

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: July 26, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0495, a.k.a. PB File No. 1734. 1801 Collins Avenue. Shelborne Hotel.**

An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment with entertainment. Specifically, the applicant is requesting modifications to the ownership/operator and to renovate and improve accessory uses including the introduction of entertainment to the lobby lounge and bar, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions.

BACKGROUND

September 27, 2005 The applicant was granted a Conditional Use Permit to operate Shine, a Neighborhood Impact Establishment (NIE), at the lobby level of the hotel in the space previously used by a ballroom, and other bars/lounges in the surrounding area.

September 28, 2010 The applicant was granted a modification to a Conditional Use Permit for an existing NIE in order to renovate and improve accessory uses including, nightclub space with dancing and entertainment; Brasserie restaurant with entertainment; Lounge Bar with entertainment; a Café and Outdoor Café restaurant without dancing and entertainment; Lobby Bar and Restaurant without dancing and entertainment; and a Pool Bar and Outdoor Cafe without dancing and entertainment.

August 28, 2012 The applicant was granted a Modification to a Conditional Use Permit (attached) in order to include an additional entertainment venue located in the basement of the hotel, with a separate entrance, and permit daytime weekend and holiday public events featuring entertainment on the pool deck, and to modify conditions relative to the request.

August 27, 2013 The Planning Board approved a modification to the CUP in order to change the name of the ownership and management.

ZONING/SITE DATA

Legal Description: THAT CERTAIN PARCEL OF LAND BOUNDED ON THE WEST BY THE WEST LINE OF LOTS 13 AND 14, AND ON THE NORTH BY THE NORTH LINE OF LOTS 13 AND 2 AND ITS EASTERLY EXTENSION, AND ON

THE SOUTH BY THE SOUTH LINE OF LOTS 14 AND 1 AND ITS EASTERLY EXTENSION, OF BLOCK 1, "FISHER'S FIRST SUBDIVISION OF ALTON BEACH" ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 77 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND ON THE EAST BY THE EROSION CONTROL LINE AS DEPICTED IN PLAT BOOK 134, PAGE 47 OF SAID PUBLIC RECORDS.

Future Lands Use: High Density Multi Family Residential (RM-3)

Zoning: RM-3, Residential multifamily high intensity zoning district

Historic District: Ocean Drive/Collins Historic District

Lot Area: Approximately 64,500 square feet (100.13 feet wide x +/- 646.64 feet deep)

Surrounding: South: Hotel (Raleigh Hotel)
East: Beach/Atlantic Ocean
West: Condominium Building with Ground Level Commercial
North: Hotel (Nautilus Hotel)

(See Zoning/Site map at the end of the report)

THE PROJECT

The applicant, Shelborne Hotel Partners WC LP, has submitted an application to modify an approved Conditional Use Permit for a Neighborhood Impact Establishment (NIE) with entertainment. Specifically, the applicant is requesting modifications to the ownership/operator and to renovate and improve accessory uses, including the introduction of entertainment to the lobby lounge and bar.

For reference, per Section 142-1361 of the Land Development Regulations (LDRs), an alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall, with an occupant content of 200 or more persons constitutes a Neighborhood Impact Establishment (NIE).

On April 13, 2021, the applicant received a Certificate of Appropriateness (COA) from the Historic Preservation Board (HPB) to renovate the building (File No. HPB20-0443). Specifically, the COA allowed for the for the partial demolition, renovation and restoration of the existing building, including interior and exterior design modifications, the introduction of a rooftop retractable canopy system at the mezzanine level, and modifications to the rear yard site plan and variances from the required setbacks.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

- 1. The Use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

Consistent – The request is consistent with the permissible uses in the High Intensity Commercial Category (RM-3) as designated on the Future Land Use Map within the Comprehensive Plan.

2. The intended Use or construction would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan

Consistent – This is an existing establishment, and as such, the proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

3. Structures and uses associated with the request are consistent with these Land Development Regulations.

Consistent – Entertainment and Neighborhood Impact Establishments are permitted as conditional uses in this zoning district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Building Permit.

4. Public health, safety, morals and general welfare would not be adversely affected.

Consistent – The proposed entertainment use in the lobby bar area may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. The establishment would have to comply with all applicable laws and regulations for licensure.

5. Adequate off-street parking facilities would be provided.

Partially Consistent - The Shelborne Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements. As there is no on-site parking, it provides valet services for its guests and patrons 24 hours a day. Other parking is available at meters, surface lots and parking garages nearby. The applicant anticipates that many patrons would be guests of the Shelborne and other local hotels and would walk or take alternative modes of transportation to the venues. Staff has incorporated conditions to minimize transportation impacts.

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

Consistent – There are potential issues related to noise due to the addition of entertainment at the lobby bar. Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

7. The concentration of similar types of uses would not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.

Consistent – There are other hotels, nightclubs, and restaurants within the vicinity. However, such uses are appropriate for this area, which consists primarily of several large hotels. Therefore, no negative impact through the concentration of uses is expected if the use is properly controlled.

NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for an outdoor entertainment establishment, open air entertainment establishment or a neighborhood impact establishment, the Planning Board shall apply the following supplemental review

guidelines criteria in addition to the standard review guidelines for conditional uses pursuant to chapter 118, article IV:

- (1) **An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.**

Consistent – The applicant has provided a revised operating plan which addresses the hours and operations for each of the venues. The plan indicates that the hotel intends to employ approximately 225 people, of which 150 would be dedicated to the food and beverage establishments. The plan also provides details for security, valet parking, noise attenuation, and sanitation. A more detailed description of the operations is included in the analysis.

- (2) **A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, self park, shared parking, after-hour metered spaces and the manner in which it is to be managed.**

Consistent – The Shelborne Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements. As there is no on-site parking, it provides valet services for its guests and patrons 24 hours a day at the front entrance of the hotel. The applicant anticipates that many patrons would be guests of the Shelborne and other local hotels and would walk or take alternative modes of transportation to the venues. Staff has incorporated conditions to minimize transportation impacts.

- (3) **An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises would be controlled.**

Consistent – Additional security equipment will be installed with the renovation. There are three access points including the main lobby entrance, the entrance to the restaurant along 18th Street, and the beach access. Security staff would be placed at these points to ensure groups of patrons gain entry in an orderly fashion and to monitor the circulation of patrons and occupancy levels in the queuing areas. With the exception of permitted public events discussed in the analysis, the pool deck is not open to the general public. The beach access would otherwise be limited to hotel guests and secured.

- (4) **A security plan for the establishment and any parking facility.**

Consistent – The plan indicates that the property will have security personnel monitoring the site 24-hours a day. Additionally, the operations plan explains that the Shelborne Hotel has three access points for the hotel guests and the general public; including the main lobby entrance, the entrance to the restaurant along 18th Street, and the beach access. The hotel will have security located at these access points to ensure groups of patrons gain entry to the venues in an orderly fashion and monitor the circulation of patrons and occupancy levels in the queuing areas. Additionally, the operations plan indicates that the site will have over 30 closed circuit cameras, in addition to the existing 21 in order to better monitor the site. In addition, all hotel personnel shall undergo Responsible Beverage Service training to ensure enforcement of patron age restrictions.

- (5) **A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.**

Consistent – The applicant seeks a modification to a CUP for an existing NIE. No new floor area would be added, and the overall occupant content of the venues on the site is being reduced, therefore, additional traffic is not anticipated as a result of the renovation. However, the applicant has committed to implement other traffic mitigation strategies; including providing bicycle racks on site, posting transit information within the property, and potentially subsidizing transit passes for employees to further reduce the number of vehicle trips coming to and from the Shelborne Hotel Overall. Staff has incorporated conditions into the attached draft modified order in order to enhance transportation demand management (TDM) practices for the site.

- (6) **A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.**

Consistent – The applicant presently contracts with a waste collection company and will continue to maintain a contract. Refuse collection occurs during the morning hours on the north side of the site. Trash bins are rolled to the garbage truck waiting on Collins Avenue for disposal. Trash is collected on a daily basis. Since there is no alley, sanitation and delivery operations take place in front of the property on Collins Avenue.

- (7) **A noise attenuation plan which addresses how noise will be controlled to meet the requirements of the noise ordinance.**

Partially Consistent – The Operations Plan contains noise attenuation policies for the site. However, the applicant is proposing to add entertainment to the new Lobby Bar. Given the proximity of this venue to the residential building across Collins Avenue and the inability to provide an entrance vestibule, given the historic nature of the interior, staff has concerns with potential sound impacts from this venue. To this end, the applicant has provided a sound study prepared by Electro-Media Design, Ltd quantifying the potential impacts of sound from the venue.

The City's Peer Reviewer, Arpeggio, reviewed the provided sound study and provided comments. In response to the peer review, the applicant submitted a response in which the applicant agreed to install an automatic noise level limiter calibrated based on a noise survey of the property and surrounding area to ensure that noise levels from the Lobby Bar do not impact adjacent properties. Staff has incorporated conditions in the attached draft modified order to mitigate potential issues related to noise. A more detailed description of the sound study and mitigation measures in the Sound analysis below.

- (8) **Proximity of proposed establishment to residential uses.**

Partially Consistent – There are other hotels, condo/hotels and ground floor and commercial uses on the north and south; and a condominium building (Tower 1800) with commercial uses on the ground floor on the west across Collins Avenue. Staff has concerns regarding the potential impacts of entertainment in the lobby bar and has proposed conditions in the attached draft order to address the concern.

- (9) **Cumulative effect of proposed establishment and adjacent pre-existing uses.**

Partially Consistent – There have been several Conditional Use Permits for Outdoor

Entertainment and Neighborhood Impact Establishments approved nearby on Collins Avenue over the years. However, such uses are appropriate for this area, which consists primarily of several large hotels. Therefore, no negative impact through the concentration of uses is expected if the use is properly controlled.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

- (1) **A recycling or salvage plan for partial or total demolition shall be provided.**

Partially Consistent – The recycling or salvage plan will be provided.

- (2) **Windows that are proposed to be replaced shall be hurricane proof impact windows.**

Consistent – New windows will be hurricane proof impact windows.

- (3) **Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.**

Not Applicable – as this is an existing building and establishment.

- (4) **Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.**

Consistent – All landscape will be Florida Friendly.

- (5) **Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.**

Not Applicable – as this is an existing building and establishment.

- (6) **The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.**

Not Applicable – as this is an existing building and establishment.

- (7) **Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.**

Partially Consistent – The applicant has indicated that to the extent possible, mechanical and electrical systems shall be located above BFE.

- (8) **Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.**

Partially Consistent – The applicant has indicated that it is not feasible to elevate the Shelborne Hotel.

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.**

Consistent – Habitable spaces below the BFE will use flood proofing systems in accordance with the City Code.

- (10) Where feasible and appropriate, water retention systems shall be provided.**

Partially Consistent – The applicant has indicated that water retention systems will be provided.

- (11) Cool pavement materials or porous pavement materials shall be utilized.**

Consistent – The applicant has indicated that cool and porous pavement materials will be utilized where possible.

- (12) The design of each project shall minimize the potential for heat island effects on-site.**

Consistent – The proposed design provides a number of shaded open spaces and non-airconditioned shaded and landscaped living spaces to strategically minimize the potential for heat island effects on site.

ANALYSIS

The original 14-story Shelborne Hotel was constructed in 1940 and designed by architects Polevitsky & Russell in the International Style of architecture. In 1957 an attached 8-story addition, designed by Morris Lapidus in the Post War Modern style of architecture, was constructed to the west (in front of) the original hotel building. There were several subsequent modifications made to the lobby, including the addition of residential units. The applicant has received approval from the HPB to remove the residential units within the lobby and introduce a new south lobby wall inspired by the original Lapidus design.

As a result of the proposed renovation, the applicant is seeking to modify the approved CUP for the Neighborhood Impact Establishment with entertainment. Specifically, the applicant is seeking the following changes:

1. Introducing entertainment within the new lobby.
2. Replacing the existing ballroom with a gym, lounge area, restrooms, and an expansion of the restaurant at the east end of the ground level.
3. Upgrades to the indoor and outdoor restaurant facilities.
4. Adding a retractable canopy on the mezzanine Sky Terrace
5. Converting the rear yard area into landscaped lawn and seating area.

Venue Operations

The approved CUP contains the following venues areas:

- The Brasseries restaurant, aka Vespers
- The Lounge
- The Lobby Bar/Restaurant
- The Event Space (Alternative Nightclub Space)
- The Café, aka Vespers
- The Outdoor Café

- The Taqueria
- The Basement Nightclub
- The pool deck area
- Mezzanine Terrace

The applicant has proposed the following venues for the site:

- The Quick Service Café
- Lobby Bar/Restaurant
- Signature Restaurant (including Lounge, Private Dining Room, Indoor Dining Room, and Outdoor Dining Area)
- Pool Deck/Pool Café
- Mezzanine Sky Terrace
- Rear Yard
- The Basement Nightclub

Following are the proposed modifications to the venue operations in Condition 8 of the approved CUP:

- a. The Signature Restaurant ~~Brasserie restaurant, aka Vespers~~, from 5:00 PM 6:00 AM until 5:00 AM, entertainment shall be permitted
- b. The Lounge from ~~5:00 PM~~ 6:00 AM until 5:00 AM
- c. The Lobby Bar/Restaurant from 6:00 AM until 5:00 AM, entertainment shall be permitted
- d. ~~The Event Space (Alternative Nightclub Space) from 10:00 PM until 5:00 AM, when operating as a nightclub~~
- e. The ~~Café, aka Vespers~~, Quick Service Café, from 6:00 AM until ~~2:00 AM~~ 5:00 AM
- f. The Outdoor Café from 6:00 AM until ~~11:00 PM~~ 2:00 AM. The hours may be extended until 5:00 AM for breakfast
- g. ~~The Taqueria from 11:00 AM until 11:00 PM~~
- h. The Basement Nightclub from 8:00 PM to 5:00 AM, entertainment shall be permitted.
- i. The pool deck area and rear yard area, including the Pool Café, ~~mezzanine terrace~~ from 6:00 AM until 11:00 PM, except during City-approved Special Events or private functions when the hours may be determined by the event/function, but no later than 2:00 AM
- j. The mezzanine Sky Terrace from 6:00 AM to 11:00 PM, during City-approved special events or private functions when the hours may be determined by the event/function, but not later than 2:00 AM. Entertainment shall only be during City-approved special events or private functions but shall cease by 11:00 PM and commence no earlier than 10:30 AM.

The proposed changes in hours are primarily intended to allow the venues to serve breakfast in the morning hours and food later into the evening. The changes also clarify which venues are permitted to have entertainment. Additionally, the modification to the Sky Terrace ensures that entertainment and public access is not allowed to the same extent that is allowed at the pool deck during public events, as is permitted today, with the intent that it primarily serves as a private/special event space. While not having an objection to the modified hours proposed, staff does have some concerns with hours for entertainment, due to the potential impact of noise at the Lobby bar (see the Sound Analysis below).

The approved board order contains occupancy load limits for the current lobby bar. As many of the venues will now be more integrated, staff does not object to removing the occupancy load for this specific venue. However, staff believes that an overall occupancy limit should be included as a condition of the CUP to better enforce the occupancy limits. To this end staff recommends a fixed occupancy limit of 1,072 persons, as represented in the plans.

Additionally, staff recommends that a mezzanine level occupancy limit of 225 persons be incorporated into the CUP, as represented in the plans. The CUP already contains an occupancy limit of 150 for the basement nightclub, which is not proposed to change. Overall, the proposed changes would reduce the occupancy of the venues within hotel from 1,586 to 1,447 persons.

The proposed modifications do not represent a significant change in the operations of the hotel and its venues. However, staff has some concerns with the addition of entertainment in the Lobby Bar, which was previously prohibited (see the Sound Analysis below).

Parking and Traffic

The Shelborne Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements for the existing structure. As there is no on-site parking, valet services are provided for guests and patrons 24 hours a day. As this is an existing venue, the Transportation Department determined that no additional conditions were necessary regarding the traffic operations of the site.

However, the applicant has committed to implement other traffic mitigation strategies, including making improvements to the valet operations, providing bicycle racks on site, posting transit information within the property, and potentially subsidizing transit passes for employees to further reduce the number of vehicle trips coming to and from the Shelborne Hotel. Staff has incorporated conditions into the attached draft modified order to enhance transportation demand management (TDM) practices for the site.

Security and Crowd Control

The applicant's proposed modified operations plan addresses crowd control and security. The plan indicates that the property will have security personnel monitoring the site 24-hours a day. Additionally, the operations plan explains that the Shelborne Hotel has three access points for the hotel guests and the general public, including the main lobby entrance, the entrance to the restaurant along 18th Street, and the beach access. The hotel will have security located at these access points to ensure groups of patrons gain entry to the venues in an orderly fashion and monitor the circulation of patrons and occupancy levels in the queuing areas. Additionally, the operations plan indicates that the site will have over 30 closed circuit cameras, in addition to the existing 21 cameras, to better monitor the site. In addition, all hotel personnel shall undergo responsible beverage service training to ensure enforcement of patron age restrictions.

The pool deck is generally not open to the public and only hotel guests and residents can access the area. During the proposed events at the pool deck or more active periods, the hotel would

add additional security staff, as well as additional hotel managers, to meet the needs of that particular event.

The applicant has also proposed several crime prevention through environmental design techniques, including electronic controls to restrict access to non-guest areas, limited entry controls, signage, landscaping to define places where people are allowed or prohibited, and others. Staff has incorporated conditions into the attached draft modified order to maximize security.

Sound

As proposed, most of the venues on the site will be able to continue to operate in the same manner as they do today. There have not been significant noise related issues at the site to date. However, the applicant is proposing to add entertainment to the new Lobby Bar. Given the proximity of this venue to the residential building across Collins Avenue, and the inability to provide an entrance vestibule, given the historic nature of the interior, staff has concerns with potential sound impacts from this venue.

To this end, the applicant has provided a sound study prepared by Electro-Media Design, Ltd quantifying the potential impacts of sound from the venue. The study concluded that the sound emitted from the Lobby Bar would be unlikely to cause complaints from the Tower 1800 across the street.

The City's Peer Reviewer, Arpeggio, reviewed the provided sound study (See attached Peer Review) and concluded the following:

While the methodology employed in this sound study appears to have been judicious, there are three aspects of it that prevent us from agreeing with its conclusions. Those issues are identified below:

- *A-weighted decibels were predicted instead of C-weighted decibels, which would have allowed for a better assessment of low-frequency (i.e., bass) impact.*
- *Modeling assumed closed doors to Collins Avenue, which underestimates potential impacts at all times when doors are open.*
- *Absence of a site noise survey prevents comparison of predicted sound levels to existing sound levels.*

Until the aforementioned items are addressed, we cannot agree that noise from the Lobby Lounge and Bar will neither impact residents at Tower 1800 Condominium nor violate the Miami Beach Noise Ordinance.

In response to the peer review, the applicant has agreed to install an automatic noise level limiter, calibrated based on a noise survey of the property and surrounding area, to ensure that noise levels from the lobby bar do not impact adjacent properties. It is expected that this device will be installed within the area of the port-cochere and is expected to confirm that the volume of the entertainment is automatically lowered to appropriate levels and minimize potential impacts. Staff has included this condition in the draft order. Additionally, staff recommends that sound testing take place prior to the issuance of a certificate of use for entertainment in the Lobby Bar.

Summary

Staff is generally supportive of the proposed modifications as they would lead to the introduction of a new lobby that is more consistent with the original Morris Lapidus design. Overall, the

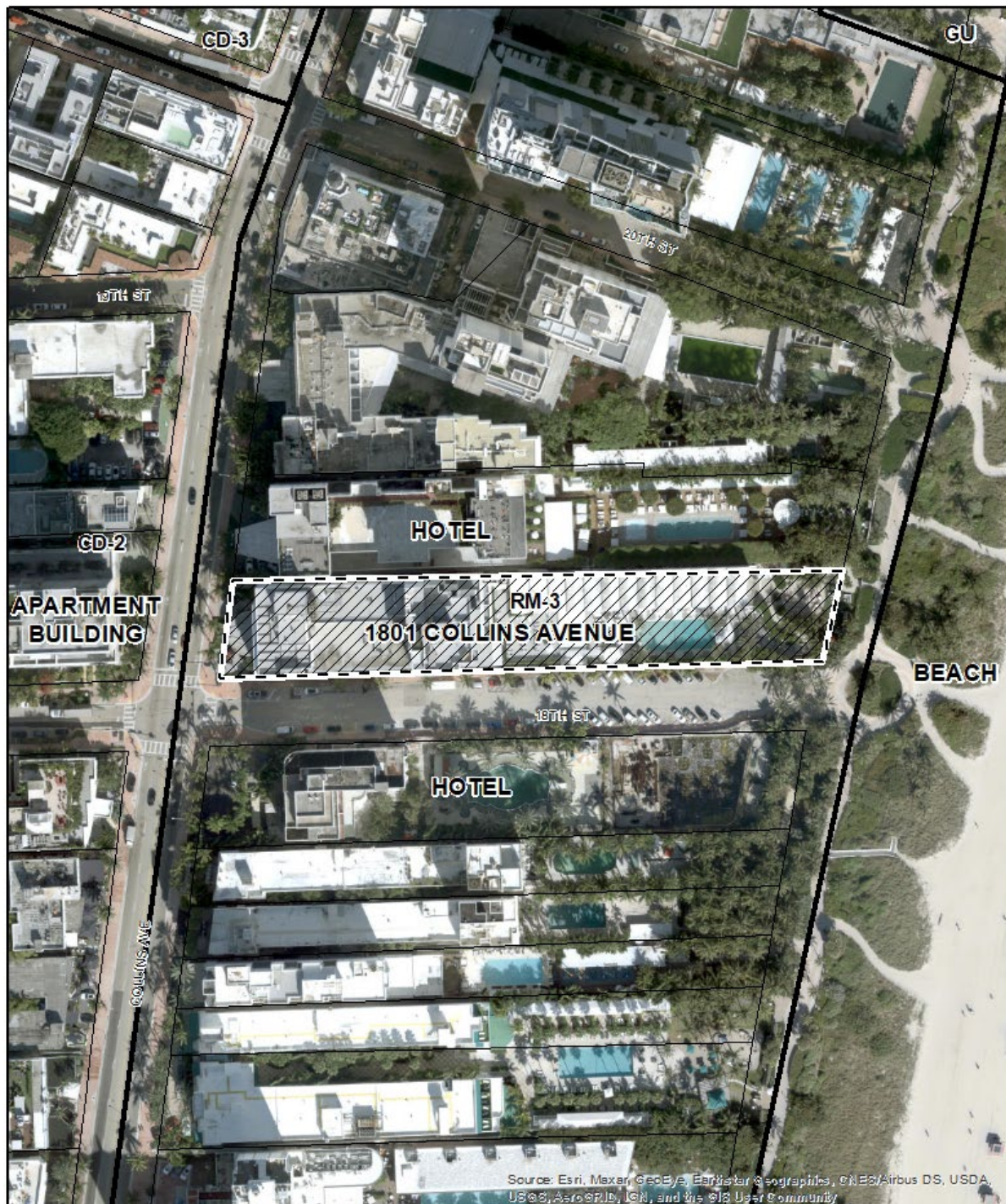
modifications result in a 139-person reduction in the occupancy for the site's venues, which should serve to reduce potential traffic impacts from what exists today.

However, staff has concerns regarding the potential for sound impacting nearby residential properties, as a result of the addition of entertainment on the western edge of the hotel. To this end, staff has recommended conditions to ensure that sound testing takes place prior to the issuance of the entertainment license. Additionally, the applicant has agreed to install an automatic noise level limiter on the exterior of the property. These mitigation measures should ensure that the venue does not impact nearby residents.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be approved subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP



MIAMI BEACH
PLANNING DEPARTMENT

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0 30 60 120 180 240 300 Feet



PLANNING BOARD CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 1801 Collins Avenue
Shelborne Hotel

FILE NO. PB22-0495 a.k.a. PB File No. 1734

IN RE: The Application by Shelborne Property Associates, LLC, requesting a modification to a Conditional Use Permit, pursuant to Chapter 118, Article IV of the Miami Beach City Code, in order to change the name of the ownership and management.

LEGAL DESCRIPTION: THAT CERTAIN PARCEL OF LAND BOUNDED ON THE WEST BY THE WEST LINE OF LOTS 13 AND 14, AND ON THE NORTH BY THE NORTH LINE OF LOTS 13 AND 2 AND ITS EASTERLY EXTENSION, AND ON THE SOUTH BY THE SOUTH LINE OF LOTS 14 AND 1 AND ITS EASTERLY EXTENSION, OF BLOCK 1, "FISHER'S FIRST SUBDIVISION OF ALTON BEACH" ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 77 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND ON THE EAST BY THE EROSION CONTROL LINE AS DEPICTED IN PLAT BOOK 134, PAGE 47 OF SAID PUBLIC RECORDS.

MEETING DATE: ~~August 27, 2013~~ July 26, 2022

MODIFIED CONDITIONAL USE PERMIT

The applicant Shelborne Property Associates, LLC, filed an application with the Planning Director for a modification to a Conditional Use Permit, pursuant to Chapter 118, Article IV of the Miami Beach City Code, in order to change the name of the ownership and management.

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 record for this matter:

That the property in question is located in the RM-3, Residential multifamily high intensity 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 recommendation, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed:

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The applicant shall come back to the Board within 90 days of the new date of approval of the Modified Certificate of Use/Business Tax Receipt, and provide a progress report. 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 Modified Conditional Use Permit is issued to ~~Shelborne Property Associates, LLC, Wyndham Hotel Management, Inc., and 1801 Collins Club #1, LLC~~ Shelborne Hotel Partners WC LP, collectively, as operator of this Neighborhood Impact Establishment. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Modified 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. operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new operator or owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Certificate of Use/Business Tax Receipt. A progress report shall be scheduled within 60 days followed by the submission and acceptance of the affidavit.
3. The conditions of approval for this Modified Conditional Use Permit are binding on the applicant, the property's owners, and all successors in interest and assigns.
4. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Modified Conditional Use Permit.
5. ~~The Final Order for File No. 7074 issued by the Historic Preservation Board on May 11, 2010 is hereby adopted and incorporated into this order by reference.~~
6. ~~The Final Order for File No. 3470 issued by the Board of Adjustment on August 6, 2010 is hereby adopted and incorporated into this order by reference.~~

7. The applicant shall provide staff documents verifying the service of a valet operator holding the contract and the locations where vehicles will be stored. These documents shall be submitted to staff prior to the approval of a Building Permit or Modified Certificate of Use/Business Tax Receipt, whichever occurs first.
8. The hours of operation shall be as proposed by the applicant:
 - a. The ~~Signature Restaurant~~ ~~Brasserie restaurant, aka Vespers~~, from ~~5:00 PM~~ 6:00 AM until 5:00 AM, entertainment shall be permitted
 - b. The Lounge from ~~5:00 PM~~ 6:00 AM until 5:00 AM
 - c. The Lobby Bar/Restaurant from 6:00 AM until 5:00 AM, entertainment shall be permitted
 - d. ~~The Event Space (Alternative Nightclub Space) from 10:00 PM until 5:00 AM, when operating as a nightclub~~
 - e. The ~~Café, aka Vespers~~, Quick Service Café, from 6:00 AM until ~~2:00 AM~~ 5:00 AM
 - f. The Outdoor Café from 6:00 AM until ~~11:00 PM~~ 2:00 AM. The hours may be extended until 5:00 AM for breakfast
 - g. ~~The Taqueria from 11:00 AM until 11:00 PM~~
 - h. The Basement Nightclub from 8:00 PM to 5:00 AM, entertainment shall be permitted
 - i. The pool deck area and rear yard area, including the Pool Café, mezzanine terrace from 6:00 AM until 11:00 PM, except during City-approved Special Events or private functions when the hours may be determined by the event/function, but no later than 2:00 AM. Entertainment shall be permitted as described in condition 9.
 - j. The mezzanine Sky Terrace from 6:00 AM to 11:00 PM, during City-approved special events or private functions when the hours may be determined by the event/function, but not later than 2:00 AM. Entertainment shall only be during City-approved special events or private functions but shall cease by 11:00 PM and commence no earlier than 10:30 AM.
9. The pool deck and mezzanine Sky Terrace areas, shall be generally limited to the use of hotel guests and/or the guests of private functions, with the following exceptions:
 - a. Patrons of the ~~Brasserie, Café, and Outdoor Café~~ Signature Restaurant shall be allowed access to the pool deck and Sky Terrace mezzanine from 11:00 AM to ~~7:00 PM~~ 11:00 PM, with music played at ambient background level only, except for weekends and holidays.
 - b. The pool deck shall be open for public events on Fridays, weekends, holidays, and during City's special event periods. It shall be open to the public during these days from

10:30 AM to 7:00 PM from December 1 to April 30 and from 10:30 AM to 8:00 PM the remainder of the year.

- c. During these events entertainment on the pool deck shall be permitted.
 - d. All music shall be played through the hotel's audio system and no portable speakers or third party speakers shall be allowed.
 - e. Only the hotel manager or his/her designee shall have sole control over sound levels.
 - f. Food for the weekend/holiday events shall be served by the wait staff of the ~~Taqueria~~ Signature Restaurant and the public shall have access to the bar within the Outdoor Café, as well as a temporary bar located on the southern end of the pool deck area.
 - g. Queuing for the events shall occur within the hotel lobby. No queuing shall be permitted on the public right of way.
 - h. The hotel shall be the sole operator of the events.
 - i. The maximum occupant content of the pool deck area during these events shall be limited to 371 persons, or as determined by the Fire Marshall, whichever is lower.
 - j. Security personnel shall use counters to ensure maximum allowed occupant content is not exceeded.
 - k. The general public shall be permitted on the pool deck during City-approved special events.
 - l. The occupant content for City-approved special events on the pool deck shall be as determined by the Fire Marshall.
10. ~~The lobby bar/restaurant shall be restricted to an occupant content of no more than 70 persons as proposed by the applicant, and the music shall be played as background only, at a level that does not interfere with normal conversation. The occupant load for the Event Space/Nightclub Space and all other venues serving alcohol, including the pool deck and mezzanine terrace Sky Terrace shall~~ The combined occupant content of the Ground Floor venues authorized in the CUP, including but not limited to the Lobby Bar/Restaurant, Rear Yard Area, Signature Restaurant, and Lounge, shall be limited to a maximum of 1,072 persons as identified in the submitted plans, or such lesser number as may be as determined by the Fire Marshall, except that the occupant content for the public events on the pool deck shall be limited as further provided for in this Order. The Fire Department staff shall make a final inspection of the pool deck venue premises to validate the patron occupant load, prior to the approval of a Certificate of Occupancy or Modified Certificate of Use/Business Tax Receipt for the pool deck venue.
11. The occupant content of the Basement Nightclub shall be limited to a maximum of 150 persons.
12. The combined occupant content of Mezzanine Level venues authorized in this CUP, including

but not limited to, Sundeck/Sky Terrace, shall be limited to 225 persons as identified in the submitted plans, or such lesser number as may be as determined by the Fire Marshall.

13. Security measures shall be taken to ensure that members of the public do not access the mezzanine terrace and pool deck areas, except as allowed under the terms of this Modified Conditional Use Permit. A detailed security plan for that purpose shall be submitted to staff for review and approval before a Modified Certificate of Use/Business Tax Receipt is issued.
14. Hotel security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all the alcoholic beverage venues.
15. As per The Audio Bug's report recommendations, the sound system, including but not limited to the system for the Lobby Bar, shall be carefully monitored and controlled by its integrated digital processor and shall only be allowed to be changed when the DJ connects his signal sources to the existing sound system. No additional speakers shall be permitted in order to maintain the balance of sound distribution. Any higher music levels shall be adjusted under the supervision of a qualified acoustical consultant. The time periods during which these events take place shall be programmed into the digital processor so that system levels are automatic. No later than 3 months after implementation, these recommendations shall be verified by a qualified acoustical consultant and a written report shall be submitted to staff for review and approval.
16. The installation plan for the sound system, including the location of all the speakers and sound system controls, shall be submitted to staff for review and approval prior to obtaining a building permit.
17. When the sound system is completely installed, but before the Modified Business Tax Receipt or Certificate of Use has been issued, it shall be tested under the supervision of a staff approved acoustic professional 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. A final report issued by the acoustic professional shall be submitted to staff.
18. The Applicant shall install an automatic noise level limiter calibrated based on a noise survey of the property and surrounding area to ensure that noise levels from the Lobby Bar do not impact adjacent properties. The device shall ensure that sound from the Lobby Bar is not plainly audible west of Collins Avenue.
19. When the sound system is completely installed, but before the issuance of a certificate of use for entertainment in the Lobby Bar, a field visit with the applicants and Planning staff shall be required to verify the sound system operations.
20. During the proposed events at the pool deck or more active periods, the hotel shall add additional security staff, as well as additional hotel managers, to meet the needs of that particular event. Security staff shall be placed at access points - the main lobby entrance, the entrance to the Café and Brasserie along 18th Street, and the beach access.
21. The applicant may apply for City approved special events pursuant to Section 12-5 of the City Code, including having live music, and entertainment as defined in the City Code, and adhere to

the conditions stated herein with regard to these special event permits. In these cases, the applicant shall notify the neighboring homeowners, condominiums or neighborhood associations in writing in accordance with applicable City special events approval requirements. The following shall apply to City approved special events:

- a. Occupant load to be determined by the Fire Marshal/Building Official for Special Events
 - b. Entertainment, including live music, concerts and the like may be permitted according to the restrictions imposed by the Special Event Permit approval
19. The applicant may hold hotel events and functions incidental and customarily associated with a hotel such as, but not limited to, weddings, receptions, and private cocktail parties for hotel guests or clients, not open to the public. The following shall apply to those events and functions in the outdoor areas.
- a. Only the hotel sound system shall be used.
 - b. Hours of operation to be determined by the event/function, but not later than 2:00 a.m.
 - c. Access to the pool deck shall be closed to the general public. Guests of the event/function shall access the venue only through the hotel lobby, and access shall be monitored by hotel security.
20. 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, that may be issued during either **City-approved special events or private events/functions** or at any other 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.
21. In the event there is an admission charge, queuing shall only be inside in the hotel lobby and a plan shall be presented to staff for review and approval. Any queuing in the public right-of-way shall be strictly prohibited.
22. There shall be at least 10 additional security personnel on duty on weekends and during Special Events, private events/functions and pool events open to the public.
23. All "wet T-shirt," "thong" or "bikini" events shall be prohibited.
24. All performances shall be limited to the interior of the establishments except for entertainment associated with public pool deck events or City-approved Special Events; only speakers playing ambient music, subject to the Audio Bug recommendations in the sound study submitted with this application, shall be permitted outdoors; except as permitted during a public pool deck event or City-approved Special Event, all outdoor music shall be ambient background music.
25. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

26. A final certificate of completion or certificate of occupancy, whichever may apply including an occupant load certificate for the entire combined space, shall be obtained before an application is made for a Modified Certificate of Use/Business Tax Receipt.
27. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about noise. Violation of the Miami-Dade County Code Section 21-28 (a/k/a “noise ordinance”) shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.
22. ~~The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), as determined by the Transportation Concurrency section. The applicant shall address the following Transportation, Mobility, Concurrency and Parking requirements, as applicable:~~
 - a. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.
 - b. The applicant shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit. The TDM Plan shall at a minimum consider providing bicycles for hotel guests, incorporating bicycle parking, providing public transportation information to guests and on the property, and providing subsidized transit passes for employees.
 - c. The applicant shall provide a minimum of ten (10) bicycle racks on the property.
 - d. 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.
29. 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 sidewalks, 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.
30. 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 Modified Certificate of Use/Business Tax Receipt to operate this entertainment establishment.
31. 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.
32. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant, and returned to the Planning Department. No

building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.

33. The establishment and operation of this Modified 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.
34. 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.
35. 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.

Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Chief of Community Planning and Sustainability
for Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

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

[NOTARIAL SEAL]

Notary:
Print Name:
Notary Public, State of Florida

PB22-0495 – 1801 Collins Ave. – Shelborne Hotel
July 26, 2022

My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department _____ ()

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