

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: **PB18-0252. 928 Ocean Drive - Voodoo Lounge - Progress Report.**

BACKGROUND

February 13, 2018: The applicant, Deco Walk Hotel & Golf Club, LLC, requested a Certificate of Appropriateness (COA) from the Historic Preservation Board (HPB17-0171) for the partial demolition of the Ocean Drive façade and the design of a new glass storefront system and the installation of a retractable canopy system at the rooftop including a variance to exceed the allowable hours of operation for an accessory outdoor bar counter on the roof of the building. The variance for the outdoor bar counter hours was denied.

September 17, 2018: The applicant requested modifications to the previously issued COA for the design and location of the outdoor bar. The HPB heard the request (HPB18-0210) and continued the application due to concerns about the rooftop operation. The applicant subsequently withdrew the modification request.

April 30, 2019: The Planning Board approved a Conditional Use Permit (CUP) for a Neighborhood Impact Establishment (NIE) with entertainment and an occupant content in excess of 200 persons and an open air entertainment establishment, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

March 31, 2021: A cure letter was sent to "Decowalk Hotel + Golf Club, LLC," the applicant for the CUP approved by the Planning Board on April 30, 2019, pursuant to the requirements of Section 118-194 of the City Code. The cure letter requested that the applicant appear before the Planning Board on April 27, 2021 for a progress report.

April 27, 2021: The Planning Board discussed the progress report and continued it to June 22, 2021.

PROGRESS REPORT

The applicant is before the Board as requested at the last Planning Board hearing as a follow-up. There are no new open violations as of the writing of this progress report. All previous violations have been closed.

STAFF ANALYSIS

As indicated at the last progress report on April 27, 2021, there were violations and a number of warnings and citations that had been issued to the property. Those violations are listed below for reference. All of the violations have since been closed.

- **NC2021-18669 Verbal Warning** 02/19/2021: 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 any unreasonably loud, excessive, unnecessary or unusual noise. You may comply by immediately ceasing the unreasonably loud, excessive, unnecessary, or unusual noise. You shall be subject to penalties if the violation continues. Ref: Above ambient level
- **CC2021-10305** 3/14/2021 – Restaurant playing above-ambient music. Section 26-31, 26-33. Whenever the city manager declares that a state of emergency exists, pursuant to section 26-31 he may order and promulgate emergency measures. 2nd Offense.
- **CC2021-10370** 3/14/2021 – Restaurant playing above-ambient music. Section 82-443. Failing to comply with the measures imposed during the High Impact Period. The limitation of live or amplified music, including those exemptions set forth in section 46-157 of this Code. 1st Offense.
- Voodoo Lounge at 928 Ocean Drive has also been in violation of their 07/16/2020 Attestation. Specifically:
 - *"An off-duty police officer shall be provided as required by Miami Beach Police, subject to an off-duty police officer being available to work at the establishment when requested"* (5th bullet in schedule 1 of Attestation);
 - *"No music is permitted unless the volume does not exceed the level of a normal conversation"* (9th bullet found in schedule 1 of Attestation).

As no additional violations or warnings have been issued since the last progress report, and all open violations have been closed, staff recommends that no further action be taken at this time. Planning staff will continue to coordinate with the Code Compliance Department, and should new or additional violations be issued, staff reserves the right to initiate new enforcement proceedings.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss and close the progress report.

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

PROPERTY: 928 Ocean Drive

FILE NO. PB18-0252

IN RE: An application for Conditional Use approval for a Neighborhood Impact Establishment (NIE) with entertainment and an occupant content in excess of 200 persons and an open air entertainment establishment, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

LEGAL DESCRIPTION: Lot 5, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

MEETING DATE: April 30, 2019

CONDITIONAL USE PERMIT

An application was filed with the Planning Director pursuant Section 118, Article IV 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:

That the property in question is located in the MXE- Mixed Use Entertainment Zoning District;

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

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

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

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

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

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and

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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 Business Tax Receipt (BTR) with entertainment. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Decowalk Hotel + Golf Club, LLC, as operator of this Conditional Use Permit consisting of a restaurant, alcoholic beverage establishment, and including open-air entertainment at the ground level only, with approximately 110 seats. The establishment shall always be licensed as a restaurant/bar, and shall not become a stand-alone bar or stand-alone entertainment establishment.
3. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. 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.
5. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, 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. The hours of operation shall be within the hours of 11:00 AM to 5:00 AM. At all times the establishment is open, food service with a full menu and operating kitchen shall be required.
 - b. The patron occupant content shall be a maximum of 448 persons, or as determined by the Fire Marshall, whichever is lower.
 - c. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study. A final sound transmission report which includes the performance of sound systems and sound attenuation devices shall be submitted to staff for review and approval prior to a Business Tax Receipt approval for the entertainment portion.
 - d. The establishment's four access doors, located facing Ocean Drive, shall be closed between 10pm and 11am, except for the actual ingress and egress of patrons and staff. Doors shall not be propped open during these hours.
 - e. Entertainment shall be prohibited on the roof top at all times.
 - f. Exterior speakers, except those required to address Building and Life Safety Codes shall be strictly prohibited on the exterior of the building on the ground floor.

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- g. Exterior speakers, except those required to address Building and Life Safety Codes and those associated with a distributed sound system for ambient, background music only, which does not interfere with normal conversation, shall not be permitted at the roof deck. An acoustic plan certified by an acoustic engineer for the proposed distributed sound system shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Historic Preservation Board and Planning Board.
- h. Live entertainment or a DJ shall only be permitted within the interior of the establishment on the ground floor. Live entertainment outside, including along the outdoor front terrace or roof top, shall be prohibited at all times.
- i. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
- j. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- k. Any queuing of patrons shall occur within the property or inside the restaurant only. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
- l. Security staff shall monitor patron circulation and occupancy levels.
- m. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
- n. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to historic preservation staff review and approval.
- o. Delivery trucks shall only be permitted to make deliveries from 7:00 AM to 10:00 AM.
- p. Delivery trucks shall only be permitted to make deliveries from the designated loading zones approved by the Parking Department.
- q. Delivery trucks shall not idle in the loading zone.
- r. Air conditioned 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.
- s. Garbage dumpster covers shall be closed at all times except when in active use.
- t. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.

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6. 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 BTR to operate this entertainment establishment.
7. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise.
8. 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.
9. 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.
10. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
11. The applicant agrees and shall be required to provide access to areas subject to this CUP (not including private residences or hotel rooms) 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.
12. 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.
13. 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.

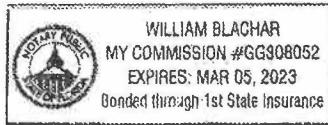
Dated this 17th day of MAY, 2019.PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDABY: Michael Belush
Michael Belush, Chief of Planning and Zoning
For Chairman

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April 30, 2019

PB18-0252- 928 Ocean Drive- Voodoo Lounge
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COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 17th day of May,
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.



{NOTARIAL SEAL}

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

Approved As To Form: (Nickallego) 5/16/2019
Legal Department

Filed with the Clerk of the Planning Board on Jessie G. G. G. G. 5/17/19)

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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

March 31, 2021

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Decowalk Hotel + Golf Club, LLC
928 Ocean Drive
Miami Beach, FL 33139

Re: PB18-0252 – Voodoo Lounge

Dear Sir/Madam:

A Conditional Use Permit to operate was issued to Decowalk Hotel + Golf Club, LLC, on April 30th, 2019 (see attached). It has come to the Planning Department's attention that violations have been issued by the Code Compliance Department regarding the operation of the venue. These violations include, but are not limited to, disorderly conduct, noise violations, failing to limit the queuing of patrons to within the property and failing to maintain enclosed garbage dumpsters. The following is a partial summary of violations, calls for service following warnings, and open offenses that are still showing in the City's records as of this writing:

- **SV2019-09388** 6/30/2019 – Ref: Container without lids. Section 90-99: Garbage facility without a lid or open lid. Fine Owed.
- **CC2021-09988** 1/2/2021 – Section 82-1 (a), 82-1(b) (1) (2). It shall be unlawful for any person, while in or on any public street, avenue or alley, or any park, beach, structure, building or other property or place owned, maintained or operated by the city for public use, to sell, rent or offer for sale or rent to the public any merchandise product goods, or service of any nature whatsoever. Ref: Selling drinks out of a cooler on public property. 1st Offense - \$250.00 Fine
- **ZV2021-03192** 1/2/2021 – Section 142-904(b)(1)h: Failing to comply with the provisions regarding cigars and cigarette sales as stipulated in this section. Ref: Made sale on the Public Right of Way in front of 918 Ocean Drive. 1st Offense - \$100.00 Fine
- **NC2021-18669 Verbal Warning** 02/19/2021:
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 any unreasonably loud, excessive, unnecessary or unusual noise. You may comply by immediately ceasing the unreasonably loud, excessive, unnecessary, or unusual noise. You shall be subject to penalties if the violation continues. Ref: Above ambient level

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- Voodoo Lounge at 928 Ocean Drive has also been in violation of their 07/16/2020 Attestation. Specifically:
 - *“An off-duty police officer shall be provided as required by Miami Beach Police, subject to an off-duty police officer being available to work at the establishment when requested”* (5th bullet in schedule 1 of Attestation);
 - *“No music is permitted unless the volume does not exceed the level of a normal conversation”* (9th bullet found in schedule 1 of Attestation).

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

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 Business Tax Receipt (BTR) with entertainment. 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).
5. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, 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:
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- be submitted to staff for review and approval prior to a Business Tax Receipt approval for the entertainment portion.
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7. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise.
8. 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.
12. 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.

In addition to the above noted violations and warnings, the establishment has exhibited repeated and intermittent noncompliance. Since July 1, 2016, there have been 59 violations, including 33 City Code violations, 8 noise complaints, 2 property maintenance violations, 10 sanitation violations, and 6 zoning violations. Since that date, there have also been 251 calls for service.

Therefore, in light of the inconsistencies with the aforementioned conditions of approval contained in the Conditional Use Permit and the pending code violations **you are requested to appear at the April 27th, 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 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. Alejandro Garavito at (305) 673-7000 ext. 26164.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Mooney', is written over the word 'Sincerely,'.

Thomas R. Mooney, AICP
Planning Director

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Senor Frogs, LLC