

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: November 17, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



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

RECOMMENDATION

Modify the CUP to revoke the approval for outdoor entertainment on the property.

BACKGROUND

<i>June 25, 2019</i>	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.
<i>October 25, 2019</i>	Field testing of the audio system was performed with the applicant, the applicant's sound consultant, as well as Planning and Code Compliance staff.
<i>October 28, 2019</i>	In accordance with Condition 6.h. of the CUP, an acoustic report was submitted to the Planning Department, summarizing the results of the field test, which took place on October 25, 2019 (attached). The approved speaker location plan, as well as the approved speakers has also been provided.
<i>November 19, 2019</i>	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.
<i>November 25, 2019</i>	A cure letter was sent to the operator (attached).
<i>December 3, 2019</i>	A BTR was issued to include entertainment on the premises as authorized by the CUP.
<i>December 17, 2019</i>	The progress report was discussed, and the Board directed staff to schedule a revocation/modification hearing for January 28, 2020.
<i>January 28, 2020</i>	The Planning Board discussed the revocation/modification of the CUP and continued the revocation/modification hearing to a date certain of March 24, 2020 in order for the appealed cases to proceed to the Special Master Hearing scheduled for February 13, 2020.
<i>March 24, 2020</i>	The March 24 th meeting was cancelled due to COVID-19 and the revocation/modification hearing was automatically continued to the next available Planning Board meeting. Due to Covid-19 the revocation hearing has been continued successively to a date certain of November 17, 2020.

Summary of Planning Board, Code Compliance, and Special Master Action

Activity Date	PB /BTR Activity	Code Action	Special Master Action	Notes
6/25/19	CUP Issued			
7/25/19		1st Written Warning re: noise		
8/10/19		1st Offense Noise violation NC2019-11985 - Appealed*		*Violation upheld at SM, per agreement
9/20/19		2nd Offense Noise violation - NC2019-12282 - Appealed*		*Violation upheld at SM, per agreement
9/22/19		3rd Offense Noise violation - NC2019-12305 - Appealed*		*Violation dismissed at SM, per agreement
10/12/19		4th Offense Noise violation - NC2019-12464 - Appealed*		*Violation dismissed at SM, per agreement
10/13/19		5th offense Noise violation - NC2019-12480 - Appealed*		*Violation dismissed at SM, per agreement
10/14/19		Noise violation ZV2019-02794 - Appealed*		*Violation dismissed at SM, per agreement
11/19/19	First progress report scheduled due to outstanding violations			
11/25/19	Cure Letter sent			
12/3/19	BTR issued to include entertainment as authorized by the CUP			
12/7/19		CUP Violation -ZV2019-02888 Condition 6.c. (bar counter rollup doors open after 8pm) - Appealed*		*Violation upheld at SM, per agreement
12/17/19	Second progress report and revocation/modification hearing set for 1/28/2020			
12/22/19		5th offense Noise violation - NC2019-13291 - Appealed*		*Violation dismissed at SM, per agreement
1/28/20	Revocation/modification hearing discussed and continued to 3/24/2020			
2/13/20			NC2019-11985, NC2019- 12282, NC2019-12305, NC2019-12464, NC2019- 12480, NC2019-13291 & ZV2019-02794	NC2019-11985, NC2019- 12282 & ZV2019-02888 were affirmed. \$1250 assessed in total. Others dismissed
2/28/20		NC2020-14137 - Third noise violation - Appealed		
3/24/20	Revocation/Modification Hearing			Due to COVID-19, hearing continued and currently scheduled for 11-17-19
7/15/20		NC2020-15790 - 6th and 7th offense noise violation - appealed		
11/17/20	Revocation/Modification hearing			Currently scheduled
12/17/20			NC2020-14137 scheduled	Due to Covid-19, Continued from initial schedule of 8/27/2020

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).
- 6.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.
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:

1. Code violations that were issued regarding unauthorized entertainment on the property.
2. In anticipation of the issuance of the BTR for the inclusion of entertainment as required by Condition 1. of the CUP.

Since the progress report was initially scheduled, several additional citations have been issued for noise and CUP violations. The color-coded summary on page 2 of this report provides the list of Planning Board, Code Compliance, and Special Master action since the CUP was initially approved on June 25, 2019.

The last substantive discussion for the revocation/modification hearing took place at the January 28, 2020 meeting. At that time, there were numerous cases that had been appealed and were pending before the Special Master Hearing on February 13, 2020. The Planning Board continued the revocation/modification hearing to March 24, 2020 for the appealed cases to be processed and the results provided to the Board.

On February 13, 2020 the Special Master reviewed the following violation cases for this property:

NC2019-11985 : 1 st Offense Noise Violation	- Violation Upheld
NC2019-12282 : 2 nd Offense Noise Violation	- Violation Upheld
NC2019-12305 : 3 rd Offense Noise Violation	- Violation Dismissed
NC2019-12464 : 4 th Offense Noise Violation	- Violation Dismissed
NC2019-12480: 5 th Offense Noise Violation	- Violation Dismissed
NC2019-13291: DJ Not using house speakers	- Violation Dismissed
ZV2019-02888: CUP Violation – roll up doors	- Violation Upheld

See Exhibit 'A' for the Special Master action and AGREED ORDER.

See Exhibit 'B' for the details of the violations issued by Code Compliance that were upheld by the Special Master.

Although a time gap exists between the current hearing and the agreed order, staff believes that the operator has not taken the necessary steps to ensure the outdoor entertainment component is in full compliance with the conditions of the CUP. After the Special Master agreed order was rendered, the following noise violations were issued to the property:

NC2020-14137: Third Noise Violation (appealed)
NC2020-15790: (two additional noise violations (appealed))

See Exhibit 'C' for details of these violations issued after the Special Master agreed order was issued. The last violation (NC2020-15790) included excessive noise from the rooftop, and the CUP expressly prohibits music that would interfere with normal conversation at all times on the rooftop. Additionally, given the proximity of residential and hotel uses in the area, the continued use of the outdoor spaces for entertainment purposes creates too much potential for future quality of life issues.

As such and considering the Special Master upholding three (3) of the numerous violations related to noise and CUP violations, staff recommends that the Board revoke the applicant's approval for outdoor entertainment. Because the authorization for indoor entertainment (in the basement) would remain, and a total occupancy load on the property exceeds 199, the neighborhood impact establishment approval would still be required, and the Board would retain jurisdiction over the property.

STAFF RECOMMENDATION

In view of the foregoing, staff recommends that the Board revoke the applicant's approval for outdoor entertainment and modify with CUP in accordance with the attached Modified Conditional Use Permit.

Exhibit "A" p.1 of 2

CG FAIRWINDS LLC, Petitioner, vs. CITY OF MIAMI BEACH, Respondent.	IN AND BEFORE THE SPECIAL MASTER OF THE CITY OF MIAMI BEACH VIOLATION CASE NOS.: NC2019-11985, NC2019-12282, NC2019-12305, NC2019-12464, NC2019-12480, NC2019-13291, ZV2019-02888 SPECIAL MASTER CASE NO.: SMN2019-00080, SMN2019-00087, SMN2019-00086, SMN2019-00089, SMN2019-00090, SMN2019-00094 SMA2019-02232
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AGREED ORDER

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of counsel, Rafael Andrade, Esquire, on behalf of CG Fairwinds LLC, (hereinafter referenced as the "Petitioner"), and Assistant City Attorney, Yoe Lopez, counsel to Respondent (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 1000 Collins Ave., Miami Beach, Florida (the "Property") and the Code Enforcement matters referenced below in this Agreed Order. The respective Parties having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The Parties hereby acknowledge that there were violations issued for unreasonably loud, excessive, or unnecessary noise, in addition to a conditional use permit violation on the Property, identified as Code Compliance Case Numbers NC2019-11985, NC2019-12282, NC2019-12305, NC2019-12464, NC2019-12480, NC2019-13291 and ZV2019-02888, and corresponding Special Master Case Numbers SMN2019-00080, SMN2019-00087, SMN2019-00086, SMN2019-00089, SMN2019-00090, SMN2019-00094 and SMA2019-02232.
2. Pursuant to this agreement, the City will DISMISS Code Violation Numbers NC2019-12305, NC2019-12464, NC2019-12480 and NC2019-13291 and corresponding Special

Exhibit "A" p.2 of 2


Master Case Numbers SMN2019-00086, SMN2019-00089, SMN2019-00090 and SMN2019-00094. The administrative fees submitted with the appeals of these matters shall not be returned to the Petitioner.

3. Petitioner's appeal of Code Violation Numbers NC2019-11985, NC2019-12282, and ZV2019-02888 are hereby DENIED, a factual basis exists to establish the violation pursuant to the applicable standard of proof for this matter.

4. Code Violation Numbers NC2019-11985, NC2019-12282, and ZV2019-02888 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish these violations by the appropriate legal standards for this proceeding.

5. The Petitioner shall be assessed a total fine in the amount of One Thousand Two Hundred and Fifty Dollars (\$1,250.00), which shall be due within 30 days of the effectiveness of this Agreed Order. If payment is not made as specified above, the fine shall return to the original amount.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 13 day of February, 2020.



Special Master for the City of Miami Beach
Annette E. Cannon

Copies furnished to:
Yoe Lopez, Assistant City Attorney at bonniestewart@miamibeachfl.gov
Rafael E. Andrade, Esq. at ralph@randradelaw.com

Exhibit “B” p.1 of 3**Case:** NC2019-11985**Case Status:** Fine Owed**Open Date:** 08/10/2019**Close Date:****City Of Miami Beach Case Notes Summary****Printed on:** 11/9/2020**Page 1 of 1****Case Description:** LOUD MUSIC

Arrival: 11:20 PM

Departure 12:13 AM

Music was plainly audible at 100 ft / 1st Offense issued

Note Text	Created By	Date
Created invoice for mail out. Agreed order attached under documents. Total amount of fine is \$1,250.00 as per the agreed order. Fines are under cases NC2019-12282 & NC2019-11985.	codebaqa	02/19/2020
Attached copy of SM order	codesmit	12/16/2019
Processed, folder prepared /Case appealed SMA 2019-00080 .File placed in appeals drawer/ Action sheet copy in CCO Inbox.	CODEGarY	10/07/2019
Returned case to clerical to process cases .	CODECAIJ	10/05/2019
Case has been returned to the CCA J. Caicedo for clarification.	CODEGarY	10/04/2019
Case has been appealed. Placed on clericals desk to process. J.Caicedo	CODECAIJ	09/29/2019
Case was handed into CCA Caicedo to be reviewed and processed for special master CCO 756 / W. Alfonso	CODEAlfW	09/24/2019
Routed to complaint by dispatch in regards to loud music coming from 1000 collins Ave. Upon arrival I was flagged down by the complainant which at the same time was receiving a call by CCO 736 A. Perez who was after speaking to the complainant on the phone decided to meet me on the call. Once CCO 736 A. Perez arrived on scene we assessed the music level 100 ft south of the property line of 1000 Collins where the music was not plainly audible, we then assessed the music 100 ft east of the property line where the music was plainly audible thus violating the noise ordinance. After dismissing the complainant, CCO Perez and I approached the hostess who put us in contact with Luis (General Manager) who we explained the noise ordinance to and how he was in violation of Section 46-152. Luis then contacted the owner of the property (Maki) and CCO 736 spoke with him and explained to the owner how he'd be receiving a violation for \$250.00, Violation was signed at 11:55 PM. After signing the violation CCO Perez and I walked with Luis and pointed out the bounds to where the music level can reach after 11:00 PM and how the noise is assessed. 1st Offense issued / \$250.00 BWC was used CCO 756 / W. Alfonso CCO 736 / A. Perez	CODEAlfW	08/11/2019

Exhibit “B” p.2 of 3

Case Status: Fine Paid
Open Date: 09/20/2019
Close Date: 04/01/2020

Printed on: 11/9/2020
Page 1 of 1

Case Description: 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.

Note Text	Created By	Date
Invoice #00218302 was paid in full 02/24/2020 - Changed status to fine paid.	CODEOlIP	04/01/2020
Created invoice for mail out. Agreed order attached under documents. Total amount of fine is \$1,250.00 as per the agreed order. Fines are under cases NC2019-12282 & NC2019-11985.	codebaqa	02/19/2020
Feb 2, 2020, Case has been reschedule, awaiting City Attorney to negotiate an agreed order.	CODENegL	02/10/2020
Deliver the Notice to appear hand delivered to 1000 Collins Ave and accepted by Damian Gomez, Manager.	CODENegL	11/25/2019
Notice to appear provided to CCO Negron for hand delivery	CODEOlIP	11/22/2019
Processed, folder prepared /Case appealed SMA 2019-00087 .File placed in appeals drawer/ Action sheet copy in CCO L. Negron Inbox.	CODEGarY	10/24/2019
I received the case paperwork from issuing Officer to have the case processed. I will turn the case over to clerical today for processing.	CODEConG	10/19/2019
Submitted paperwork to CCA Contreras for review and approval	CODENegL	10/19/2019
Case appeal on 9/24/19 awaiting for SM hearing.	CODENegL	10/19/2019
Arrival: 10:31 pm Departure: 11:45 pm Received a loud music complaint coming from the patio/restaurant area located at 1000 Collins Ave. I drove by the front of the property and the music sounded very loud. I made a right turn on 10th street and parked in the rear of the property in the alleyway. I exited my vehicle and the music could be heard in the rear alley while I walk north. I then walked south in Collins ave and across the street from the property in question and the same music was heard loud and excessive. I walk to the entrance of the patio for the restaurant and spoke with a lady who asked why I was there I had to raise my voice to let her know the music was too loud. The Manager Luis and Mikael came and spoke with me and eventually lowered the music. I explained to Mikael and Luis that the music should be at an ambient level as to allow their patrons to enjoy small talk with each other. The Manager Mikael was adamant in regards to the complainant Peter calling on us and called him names. I explained and offer to bring them a copy of the noise ordinance for him to educate his staff and control the music noise level emanating from his restaurant. I explained how he could monitor the music frequently to avoid other complaints. I contacted CCA Caicedo and informed her a violation was written. I asked if she would call the complainant and see if he wanted to meet with me. CCA Caicedo contacted me and stated she had left a voice message for the complainant. 2nd offense, \$1,000.00 fine Notice of violation issued BWC: Used L. Negron #740	CODENegL	09/20/2019

Exhibit “B” p.3 of 3

Case: ZV2019-02888
Case Status: Closed
Open Date: 12/07/2019
Close Date: 02/19/2020

City Of Miami Beach Case Notes Summary
Printed on: 11/9/2020
Page 1 of 1

Case Description: Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

REF: Failing to adhere to Conditional Use Permit # PP19-0270. Number 6 (C) After 8:00 PM the roll down storefront that faces the courtyard shall be closed in order to continue to operate as an indoor bar entertainment.

Note Text	Created By	Date
Agreed order attached under documents. Total amount of fine is \$1,250.00 as per the agreed order and fines are under cases NC2019-12282 & NC2019-11985. Close case.	codebaqa	02/19/2020
Processed, folder prepared /Case appealed SMA2019-02232. File placed in appeals drawer/ Action sheet copy in CCO Inbox. (Wrong note, case will be process as Appeal instead)	CODEGonL	01/29/2020
Prepare case for SP Master-printed AFV-return file to CCO Maharaj, Vijma for review and signature.	CODEGonL	01/27/2020
Forwarded to Clerical to set up for Special Master. KV	CODEVarK	01/21/2020
Submitted violation action sheet to CCA Varela to approve case for Special Master. V.Maharaj/708	CODEMahV	01/13/2020
Prepared file - NOV & Violation action list form in CCO Inbox, file placed in the Open drawer	CODEGonL	12/26/2019
Case prep checked and forwarded to Clerical for processing. KV	CODEVarK	12/14/2019
Service was obtained. Attached a copy of the signed NOV along with a violation action sheet and submitted to CCA Varela to review and approve to be process. V.Maharaj/708	CODEMahV	12/12/2019
12/12/19 at approximately 1:20 PM I met with Mr. Tal Alon (General Manager) and explained the NOV to him and the appeal process. Mr. Tal signed the NOV at 1:21 PM and a copy was given to him. BWC was used. V.Maharaj/708	CODEMahV	12/12/2019
On 12/07/19 I responded to a noise complaint at approximately 11:30 PM, after 8:00 PM the roll down storefront that faces the courtyard shall be closed in order to continue to operate as an indoor bar entertainment. After further research and clarification I confirmed that having the above mentioned doors open is a violation of the Conditional Use Permit. # PP19-0270. Number 6 (C). This is a second offense violation issued for Failing to adhere to the terms and conditions of their CUP (Conditional Use Permit) . V.Maharaj/708	CODEMahV	12/12/2019
First offense ZV2019-02794 was issued on 10/14/19.	CODEMahV	12/12/2019

Exhibit “C” p.1 of 2**Case:** NC2020-14137**Case Status:** Appeal**Open Date:** 02/28/2020**Close Date:****City Of Miami Beach Case Notes Summary****Printed on:** 11/10/2020**Page 1 of 1****Case Description:** 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.

Note Text**Created By****Date**

Processed, folder prepared /Case appealed SMN 2020-00096. File placed

CODERuiC

03/17/2020

in appeals drawer/ Action sheet copy in CCO Inbox.

Case prep checked and forwarded to Clerical for process and return to CCO for appeal hearing. KV

CODEVarK

03/12/2020

Submitted paperwork to CCA Varela for review and approval. It has been appealed.
L. Negron #740

CODENegL

03/09/2020

Arrival: 10:59 pm

CODENegL

02/28/2020

Departure: 12:50 am

Received a noise complaint in regards to loud music coming from 1000 Collins Ave, the complainant is located at 1001 Collins Ave. I arrived at the property in question and parked north of the property by 1030 Collins. As I exited the vehicle I could hear loud music coming from the south of 10 street. I walked on the East side of the street towards 10 street and the music got louder. I stood across the street and the music was plainly audible I walked to the south corner of 1001 Collins ave and I could still hear the music. I then approached the property and requested to speak with the Manager on duty. The hostess departed to find the Manager on duty. A lady by the name of Lynn requested identified herself as the Manager. I explained the reason I was there and that we needed the music lowered. She went to the back and returned once the music was lowered. I explained she would be receiving a noise ordinance violation and I would go to my vehicle to write it up and return thereafter.

Third violation, \$2,000.00 fine

Notice of violation issued

BWC: Used

L. Negron #740

Exhibit “C” p.2 of 2

Case: NC2020-15790

Case Status: Appeal

Open Date: 07/15/2020

Close Date:

City Of Miami Beach Case Notes Summary

Printed on: 11/10/2020

Page 6 of 6

Case Description: LOUD MUSIC

Note Text

Arrival: 10:25 PM

Departure: 12:25 AM

Created By

CODEMadJ

Date

07/16/2020

Upon arrival, I parked my vehicle on the 200 block of 10th St. I exited and and walked to the front of 1000 Collins. I heard different sounds of music from different directions. I stood at the corner NE and SE corners of 10th and Collins. I could not hear the noise. The complainant then asked to meet and met me on the SE corner of Collins and 10th. He stated the music was extremely loud from the 200 block. Upon reaching the north side of 960 Collins, I heard loud house music coming from a roof top. I followed the music to the rear of 1000 Collins. Complainant stated it was louder and clearer from the roof top of 960 Collins. I walked with the owner of 960 Collins to the roof top of 960. I heard unreasonably loud and excessive house music coming from the roof top of 1000 Collins. There did not appear to be any people on the roof top. I walked inside 1000 Collins and advised the front desk of the music. He called someone to shut it off. I went back to my vehicle to enter notes and the complainant came back to state it was not off. I walked in again and advised front desk and 2 other employees. It appeared one of the employees stated they forgot to turn off the music from earlier in the day. A 6th and subsequent (7th) offense violation was issued. Violation explained to and signed by MOD Logan Gray.

BWC used

J. Madariaga 733

LOUD MUISC COMING THE ROOF TOP OF THE HOTEL

pinggar1

07/15/2020