

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: December 17, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



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

BACKGROUND

June 25, 2019

A Conditional Use Permit was granted by the Board, for a Neighborhood Impact Establishment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons.

October 25, 2019

Field testing of the audio system was performed with the applicant, the applicant's sound consultant, as well as Planning and Code Compliance staff.

November 19, 2019

A progress report was scheduled due to outstanding violations related to the CUP. The nature of the violations was discussed by the Board and the progress report was continued to a date certain of December 17, 2019.

November 25, 2019

A cure letter was sent to the operator (attached).

December 3, 2019

A BTR was issued to include entertainment on the premises as authorized by the CUP.

DECEMBER 19, 2019 UPDATE

Since the November 19, 2019 meeting, the applicant obtained the BTR to include entertainment. As of the writing of this report, no new violations or complaints have been registered with the Code Compliance Department.

PROGRESS REPORT

The applicant is before the Board pursuant to the following conditions:

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).
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.
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 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.

STAFF ANALYSIS

The Planning Department initially scheduled the progress report for two reasons; first due to code violations that were issued regarding unauthorized entertainment on the property, and second, in anticipation of the issuance of the BTR for the inclusion of entertainment as required by Condition 1. of the CUP.

Since the November 19, 2019 meeting, the applicant obtained the BTR to include entertainment. As of the writing of this report, no new violations or complaints have been registered with the Code Compliance Department.

For reference the following is the list of complaints and violations issued by Code Compliance:

Case Number: ZV2019-02794.
Case Status: Notice of Violation
Open Date: 10/14/2019

While responding to complaint of loud music. I parked vehicle at the rear of property in the alleyway. I met with complainant and heard loud music playing. I then walked to the entrance of the patio by the restaurant and spoke with a lady and asked for the person in charge. I met with two gentleman and ended up talking to the person in charge, Luis Concepcion. I informed him the reason why I was there. There was no dj in the courtyard playing music. He stated on camera there was a dj at the rooftop which is not complying with CUP Section 6(i). The person in charge Luis and I walked back to the rear of the property and the music wasn't loud but within 10 minutes, the music went back up again. Luis was telling me about how we keep showing up and mentioned the complainant by name. He started recording our conversation and saying how unfair he's receiving another violation and that he's not going to sign it. I asked if I can go up to the rooftop and he denied access which is not complying with CUP Section 16. We then walked to the rear of CVS standing on the north side on 10th Street and the music was lowered and raised again. We then walked back to the rear of the building. I mentioned since there's a dj playing loud music on the rooftop, a noise violation will be given, NC2019-12480 which is not complying with CUP Section 12 and 17 and a conditional use permit is required. I asked if he has a permit and he wasn't aware. Luis then wanted to speak to my Supervisor. I contacted CCA Thomas and gave her his phone number. I also informed her a violation will be written. I asked if she would call the manager Luis

Concepcion. He then left and I went back to the vehicle and entered my notes for the Noise Violation.

Met with Director of Operations Carlos Zumaeta. Explained and hand delivered violation.

Case Number: NC2019-121480

Case Status: Appeal

Open Date: 10/13/2019

Section 46-152: Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.

Ref: Loud music from dj on the rooftop.

5th Offense

Body Worn Camera used.

J. Rios (706)

Case Number: NC2019-12464

Case Status: Appeal

Open Date: 10/12/19

LOUD MUSIC

Arrival Time: 3:57 pm

Departure Time:5:08

Met with Complainant

Reference: Unreasonable Loud and excessive music.

4th Offense: \$ 2,000.00

A.PEREZ736

BWC

LOUD MUSIC COMING FROM THE ROOF TOP OR THE COURT YARD COMPLAINT REQUESTING FOR A CALL BACK

Case Number: NC2019-12309

Case Status: Noise Complaint, no violation issued

Open Date: 09/23/2019

LOUD MUSIC AT THE ROOF TOP

Additional information from 739

Complainant on site

Arrival time@ 9:45 PM

Upon arrival complainant was on site to assist and inform me about the complaint. I walked the surrounding 4 corners of 10th and Collins Ave and music, car noise and unusual street noise was heard. None of the noises was loud and or excessive. I continued the inspection and went to the rooftop of the complainant's building and music was heard. The music was not loud and or excessive. As a courtesy to the complainant I advised him that i will speak to Management at the 1000 Collins Ave

Fairwind Hotel and educate Management the city of Miami Beach Noise Ordinance. I then spoke to the Manager on Duty Lyne Metry and advised her about the complaint and if there was an event at the rooftop. She advised me that no rooftop was taking place. We both walked to the rooftop for verification of the closing. Rooftop was closed. I again educated Lyne Metry the Noise Ordinance to the city of Miami Beach. The complainant was on site to know of the findings of his complaint. Complainant was not pleased with the language of the ordinance. No violation issued at this time.

Body camera in use
Departed @ 10:50 PM
J.Hernandez-739

Case Number: NC2019-12305
Case Status: Noise complaint – Appeal
Open Date: 09/22/2019

Violation of Section 46-152:

Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.

YOU SHALL IMMEDIATELY CEASE THE VIOLATION.

You shall be subject to additional penalties if the violation continues. Repeat violations of Section 46-152 will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license and /or certificate of use, or accessory use, and/or injunctive and/or other legal proceedings as provided by law.

3rd Offense \$2000
BWC used
CCO M. Jefferson 747

Arrival 6:18 PM

Responded to a noise complaint of music coming from the rooftop. I drove through Collins Ct on the 900 block and could hear the music from the car. The music could also be heard from the sidewalk on the south side of the property. Upon arrival I parked in front of the property and while exiting my vehicle I could hear the music. I met with the complainant Peter at his property 960 Collins Ave and while inside of the hotel I could not hear the music. While on the porch the music could be heard faintly and we had no issues hearing each other. He then proceeded to take a picture of my name from my shirt. He then request that a supervisor also come to the scene. I made CCA Varela aware. I then made contact with the manager Luis at the Fairwind property and we walked around to the rear. While in Collins Ct we both could hear the music from the rooftop. He immediately called and had the music lowered. To avoid further problems he instructed the staff to cut the music off and move the customers inside. While in Collins Ct I noticed the complainant Peter recording my interaction with the manager Luis from across the street. I then went back to my vehicle to being the noise case. Peter came by the vehicle twice while I was creating the case to request the violation number. The music playing from the property was loud and excessive upon arrival and was immediately turned off during my interaction with the manager Luis. Violation issued. The violation was signed and accepted by the manager Luis.

Case Number: NC2019-12282
Case Status: Noise complaint – Appeal
Open Date: 09/20/2019

Ref: LOUD MUSIC

Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.

YOU SHALL IMMEDIATELY CEASE THE VIOLATION.

You shall be subject to additional penalties if the violation continues. Repeat violations of Section 46-152 will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license and /or certificate of use, or accessory use, and/or injunctive and/or other legal proceedings as provided by law.

2nd offense, \$1,000.00 fine

Notice of violation issued

BWC: Used

L. Negrón #740

Case Number: CC2019-07778
Case Status: City Code Violation – Notice of Violation
Open Date: 09/06/2019

Section 102-311. Failing to remit Resort Tax returns and/or payments to the City of Miami Beach as required.

Ref; Finance Resort Tax not paid RT 2098411

1s violation issued

Complaint inspection from finance dept

BWC in use

J Randolph 749

Case Number: NC2019-11858
Case Status: Written Warning Notice
Open Date: 07/25/19

loud music /1000 collins ave

Inspection revealed music was loud and excessive-

Written Warning issued

Body camera in use

J.Hernandez-739

Additional information from 739

Complainant on site

Arrival time@ 10:05 PM

Upon arrival the complainant was on site to assist me with the complaint. I stood at the corner of 10th and Collins Ave and could hear the loud and excessive music coming from the atrium of the Fairwinds Hotel. I followed the music to the middle of the building where the music was being played. I walked the surrounding area and ask to speak to the manager on duty. I then was approached by General

Manager Luis Concepcion. I advised him about the complaint and where the music was heard. We both walked to the corner of 10th and Collins Ave and his music was plainly audible. The G.M immediately called the sound man to lower the music for compliance.

Complainant satisfied with the findings and the service of Code

I educated the G.M the city of Miami Beach Noise Ordinance and issued a Written Warning.

Body camera in use

J.Hernandez-739

Departed @ 11:10 PM

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the progress report, and although no new complaints or violations have been issued since the prior meeting, continue the progress report to a date certain of January 28, 2020 in order to monitor the property for compliance with the conditions of the CUP.

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

November 25, 2019

MLB Fairwinds, LLC
1000 Collins Avenue
Miami Beach, FL 33139

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#9214 8901 9403 8300 0005 42

Re: PB19-0270, 1000 – 1030 Collins Avenue –
Fairwind Hotel Conditional Use Permit Cure Letter

Dear Sir/Madam:

A Conditional Use Permit to operate a neighborhood impact establishment and outdoor entertainment establishment was issued to MLB Fairwinds, LLC. on June 25, 2019. It has come to the Planning Department's attention that complaints have been made and violations have been issued by the Code Compliance Department regarding the operation of the venue in a manner that is contrary to the issued conditional use permit (CUP).

In light of the inconsistencies with the following conditions of approval contained in the Conditional Use Permit, including operating with entertainment without first amending the Business Tax Receipt (BTR) to include entertainment, and due to issued code violations, **you are requested to appear at the December 17, 2019 Planning Board hearing** for the continuation of the progress report, which was last heard by the Planning Board on November 19th, 2019.:

- 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).
6. The Applicant agrees to the following operational conditions for the entire facility:
 - f. The roof top and pool deck may remain open:
Monday through Sunday from 10:00 a.m. to 8:00 p.m.
 - i. Entertainment shall be prohibited on the roof top at all times.
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:

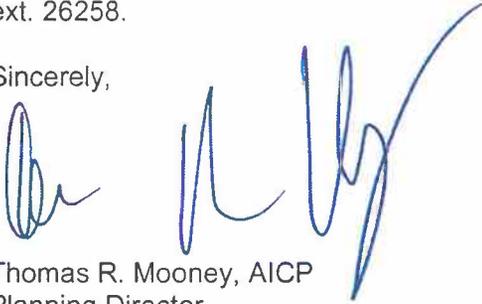
- a. The applicant shall identify locations, acceptable to the Transportation Department, for bicycle racks to be installed in the public right-of-way and within the proposed development. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of 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 with entertainment. 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.
- 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.
- 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 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.
16. 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.

Please be advised that at the time of the progress report, in accordance with the provisions of the City Code, Section 118-194(3), the Planning Board may consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings. Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings, this issue may be placed on the next available meeting of the Board.

If a future public hearing is set, the board may consider the issue 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.

If you have any questions, please do not hesitate to contact Mr. Michael Belush at (305) 673-7000 ext. 26258.

Sincerely,

A handwritten signature in blue ink, consisting of a series of loops and a long, sweeping tail that extends upwards and to the right.

Thomas R. Mooney, AICP
Planning Director

MIAMI BEACH

PLANNING DEPARTMENT

SUBJECT: List of complaints and violations related to
PB 19-0270, 1000 – 1030 Collins Avenue – Fairwind Hotel.

Case Number: ZV2019-02794.
Case Status: Notice of Violation
Open Date: 10/14/2019

While responding to complaint of loud music. I parked vehicle at the rear of property in the alleyway. I met with complainant and heard loud music playing. I then walked to the entrance of the patio by the restaurant and spoke with a lady and asked for the person in charge. I met with two gentleman and ended up talking to the person in charge, Luis Concepcion. I informed him the reason why I was there. There was no dj in the courtyard playing music. He stated on camera there was a dj at the rooftop which is not complying with CUP Section 6(i). The person in charge Luis and I walked back to the rear of the property and the music wasn't loud but within 10 minutes, the music went back up again. Luis was telling me about how we keep showing up and mentioned the complainant by name. He started recording our conversation and saying how unfair he's receiving another violation and that he's not going to sign it. I asked if I can go up to the rooftop and he denied access which is not complying with CUP Section 16. We then walked to the rear of CVS standing on the north side on 10th Street and the music was lowered and raised again. We then walked back to the rear of the building. I mentioned since there's a dj playing loud music on the rooftop, a noise violation will be given, NC2019-12480 which is not complying with CUP Section 12 and 17 and a conditional use permit is required. I asked if he has a permit and he wasn't aware. Luis then wanted to speak to my Supervisor. I contacted CCA Thomas and gave her his phone number. I also informed her a violation will be written. I asked if she would call the manager Luis Concepcion. He then left and I went back to the vehicle and entered my notes for the Noise Violation.

Met with Director of Operations Carlos Zumaeta. Explained and hand delivered violation.

Case Number: NC2019-121480
Case Status: Appeal
Open Date: 10/13/2019

Section 46-152: Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.

Ref: Loud music from dj on the rooftop.
5th Offense
Body Worn Camera used.
J. Rios (706)

Case Number: NC2019-12464
Case Status: Appeal
Open Date: 10/12/19

LOUD MUSIC

Arrival Time: 3:57 pm
Departure Time:5:08
Met with Complainant
Reference: Unreasonable Loud and excessive music.
4th Offense: \$ 2,000.00
A.PEREZ736
BWC

**LOUD MUSIC COMING FROM THE ROOF TOP OR THE COURT YARD COMPLAINT
REQUESTING FOR A CALL BACK**

Case Number: NC2019-12309
Case Status: Noise Complaint, no violation issued
Open Date: 09/23/2019

LOUD MUSIC AT THE ROOF TOP

Additional information from 739
Complainant on site

Arrival time@ 9:45 PM

Upon arrival complainant was on site to assist and inform me about the complaint. I walked the surrounding 4 corners of 10th and Collins Ave and music, car noise and unusual street noise was heard. None of the noises was loud and or excessive. I continued the inspection and went to the rooftop of the complainant's building and music was heard. The music was not loud and or excessive. As a courtesy to the complainant I advised him that i will speak to Management at the 1000 Collins Ave Fairwind Hotel and educate Management the city of Miami Beach Noise Ordinance. I then spoke to the Manager on Duty Lyne Metry and advised her about the complaint and if there was an event at the rooftop. She advised me that no rooftop was taking place. We both walked to the rooftop for verification of the closing. Rooftop was closed. I again educated Lyne Metry the Noise Ordinance to the city of Miami Beach. The complainant was on site to know of the findings of his complaint. Complainant was not pleased with the language of the ordinance. No violation issued at this time.

Body camera in use

Departed @ 10:50 PM
J.Hernandez-739

Case Number: NC2019-12305
Case Status: Noise complaint – Appeal
Open Date: 09/22/2019

Violation of Section 46-152:

Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or

causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.

YOU SHALL IMMEDIATELY CEASE THE VIOLATION.

You shall be subject to additional penalties if the violation continues. Repeat violations of Section 46-152 will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license and /or certificate of use, or accessory use, and/or injunctive and/or other legal proceedings as provided by law.

3rd Offense \$2000

BWC used

CCO M. Jefferson 747

Arrival 6:18 PM

Responded to a noise complaint of music coming from the rooftop. I drove through Collins Ct on the 900 block and could hear the music from the car. The music could also be heard from the sidewalk on the south side of the property. Upon arrival I parked in front of the property and while exiting my vehicle I could hear the music. I met with the complainant Peter at his property 960 Collins Ave and while inside of the hotel I could not hear the music. While on the porch the music could be heard faintly and we had no issues hearing each other. He then proceeded to take a picture of my name from my shirt. He then request that a supervisor also come to the scene. I made CCA Varela aware. I then made contact with the manager Luis at the Fairwind property and we walked around to the rear. While in Collins Ct we both could hear the music from the rooftop. He immediately called and had the music lowered. To avoid further problems he instructed the staff to cut the music off and move the customers inside. While in Collins Ct I noticed the complainant Peter recording my interaction with the manager Luis from across the street. I then went back to my vehicle to being the noise case. Peter came by the vehicle twice while I was creating the case to request the violation number. The music playing from the property was loud and excessive upon arrival and was immediately turned off during my interaction with the manager Luis. Violation issued. The violation was signed and accepted by the manager Luis.

Case Number: NC2019-12282

Case Status: Noise complaint – Appeal

Open Date: 09/20/2019

Ref: LOUD MUSIC

Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.

YOU SHALL IMMEDIATELY CEASE THE VIOLATION.

You shall be subject to additional penalties if the violation continues. Repeat violations of Section 46-152 will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license and /or certificate of use, or accessory use, and/or injunctive and/or other legal proceedings as provided by law.

2nd offense, \$1,000.00 fine

Notice of violation issued

BWC: Used

L. Negron #740

Case Number: CC2019-07778
Case Status: City Code Violation – Notice of Violation
Open Date: 09/06/2019

Section 102-311. Failing to remit Resort Tax returns and/or payments to the City of Miami Beach as required.

Ref; Finance Resort Tax not paid RT 2098411
1s violation issued
Complaint inspection from finance dept
BWC in use
J Randolph 749

Case Number: NC2019-11858
Case Status: Written Warning Notice
Open Date: 07/25/19

loud music /1000 collins ave
Inspection revealed music was loud and excessive-
Written Warning issued
Body camera in use
J.Hernandez-739

Additional information from 739
Complainant on site

Arrival time@ 10:05 PM

Upon arrival the complainant was on site to assist me with the complaint. I stood at the corner of 10th and Collins Ave and could hear the loud and excessive music coming from the atrium of the Fairwinds Hotel. I followed the music to the middle of the building where the music was being played. I walked the surrounding area and ask to speak to the manager on duty. I then was approached by General Manager Luis Concepcion. I advised him about the complaint and where the music was heard. We both walked to the corner of 10th and Collins Ave and his music was plainly audible. The G.M immediately called the sound man to lower the music for compliance.

Complainant satisfied with the findings and the service of Code

I educated the G.M the city of Miami Beach Noise Ordinance and issued a Written Warning.

Body camera in use
J.Hernandez-739
Departed @ 11:10 PM

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

PROPERTY: 1000 — 1030 Collins Avenue — Fairwind 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 and Outdoor Entertainment 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

MBS

June 25, 2019

PB 19-0270 1000-1030 Collins Avenue – Fairwind Hotel
Page 2 of 6

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 of 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 the following maximum occupant content (including within the interior and exterior portion located on private property) for the Courtyard, outdoor bar area, restaurant on 1020 Collins Avenue, and basement: Less than 300 persons, or any lesser such occupant content as determined by the Fire Marshal.
 - b. The courtyard may remain open with outdoor entertainment:
Monday through Sunday from 8:00 a.m. to 5:00 a.m.

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.

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) between 11pm and 8am Sunday through Thursday, and between midnight and 8am Fridays, Saturdays, holidays and special events.
 - c. The outdoor bar may remain open:
Monday through Sunday from 8:00 a.m. to 8:00 p.m.

June 25, 2019

PB 19-0270 1000-1030 Collins Avenue – Fairwind Hotel
Page 3 of 6

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. The restaurant at 1020 Collins Avenue may remain open:
Monday through Sunday from 8:00 a.m. to 5:00 a.m. and indoor entertainment shall be allowed.
- e. Indoor entertainment at the basement venue may operate:
Monday through Sunday from 8:00 a.m. to 5:00 a.m.
- f. The roof top and pool deck may remain open:
Monday through Sunday from 10:00 a.m. to 8:00 p.m.
- g. At all times that entertainment is operating anywhere on the subject property, a restaurant shall be open with food service, a full menu, and operating kitchen.
- 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. A maximum of 2 televisions may be permitted in the courtyard subject to a Certificate of Appropriateness and historic preservation board approval, if required. The volume level of the televisions in the courtyard shall comply with the audio volume limitations stated in this order.
- k. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- l. Delivery trucks shall not be allowed to idle in the loading zone.
- m. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- n. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 AM.
- o. Loading and deliveries from the alley shall at no time block the passage of any other vehicles along the alley.
- p. 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.

MB

June 25, 2019

PB 19-0270 1000-1030 Collins Avenue – Fairwind Hotel
Page 4 of 6

-
- q. 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.
 - r. 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.
 - s. Garbage dumpster covers shall be closed at all times except when in active use.
 - t. 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.
 - u. No patrons shall be allowed to queue on public rights-of-way. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
 - v. 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.
 - w. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - x. 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.
 - y. 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

MS

June 25, 2019

PB 19-0270 1000-1030 Collins Avenue – Fairwind Hotel
Page 5 of 6

- 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 with entertainment. 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 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

MB

June 25, 2019

PB 19-0270 1000-1030 Collins Avenue - Fairwind Hotel
Page 6 of 6

Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

- 16. 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.
- 17. 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.

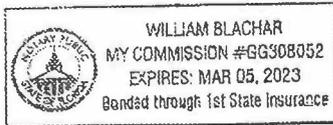
Dated this 18th day of JULY, 2019.

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 18th day of July, 2019, 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.



William Blachar
Notary:
Print Name
Notary Public, State of Florida
My Commission Expires: March 5th, 2023
Commission Number: GG308052

{NOTARIAL SEAL}

Approved As To Form:
Legal Department Dickfalligo 7/16/2019

Filed with the Clerk of the Planning Board on Jessica Guelberg (7/16/19)

MB