

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: February 22, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB19-0270: 1000-1030 Collins Avenue - Fairwinds Hotel
Revocation/Modification**

RECOMMENDATION

Discuss the item and continue to the March 22, 2022 meeting.

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.
- November 5, 2021 A cure letter was sent to the operator requesting that the operator appear before the Planning Board on November 30, 2021 for a progress report.
- November 30, 2021 The Planning Board discussed the progress report and directed staff to schedule a revocation/modification hearing for January 25, 2021.
- January 25, 2022 The Planning Board discussed the item and continued it to the February 22, 2022 hearing.

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.

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 8am Sunday through Thursday, and between midnight and 8am Fridays, Saturdays, holidays and special events.

- c. The outdoor bar may remain open:
Monday through Sunday from 8:00 a.m. to 8:00 p.m.

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 ANALYSIS

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.

At the progress report on November 30, 2021, staff noted concerns with the operation of this establishment, particularly in view of the issues that were dealt with during the previous progress reports, as well as the revocation/modification hearing on November 17, 2020. Since the last progress report staff has been made aware of new property owners that purchased the property last Spring, and took over operations in mid-October, after the current violations took place. Since this time there have been no additional violations.

The new owners have indicated that they intend to improve the property and raise standards. It is expected that the owners will make a presentation to the Board regarding the changes that they are expecting making at the property in order to address concerns. Staff recommends that the Planning Board discuss the item and continue it to the March 22, 2022 meeting. However, should the board wish to modify the order to cease entertainment from the property, a draft order is attached.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board discuss the item and continue it to the March 22, 2022 meeting.

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

PROPERTY: 1000 - 1030 Collins Avenue - Fairwind Hotel
FILE NO. PB 19-0270

IN RE: An application for Conditional Use Approval for a Neighborhood Impact Establishment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V, Division 6 of the City Code.

LEGAL DESCRIPTION: Lots 5-8, Block 30 of Ocean Beach Addition No. 2, According to the Plat Thereof, as Recorded in Plat Book 2, Page 56, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: ~~June 25, 2019~~ February 22, 2022

CONDITIONAL USE PERMIT

The applicant, MLB Fairwinds LLC, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment and Outdoor Entertainment Establishment pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

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

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

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

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

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

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

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

record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, including modification to the hours of operation, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to MLB Fairwinds LLC, any changes in ownership of 50% (fifty percent) or more stock ownership, or the equivalent, shall require the new owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for the entire facility:
 - a. The CUP shall have the following maximum occupant content (including within the interior and exterior portion located on private property) for the Courtyard outdoor bar area, restaurant on 1020 Collins Avenue, and basement: Less than 300 persons, or any lesser such occupant content as determined by the Fire Marshal.
 - b. The courtyard may remain open ~~with outdoor entertainment~~:
Monday through Sunday from 8:00 a.m. to 5:00 a.m.

Audio shall not exceed a level that interferes with normal conversation.

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

Audio from the subject property shall not be plainly audible at the southern balconies of the abutting apartment building to the north (1040 Collins Avenue) between 11pm and 8am Sunday through Thursday, and between midnight and 8am Fridays, Saturdays, holidays and special events.
 - c. The outdoor bar may remain open:
Monday through Sunday from 8:00 a.m. to 8:00 p.m.

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 and outdoor entertainment shall be prohibited at all times. at the basement venue may operate: Monday through Sunday from 8:00 a.m. to 5:00 a.m.
- f. The roof top and pool deck may remain open:
Monday through Sunday from 10:00 a.m. to 8:00 p.m.
- g. At all times that entertainment is operating anywhere on the subject property, a restaurant shall be open with food service, a full menu, and operating kitchen.
- h. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Within 60 days of this approval, the sound system in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.
- i. Entertainment shall be prohibited on the roof top at all times.
- j. A maximum of 2 televisions may be permitted in the courtyard subject to a Certificate of Appropriateness and historic preservation board approval, if required. The volume level of the televisions in the courtyard shall comply with the audio volume limitations stated in this order.
- k. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- l. Delivery trucks shall not be allowed to idle in the loading zone.
- m. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- n. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 **AM**.
- o. Loading and deliveries from the alley shall at no time block the passage of any other vehicles along the alley.
- p. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.

-
- q. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
 - r. An air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one pick up of garbage per day will be necessary.
 - s. Garbage dumpster covers shall be closed at all times except when in active use.
 - t. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
 - u. No patrons shall be allowed to queue on public rights-of-way. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
 - v. The owner/operator shall be responsible for maintaining the areas adjacent to the facility) including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day.
 - w. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - x. Special Events may occur on the premises, subject to City ordinances) rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
 - y. The host/hostess stand, podium and menu board shall be prohibited in the public right of way, and shall be placed on private property, except as may be permitted under the sidewalk cafe permit to be reviewed and approved by the Public Works department.
7. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.
8. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department within 90 days, prior to the issuance of a BTR for the addition of entertainment and include the following:
- a. The applicant shall identify locations, acceptable to the Transportation Department, for bicycle racks to be installed in the public right-of-way and within

- the proposed development. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.
- b. The applicant shall coordinate with the South Florida Commuter Services in participating in the transit subsidy program.
 - c. The applicant shall provide an analysis proposing for a drop-off and pick-up area shared with the valet drop-off and pick-up spaces.
 - d. The Developer shall conduct an updated valet utilization study incorporating the rideshare demand 60 days after opening of the proposed development with entertainment. The updated analysis shall include weekday peak hour and weekend peak hour analysis. Prior to commencement of the post-opening valet/ride-share analysis the Developers' Traffic Engineer shall coordinate with the Transportation Department.
9. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license with entertainment.
 10. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
 11. The Planning Board shall retain the right to call the owner or operator back before the Board and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
 12. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
 13. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
 14. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
 15. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this

16. The applicant agrees and shall be required to provide access to areas subject to this CUP {not including private residences) for inspection by the City (i.e.. Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the terms and conditions of this CUP.
17. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

BY: _____
 Rogelio A. Madan, AICP
 Chief of Community Planning & Sustainability
 For Chairman

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio Madan, Chief of Community Planning & Sustainability of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. She is personally known to me.

Filed with the Clerk of the Planning Board on _____ ()