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.
 14. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
 15. 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

