

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 22, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB06-0075 – 601-685 Washington Avenue. Goodtime Hotel – Progress Report**

BACKGROUND

May 10, 2016

The Historic Preservation Board approved the project (HPB File No. 7632.)

July 26, 2016

The Planning Board approved a Conditional Use Permit (CUP) for the construction of a new seven story hotel development exceeding 50,000 square feet including a parking garage and a Neighborhood Impact Establishment with outdoor entertainment.

January 24, 2017

The Planning Board approved a Modified CUP to include mechanical parking in the garage.

PROGRESS REPORT

The applicant is before the Board pursuant to Condition #2 of the modified CUP (attached) as follows:

2. *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 business tax receipt (BTR) for any of the proposed outdoor entertainment venue.*

Condition #2 also has the following requirements:

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

As of the writing of this report, no other BTR's for the commercial spaces of the building have

been issued. As such, the applicant shall be required to appear before the Planning Board when the BTR's are issued for at least 75% of the building area or before **March 26, 2022** for a progress report specific to traffic as required per condition #2.

There are open violations as of the writing of this progress report, and a number of warnings and citations have been issued to the property since the CUP was approved by the Planning Board. Below are descriptions of the warnings and violations that were issued, as recorded in the City's code case management system.

- 05/22/2021 – **NC2021-20281** Written Warning Issued - 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.

Received an anonymous complaint in regard to loud music coming from 601 Washington Ave. I met with CCA Varela who explained the boundaries for any loud music complaint coming from 601 Washington Ave as per attached email from Mr. Rogelio A. Madan, Chief Community Planning and Sustainability Planning Department. As we stood by the east side edge of the Arcadia House balconies, we could hear the music. We then moved behind the Arcadia House in Euclid Court and the music could still heard. The Notice of violation was issued and received by Manager Nick Fielding.

- 05/22/2021 – **CUP2021-00031** Violation of the CUP - Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

Notes indicate that Code Enforcement received an anonymous complaint in regard to loud music coming from 601 Washington Ave. I met with CCA Varela who explained the boundaries for any loud music complaint coming from 601 Washington Ave as per attached email from Mr. Rogelio A. Madan, Chief Community Planning and Sustainability Planning Department. As we stood by the east side edge of the Arcadia House balconies, codeescs we could hear the music. We then moved behind the Arcadia House in Euclid Court and the music could still heard. The Notice of violation was issued and received by Manager Nick Fielding.

- 5/29/2021 – **NC2021-20407** First Offence - Repeat violations of Section 46-152 of the Code of the City of Miami Beach 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. Reference: Loud music coming from this location. First Offence - \$250.00 Fine.

Notes indicate that CCO Balgobin and I arrived to 601 Washington Ave responding to a noise complaint. Upon arrival we could hear the loud music coming from the Good Time Hotel from the eastern balcony as well as the alleyway behind of the Arcadia building. We then made contact with the manager and director of the Good Time hotel. We all then walked over to the alleyway of the Arcadia building because the director and manager wanted to hear for the loud music themselves. The manager and director then disagreed

that the music we were hearing was coming from the Good Time Hotel. Myself and CCO Balgobin the reconfirmed that the loud music was indeed coming from the good Time Hotel, especially in between the Arcadia building and the building next door. Notice of violation was issued. The noise/music was lowered at the time of departure from this location.

- 5/29/2021 – **CUP2021-00033** Violation of the CUP - Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

Notes indicate that *Upon arrival to this 601 Washington Ave we measured the music coming from the Good Time Hotel in accordance to their CUP. We measured the music from the east balcony and it was audible. Notice of violation issued. The noise/music was lowered at the time of departure from this location. 1st offense. BWC activated.*

- 6/4/2021 – **NC2021-20477** Second Offence - Repeat violations of Section 46-152 of the Code of the City of Miami Beach 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. Reference: Loud music coming from this location. Second Offence - \$1,000.00 Fine.

Notes indicate that *CCO McLean and I received a call from dispatch in reference to loud music coming from the "Good Time Hotel" at 601 Washington Ave. Upon our arrival we parked and proceeded over to 650 Pennsylvania Ave and stood under the balconies facing 601 Washington Ave. We then proceeded to Pennsylvania Ct and surveyed for loud music; music was heard in both areas. We then proceeded to 601 Washington Ave and met with director of security, food and beverage director and the general manager, Avi. CCO McLean and I went to the same locations with them and confirmed with them that the music could still be heard. A violation was issued for violating the noise ordinance 2nd offense and a 2nd offense for violating the conditional use permit (CUP2021-00035, 2nd Offense).*

They said they would turn the music down and we departed. While returning to our vehicles we were stopped by a female individual that brought me to 701 Euclid Ave #202 to survey for loud music. At her unit I educated her about the noise ordinance and she said that the music was lower than previously. There was no music heard from within her unit. We then received another call for 635 Euclid Ave, with a complainant named Charles. I met with him and he brought me to the court yard of his building. The music could be heard in his courtyard. He then brought me to his unit and opened the balcony door. I educated him on the ordinance, he closed the balcony door and no noise was heard in the unit. He then brought me to his neighbor who just came back from walking her dog and I was able to survey from her kitchen.

*No noise was heard, she suggested I go up to the screen door and I only heard Charles speaking with another neighbor in the courtyard no music. The music ceased at around 6:40 PM. Violations were issued and signed for by the General Manager, Avi.
Met with Several Complainants*

- 6/4/2021 – **CUP2021-00035** violation(s) of the City Code, which is/are: Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

Notes indicate that Upon arrival, I parked in the alleyway located to the West of 640/650 Pennsylvania Avenue. (Arcadia House) I noticed unreasonably loud and excessive music coming from the east side of the building. I walked West toward Euclid Avenue and continued to hear the unreasonably loud and excessive music. I walked north on Pennsylvania Court behind 708 Pennsylvania Avenue and continued to hear the unreasonably loud music. I walked on the east side of 640/650 Pennsylvania Avenue (Arcadia House) and stood under the balcony and determined the music to be coming from the pool deck of the Goodtime Hotel located at 601 Washington Avenue. I created the violations and met with General Manager, Avi Y., and head of security, Chris Torres. I explained the violations and walked with them around the 640/650 Pennsylvania Avenue (Arcadia House) building and into the alleyway. The music was still unreasonably loud and excessive, and plainly audible from the Pennsylvania Court alleyway. I explained that I will allow them to return to the establishment to lower the music. They understood and signed for the violations. Service obtained. Moments later the music was lowered to a reasonable level and no longer heard in the alleyway or directly east of the 640/650 Pennsylvania Avenue (Arcadia House) building. Compliance achieved.

- 6/5/2021 – **NC2021-20507** Third Offence - Repeat violations of Section 46-152 of the Code of the City of Miami Beach 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. Reference: Unreasonably loud and excessive music coming from the pool deck of the establishment. 3rd Offense; \$2000.00 Fine.

Responded to complaint of loud music coming from the location. Upon arrival, I parked in the alleyway located to the West of 640/650 Pennsylvania Avenue. (Arcadia House) I noticed unreasonably loud and excessive music coming from the east side of the building. I walked West toward Euclid Avenue and continued to hear the unreasonably loud and excessive music. I walked north on Pennsylvania Court behind 708 Pennsylvania Avenue and continued to hear the unreasonably loud music. I walked on the east side of 640/650 Pennsylvania Avenue (Arcadia House) and stood under the balcony and determined the music to be coming from the pool deck of the Goodtime Hotel located at 601 Washington Avenue. I created the violations and met with General Manager, Avi Y., and head of security, Chris Torres. I explained the violations and walked with them around the 640/650 Pennsylvania Avenue (Arcadia House) building and into the alleyway. The music was still unreasonably loud and excessive, and plainly audible from the Pennsylvania Court alleyway. I explained that I will allow them to return to the establishment to lower the music. They understood and signed for the violations. Service obtained. Moments later the music was lowered to a reasonable level and no longer heard in the alleyway or directly east of the 640/650 Pennsylvania Avenue (Arcadia House) building. Compliance achieved.

- 6/5/2021 – **CUP2021-00034** violation(s) of the City Code, which is/are: Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit. 4th Offence.

Notes indicate that code enforcement officer *responded to complaint of loud music coming from the location.*

Responded to complaint of loud music coming from the location. Upon arrival, I parked in the alleyway located to the West of 640/650 Pennsylvania Avenue. (Arcadia House) I noticed unreasonably loud and excessive music coming from the east side of the building. I walked West toward Euclid Avenue and continued to hear the unreasonably loud and excessive music. I walked north on Pennsylvania Court behind 708 Pennsylvania Avenue and continued to hear the unreasonably loud music. I walked on the east side of 640/650 Pennsylvania Avenue (Arcadia House) and stood under the balcony and determined the music to be coming from the pool deck of the Goodtime Hotel located at 601 Washington Avenue. I created the violations and met with General Manager, Avi Y., and head of security, Chris Torres. I explained the violations and walked with them around the 640/650 Pennsylvania Avenue (Arcadia House) building and into the alleyway. The music was still unreasonably loud and excessive, and plainly audible from the Pennsylvania Court alleyway. I explained that I will allow them to return to the establishment to lower the music. They understood and signed for the violations. Service obtained. Moments later the music was lowered to a reasonable level and no longer heard in the alleyway or directly east of the 640/650 Pennsylvania Avenue (Arcadia House) building. Compliance achieved.

The following conditions of approval contained in the approved CUP are applicable regarding the above noted violations and warnings:

2. *This Conditional Use Permit is issued to Washington Squared Owner, LLC, to construct a seven (7) story mixed use hotel project, with retail space on the first floor, traditional parking and mechanical parking on the 2nd floor, food and beverage areas located on the roof and interior of the second floor (3rd level), and a pool and pool deck on the upper roof deck. Any proposed change to the uses approved in this Conditional Use shall require the review and approval of the Planning Board.*
3. *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 business tax receipt (BTR) for any of the proposed outdoor entertainment venue.*

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address

- possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.
 6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
 10. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
 - a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed lounge, café, restaurant, café cart, and two (2) outdoor courtyard areas located on the roof of the second floor (3rd level) with the criteria listed below:
 - i. The food and beverage areas of the hotel covered in the CUP shall have a maximum occupant content of approximately 1200 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor portions of the project may operate until 5:00 AM and shall be permitted to have a DJ or music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation), seven (7) days per week, from 11:00 AM to 5:00 AM.
 - iii. All outdoor areas of the venue(s) may operate until 1:00 AM and shall be permitted to have a DJ or music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation), as follows seven (7) days per week:

<u>Times</u>	<u>Type of Permitted Music</u>	<u>DJ Permitted</u>
<u>9:00 AM to 11:00 AM</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>11:00 AM to 8:00 PM</u>	<u>Ambient Or Entertainment</u>	<u>Yes, Ambient Or Entertainment</u>
<u>8:00 PM to 1:00 AM</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>1:00 AM to 9:00 AM</u>	<u>None</u>	<u>No</u>

- iv. *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 in accordance with the design intent and recommendations of the sound system study submitted as part of this application. 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. Prior to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and the City's sound study peer reviewer, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. This shall include the requirement that noise from the sound system shall not be plainly audible at the western [eastern] balconies of the Arcadia House Condominium located at the southwest corner of 7th Street and Washington Avenue. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR.*
- v. *Additionally, 60 days after the issuance of a BTR , the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review demonstrating that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application.*

On March 26, 2021, a Business Tax Receipt (BTR) with entertainment (BTR009732-02-2021) was inadvertently issued to the establishment prior sound testing taking place as required by the approved CUP. On May 17, 2021 the City suspended the 'Entertainment' portion of the BTR, as it was issued in error.

On May 21, 2021, the required sound testing took place on site with the applicant's sound consultant, the City's Peer Reviewer, Planning staff and Code Enforcement. At the conclusion of this on site testing, the sound system within the outdoor portions of the venue was set at a level that was not audible from across the street on Washington Avenue, at the eastern side of the Arcadia condominium. The applicant's sound consultant submitted a report substantiating this and the City's peer reviewer agreed with the findings of the report. Based upon the report submitted by the sound consultant, the 'Entertainment' portion of the BTR was reinstated.

As noted above, on the very next day, May 22, 2021, a warning and noise violation were issued, in direct contravention of the CUP. In addition to the above noted violations, there have been 27 noise complaints since April 3, 2021. The pattern of calls for service, warnings and violations at the establishment, as summarized above, is troubling.

On May 27, 2021, the Planning Department issued a Cure Letter to the applicant requesting that they appear at the June 22, 2021 Planning Board meeting to address these issues as part of the Progress Report. In accordance with the provisions set forth in Sec. 118-194 of the LDR's, the Planning Board may consider setting a revocation/modification hearing. In anticipation of a potential request to schedule a revocation/modification hearing, staff has noticed a modification/revocation hearing for the July 27, 2021 meeting of the Planning Board, pursuant to the requirements of section 118-194.

Staff would also note that the recorded CUP contains a scrivener's error. Specifically, condition 10 (a)(iv) states the following:

"This shall include the requirement that noise from the sound system shall not be plainly audible at the western balconies of the Arcadia House Condominium located at the southwest corner of 7th Street and Washington Avenue."

Staff has discussed this error with the applicant, and after reviewing the actions of the board, it is clear that the intent of the Planning Board motion was for this requirement to apply to the "eastern balconies" of the Arcadia House Condominium. As such, the aforementioned violations for non-compliance with the requirements of condition 10 (a)(iv), demonstrate that sound is plainly audible from the eastern balconies of the Arcadia House.

In light of the malicious nature of the violations noted herein, as well as the need to correct the aforementioned scrivener's error, staff recommends that the Planning Board set a modification and revocation hearing for July 27, 2021. At this hearing, the Board may consider the cumulative impact of the violations issued, as well as the testimony of the applicant and affected parties.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the progress report and schedule a revocation/modification hearing for the July 27, 2021 Planning Board meeting.

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

PROPERTY: 601-685 Washington Avenue

FILE NO. PB 06-0075, a.k.a. PB 0616-0031, f.k.a., PB File No. 2320

IN RE: The application for a modification to a previously issued Conditional Use Permit for the construction of a new seven story hotel development exceeding 50,000 square feet including a parking garage and a Neighborhood Impact Establishment with outdoor entertainment. Specifically, the modification includes mechanical parking in the garage, pursuant to Section 118, Article IV and Section 130, Article II of the City Code.

LEGAL

DESCRIPTION: Lots 11-21 of Block 34, of "Ocean Beach Fla Addition No. 1", according to the Plat thereof, as recorded in Plat Book 3, page 11 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: January 24, 2017

CONDITIONAL USE PERMIT

The applicant, Washington Squared Owner, LLC, requested a Conditional Use approval for the construction of a new seven story hotel development exceeding 50,000 square feet including a parking garage, with mechanical parking in the garage and a Neighborhood Impact Establishment with outdoor entertainment, pursuant to Section 118, Article IV, Section 142, Article II, and Section 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:

The property in question is located in the CD-2 – Commercial, Medium Intensity Zoning District.

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

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;

The structures and uses associated with the request are consistent with the Land Development Regulations;

The public health, safety, morals, and general welfare will not be adversely affected;

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

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IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below to which the applicant has agreed. Underlining denotes new language and ~~strikethrough~~ denotes stricken language from the previous order:

1. This Conditional Use Permit is issued to Washington Squared Owner, LLC, to construct a seven (7) story mixed use hotel project, with retail space on the first floor, traditional parking and mechanical parking on the 2nd floor, ~~and~~ food and beverage areas located on the roof and interior of the second floor (3rd level), and a pool and pool deck on the upper roof deck. Any proposed change to the uses approved in this Conditional Use shall require the review and approval of the Planning Board.
2. 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 business tax receipt (BTR) for any of the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property applicants, operators, and all successors in interest and assigns. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest or equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. ~~Subsequent owners and operators shall be required to appear before the Board, in advance, to affirm their understanding of the conditions listed herein.~~
4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.
5. 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.

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6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
7. All existing overhead utilities abutting the subject site shall be placed underground at the sole expense of the applicant.
8. The following shall apply to the operation of the proposed parking garage:
 - a. There shall be security personnel of at least one person, on-site, monitoring the garage during all hours of operation.
 - b. Signs prohibiting tire-screeching and unnecessary horn-honking shall be posted at the garage entrance.
 - c. Signs to minimize vehicle conflict in the driveways in and out of the property shall be posted in appropriate locations.
 - d. The minimum parking required by the land development regulations shall be provided, or parking in lieu fee shall be paid for any spaces that cannot be provided in the parking level.
9. The following shall apply to the construction and operation of the proposed mechanical parking system:
 - a. The noise or vibration from the operation of the mechanical parking lifts shall not be plainly audible to or felt by any individual standing outside an apartment or hotel unit at any adjacent or nearby property. In addition, noise and vibration barriers shall be utilized to ensure that surrounding walls decrease sound and vibration emissions outside of the parking garage.
 - b. The parking lift platforms must be fully load bearing, and must be sealed and of a sufficient width and length to prevent dripping liquids or debris onto the vehicle below.
 - c. All free-standing mechanical parking lifts must be designed so that power is required to lift the car, but that no power is required to lower the car, in order to ensure that the lift can be lowered and the top vehicle can be accessed in the event of a power outage.
 - d. All mechanical lifts must be designed to prevent lowering of the lift when a vehicle is parked below the lift.
 - e. All mechanical parking lifts must be inspected and certified as safe and in good working order by a licensed mechanical engineer at least once per year and the findings of the inspection shall be summarized in a report signed by the same licensed mechanical engineer or firm. Such report shall be furnished to the Planning Director and the Building Official.
 - f. All parking lifts shall be maintained and kept in good working order.
 - g. Parking operation shall be by valet attendants only. A contract with a valet operator

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shall be submitted to staff for review and approval prior to a final Certificate of Occupancy or Business Tax Receipt, whichever occurs first

10. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:

a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed lounge, café, restaurant, café cart, and two (2) outdoor courtyard areas located on the roof of the second floor (3rd level) with the criteria listed below:

i. The food and beverage areas of the hotel covered in the CUP shall have a maximum occupant content of approximately 1200 persons or any lesser such occupant content as determined by the Fire Marshal.

ii. ~~The indoor portions of the project may operate until 5:00 AM and shall be permitted to have a DJ or music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation), seven (7) days per week, from 11:00 AM to 5:00 AM.~~

iii. All outdoor areas of the venue(s) may operate ~~only from 7:00 AM to until 1:00 AM~~ and shall be permitted to have a DJ or ~~entertainment music (defined as music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music) (defined as a sound level that does not interfere with normal conversation)~~, as follows seven (7) days per week:

<u>Times</u>	<u>Type of Permitted Music</u>	<u>DJ Permitted</u>
<u>9:00 AM to 11:00 AM</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>11:00 AM to 8:00 PM</u>	<u>Ambient Or Entertainment</u>	<u>Yes, Ambient Or Entertainment</u>
<u>8:00 PM to 1:00 AM</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>1:00 AM to 9:00 AM</u>	<u>None</u>	<u>No</u>

iv. 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 in accordance with the design intent and recommendations of the sound system study submitted as part of this application. 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. Prior

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to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and the City's sound study peer reviewer, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. This shall include the requirement that noise from the sound system shall not be plainly audible at the western balconies of the Arcadia House Condominium located at the southwest corner of 7th Street and Washington Avenue. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR.

- v. Additionally, 60 days after the issuance of a BTR , the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review demonstrating that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application.
- b. Delivery trucks shall only be permitted to make deliveries from the designated loading spaces contained within the property and from designated on-street loading zones for trucks not to exceed 20'-0" in length, as authorized by the Parking Department.
- c. Delivery trucks shall not be allowed to idle in the loading areas.
- d. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- e. Deliveries and waste collections may occur daily, but shall occur only between 7:00 AM and 1:00 PM 6:00 AM and 5:00 PM.
- f. There shall be a loading dock master, on-site, monitoring the interaction between loading and refuse pick up with the operation of the valet and garage during all hours of deliveries and refuse pick up.
- g. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
- h. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
- i. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.

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- j. Garbage dumpster covers shall be closed at all times except when in active use.
 - k. Restaurant personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
 - l. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises, except adjacent to Collins Court, on private property.
 - m. 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
 - n. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - o. Special Events shall not be issued for the outdoor areas. Special Events may occur on the interior of the building, 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.
-
- p. No outdoor bar counter shall be permitted on the roof deck located above the highest level of hotel units.
 - q. The rooftop deck located above the highest level of hotel units shall be for the exclusive use of hotel guests and their invitees.
11. The applicant shall address the following Concurrency and Traffic requirements, as applicable:
- a. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
 - b. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.
 - c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - d. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Business Tax Receipt.
 - e. Valet or loading activities shall not block the garage ramp at any time.

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- f. Valet pick-up may only occur in front of the two (2) northernmost loading spaces (the middle of the three (3) valet spaces) between to 4:00 PM 5:00 PM and 7:00 AM.
 - g. The required number of valet runners will be provided in order to prevent queued vehicles from blocking traffic on Collins Court.
 - h. A representative shall be identified who will be in charge of implementing the Transportation Demand Management (TDM) strategies identified and approved in the original traffic impact study memorandum dated May 24, 2016. Once a TDM plan is implemented, the City will contact the TDM representative to determine how well the plan is working and if any adjustment are needed with time.
12. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a Building permit.
13. The applicant shall obtain a full building permit within 18 months from the date of the original approval, on July 26, 2016, of this Conditional Use Permit, 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.
14. 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.
15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
16. 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.
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 8th day of FEBRUARY, 2017.

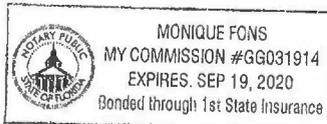
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PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

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 8th day of February, 2017, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



Monique Fons

Notary:
Print Name MONIQUE FONS
Notary Public, State of Florida
My Commission Expires: 9/19/2020
Commission Number:

{NOTARIAL SEAL}

Approved As To Form:
Legal Department

John Sant 2/6/17

Filed with the Clerk of the Planning Board on 2/8/2017

JS

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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

May 25, 2021

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Washington Squared Owner, LLC,
601- 685 Washington Avenue
Miami Beach, FL 33139

Re: PB 06-0075, a.k.a. PB 0616-0031, f.k.a., PB File No. 2320.

Dear Sir/Madam:

A Conditional Use Permit (CUP) to operate was issued to Washington Squared Owner, LLC, on January 24, 2017 (see attached). It has come to the Planning Department's attention that written warnings and violations have been issued by the Code Compliance Department regarding the operation of the venue.

These violations include, but are not limited to, noise violations that are still pending as of the date of this letter:

- 05/22/2021 – **NC2021-20281** Written Warning Issued - 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.
- 05/22/2021 **CUP2021-00031** Violation of the CUP - Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

Notes indicate that upon arrival, CCO Ramirez and myself walked over to the eastern edge of the Arcadia Building located at 650 Pennsylvania Avenue and stood underneath the balcony. We could still plainly hear the music being played from the pool deck of the building at 601 Washington Avenue. We met with Nick, one of the managers, at the eastern edge of the Arcadia building and explained the violation. The music was not lowered.

In addition to the items listed above, there were three other noise complaints made in the same timeframe.

The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted violations and warnings:

2. 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 business tax receipt (BTR) for any of the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.

10. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
 - a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed lounge, café, restaurant, café cart, and two (2) outdoor courtyard areas located on the roof of the second floor (3rd level) with the criteria listed below:
 - i. The food and beverage areas of the hotel covered in the CUP shall have a maximum occupant content of approximately 1200 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor portions of the project may operate until 5:00 AM and shall be permitted to have a DJ or music, whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation), seven (7) days per week, from 11:00 AM to 5:00 AM.
 - iii. All outdoor areas of the venue(s) may operate until 1:00 AM and shall be permitted to have a DJ or music whether live or recorded, whether amplified or non-amplified, which is played at a volume that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation), as follows seven (7) days per week:

<u>Times</u>	<u>Type of Permitted Music</u>	<u>DJ Permitted</u>
<u>9:00 AM to 11:00 AM</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>11:00 AM to 8:00 PM</u>	<u>Ambient Or Entertainment</u>	<u>Yes, Ambient Or Entertainment</u>
<u>8:00 PM to 1:00 AM</u>	<u>Ambient Only</u>	<u>Yes, Ambient Only</u>
<u>1:00 AM to 9:00 AM</u>	<u>None</u>	<u>No</u>

- iv. 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 in accordance with the design intent and recommendations of the sound system study submitted as part of this application. 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. Prior to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and the City's sound study peer reviewer, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. This shall include the requirement that noise from the sound system shall not be plainly audible at the western balconies of the Arcadia House Condominium located at the southwest corner of 7th Street and Washington Avenue. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR.
- v. Additionally, 60 days after the issuance of a BTR , the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review demonstrating that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application.

16. 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.

It is important to note that the above noted violations and noise complaints (total of 5) were issued or made over a short period of time (5/22/2021 to 5/23/2021) and occurred the day after a sound test at the site was performed, with both the operator and City staff present. These violations and noise complaints exhibit repeated and intermittent noncompliance with the conditions of this CUP and underscore a serious concern about further repeated or intermittent noncompliance with the conditions of the CUP.

Therefore, in light of the inconsistencies with the aforementioned conditions of approval contained in the CUP, the repeated and intermittent noncompliance with the conditions of this CUP, and the pending code violations, **you are requested to appear at the June 22, 2021 Planning Board hearing** for a verbal progress report. Please be advised that at the time of the progress report, in accordance with the provisions of 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 noted herein, and initiate modification/revocation proceedings, this matter may be placed on the July 27, 2021 agenda meeting of the Board as a modification/revocation hearing. 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. Rogelio Madan at (305) 673-7000 ext. 26131 or via email at rogeliomadan@miamibeachfl.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Mooney', with a long, sweeping flourish extending to the right.

Thomas R. Mooney, AICP
Planning Director

TRM\RAMAG