

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: November 30, 2021

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB19-0270: 1000-1030 Collins Avenue - Fairwinds Hotel
Progress Report**

BACKGROUND

- March 14, 2006:* A Certificate of Appropriateness for the partial demolition, renovation and restoration of the existing 3-story Fairwinds Hotel, including a single-story roof-top addition, as well as the renovation and substantial demolition of the two (2) existing 2-story multifamily buildings and the construction of one (1) new 5-story building along the alley was approved by the HPB. (HPB file No. 3434)
- January 14, 2014:* Modifications to the previously issued Certificate of Appropriateness were approved by the HPB including the construction of an open air pedestrian bridge between the buildings located at 1020 and 1030 Collins Avenue.
- June 25, 2019* A Conditional Use Permit (CUP) for a Neighborhood Impact Establishment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons was approved by the Planning Board. (PB19-0270)
- November 19, 2019 A progress report was scheduled due to outstanding violations related to the CUP. The nature of the violations was discussed by the Board and the progress report was continued to a date certain of December 17, 2019.
- November 25, 2019 A cure letter was sent to the operator.
- December 17, 2019 The progress report was discussed, and the Board directed staff to schedule a revocation/modification hearing for January 28, 2020.
- January 28, 2020 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.
- March 24, 2020 The March 24, 2020 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/modification hearing was continued successively to a date certain of November 17, 2020.

November 17, 2020 The Planning Board approved a modification to the board order to revoke outdoor entertainment on the property.

PROGRESS REPORT

On November 5, 2021 the attached cure letter was sent to MLB Fairwinds, LLC, the applicant for the CUP approved by the Planning Board on June 25, 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 November 30, 2021 for a progress report.

STAFF ANALYSIS

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 revocation/modification hearing that took place before the Planning Board on November 17, 2020. Below is a summary of the current violations issued to the property, as recorded in the City's code case management system.

- 9/30/2021 – **NC2021-21384**: LOUD MUSIC. Music unreasonably loud and excessive
3rd Offense
BWC
J.Jarquin 729

Notes indicate:

Arrival: 4:29 PM
Departure: 5:53 PM

We received a complaint for loud music coming from the rooftop pool area of the building and I responded to the complaint. I arrived and parked my vehicle on 10th Street and Ocean Court and walked towards Collins Court to meet with the complainant. Complainant was upset at the situation since it has been happening with frequency and was not happy that the issue has not been resolved. As we were talking about the situation. I was able to hear the music coming from the rooftop since the noise was bouncing/echoing between the buildings. I asked the complainant if I could have access into their property to assess the volume there but did not. Once history check was done on the property it was confirmed that the property had two prior violations in the past 12 months and the third offense was issued.

I proceeded to the hotel to speak to a manager and got a hold off the front desk employee, who signed for the violation and also asked if I could email a copy of the violation to the general manager, Mariana. Then I was introduced to Mr. Marciano, another manager of the hotel, and I informed him of the violation and educated him on the ordinance, process and outcome of inspection.

Violation was signed for and delivered.

Upon exiting, the complainant approached me again and I informed him of the outcome and was still upset about the situation since he could still hear the music. But at this point the music was not loud or excessive anymore since the hotel had already lowered it.

BWC

J.Jarquin 729

- 9/30/2021 – **CUP2021-00041**: Violation of Sections 142-153, 118-194, 114-8. Failure to operate your business in accordance with your conditional use permit

Reference: File PB 09-0270, Section 6, Sub Section i

- *i. Entertainment shall be prohibited at the roof top at all times. - Use of entertainment speakers/loud music on the roof top pool area*

BWC under NC2021-21384J.

Jarquin 729

- 10/8/2021 – **NC2021-21441**: Section 46-152: Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise.

You may comply by immediately ceasing the unreasonably loud, excessive, unnecessary, or unusual noise and paying the following fine:

Fourth Offense: \$3,000.00 Fine plus commercial establishments are subject to one (1) weekend of Business Tax Receipt and/or accessory use restrictions

Notes indicate:

Arrival: 9:33 PM

Departure: 10:40 PM

This complaint was referred from MBPD. CCO Castillo and I responded to a complaint at 1000 Collins Ave in reference to loud music. We walked South to 10th Street. Approaching the property I heard music from at least half way through the block. Music was loud and excessive from at least the East side of 1040 Collins Ave, The exterior of the building. I was unable to determine if the music could be heard from inside any unit or the balcony of any unit because the call came from PD. Upon my arrival I entered the courtyard of the hotel and music was loud and excessive. I was approached by an employee of the hotel and I spoke to the gentleman. I informed the employee that the music was loud and to turn it down immediately. I also informed the employee that the property would be issued a notice of violation. I then was approached by Mr. Luis Cruz, the Manager of the bar. I informed Mr. Cruz of the complaint and Mr. Cruz was very understanding. Mr. Cruz had the music turned down immediately. CCO Castillo, Mr. Cruz and I then walked down the

block to survey the area. Once again I informed Mr. Cruz that a notice of violation would be issued and he understood.

Notice of violation issued.

Bwc used and photos taken.

D. Giraldo 752.

- 10/13/2021 – **CUP2021-00042**: Sections: 142-153, 118-194, 114-8. Failure to operate your business in accordance with your conditional use permit.

RE: Violation of Noise Ordinance

Ref: NC2021-21441

1st Offense

The following conditions of approval contained in the Conditional Use Permit are applicable to 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 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).
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for the entire facility:
 - a. The CUP shall have the following maximum occupant content including within the interior and exterior portion located on private property) for the Courtyard outdoor bar area, restaurant on 1020 Collins Avenue, and basement: Less than 300 persons, or any lesser such occupant content as determined by the Fire Marshal.
 - b. The courtyard may remain open with outdoor entertainment: Monday through Sunday from 8:00 a.m. to 5:00 a.m.

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

Audio from the subject property shall not be plainly audible at the southern balconies of the abutting apartment building to the north (1040 Collins Avenue) between 11pm and Barn Sunday through Thursday, and between midnight and 8am Fridays, Saturdays, holidays and special events.

- c. The outdoor bar may remain open:

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

After 8:00 p.m. the roll down storefronts that face the courtyard shall be closed in order to continue to operate as an indoor bar counter.

- d. The restaurant at 1020 Collins Avenue may remain open:

Monday through Sunday from 8:00 a.m. to 5:00 a.m. and indoor entertainment shall be allowed.

- e. Indoor entertainment at the basement venue may operate:

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

- f. The roof top and pool deck may remain open:

Monday through Sunday from 10:00 a.m. to 8:00 p.m.

- g. At all times that entertainment is operating anywhere on the subject property, a restaurant shall be open with food service, a full menu, and operating kitchen.

- h. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Within 60 days of this approval, the sound system in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.

- i. Entertainment shall be prohibited on the roof top at all times.**

- x. Special Events may occur on the premises, subject to City ordinances) rules or

regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.

- 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 would emphasize that per Condition 15 of the CUP, the establishment and operation of this Conditional Use must comply with all the conditions of approval and non-compliance shall constitute a violation of the City Code. Additionally, the CUP is subject to enforcement procedures set forth in Section 114-8 of the Code and such enforcement procedures as are otherwise available.

Given the issues that were dealt with during the previous progress reports, as well as the revocation/modification hearing on November 17, 2020, staff has very serious concerns with the operation of this establishment and the seemingly wanton disregard for the express requirements of the CUP. At a minimum, staff recommends continuing this progress report 60 days to further discuss the operation of the establishment, as well as monitor compliance with the prohibition of entertainment and other operational conditions of the CUP.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the progress report and schedule a follow-up progress report for January 25, 2022.

MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

PLANNING DEPARTMENT

Tel: 305-673-7550 Fax: 305-673-7559

November 5, 2021

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

MLB Fairwinds, LLC
1000 – 1030 Collins Avenue
Miami Beach, FL 33139

Re: Cure Letter regarding Planning Board File No. PB 19-0270.

Dear Sir/Madam:

A Conditional Use Permit (CUP) to operate was issued to MLB Fairwinds, LLC, on June 25, 2019 (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, the following violations that are still pending as of the date of this letter:

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BWC under NC2021-21384J.

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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).
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for the entire facility:
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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.

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 November 30, 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 January 25, 2022 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,



Thomas R. Mooney, AICP
Planning Director

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