MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 25, 2024

FROM: Thomas R. Mooney, AICP
Planning Director

DS for TRM

SUBJECT: **PB24-0678, a.k.a PB0616-0034, f.k.a., File No. 1898. 1100 West Avenue – Mondrian Hotel.** Public hearing to consider a revocation, modification, or imposition of additional or supplemental conditions to a previously issued conditional use permit for a Neighborhood Impact Establishment, pursuant to Section 2.5.2.5 of the Miami Beach Resiliency Code.

HISTORY

October 28, 2008 The Board approved a Conditional Use Permit for a Neighborhood Impact Establishment for 1100 West Properties, LLC consisting of a restaurant and bar/lounge located throughout the garden, lobby and pool deck areas.

August 25, 2009 The Board approved a Modification to the Conditional Use Permit (MCUP) to extend the hours of operation of the interior portion of Sunset Lounge from 2:00 AM to 5:00 AM.

October 29, 2013 The Board approved a modification to the MCUP, modifying certain conditions pertaining to hours and entertainment for interior and exterior portions of the project.

Feb. 25, 2014 The Board approved additional modifications to the MCUP pertaining to hours and entertainment for interior and exterior portions of the project.

Nov. 24, 2015 The applicant appeared before the Board for a Progress Report. The Board approved a minor modification to the MCUP, and a clarification of the condition related to the maximum occupancy on the pool deck. The Board also required a Progress Report be scheduled for January 26, 2016.

August 23, 2016 The applicant, 1100 West Investments, LLC, requested a modification to a previously issued MCUP. Specifically the applicant requesting to change the ownership/operator, pursuant to Section 118, Article IV of the City Code.

Dec. 27, 2018 The Planning Department sent a cure letter to the applicant, 1100 West Investments, LLC, in response to outstanding code violations related to the conditions of the CUP. The cure letter advised the applicant that a progress report was scheduled for the January 22, 2019 meeting.

Jan. 22, 2019 The Board heard and discussed the issue of non-compliance. The applicant agreed to an amendment the MCUP that would explicitly a provide access to areas subject to this MCUP (not including private residences or hotel rooms)

for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the terms and conditions of this MCUP. The Board also set a progress report hearing for March 26, 2019.

March 26, 2019 The Board discussed the issue of not allowing additional sound systems to be brought in or utilized for special events. The Board also continued the progress report to July 23, 2019.

July 23, 2019 The Board discussed the progress report and determined that no further progress report we required at this time.

March 31, 2022 The Planning Department sent a cure letter to the applicant, 1100 West Investments, LLC, in response to outstanding code violations related to the conditions of the CUP. The cure letter advised the applicant that a progress report was scheduled for the April 26, 2022 meeting.

April 26, 2022 The applicant appeared before the Board for a progress report and the Board dismissed the progress report, with no further action.

March 28, 2024 The Planning Department sent a cure letter to the applicant, 1100 West Investments, LLC, in response to nine (9) noise complaints that were received for the pool area between January 1, 2024 and March 24, 2024. The cure letter advised the applicant that a progress report was scheduled for April 25, 2024.

April 25, 2024 The applicant appeared before the Board for a progress report and the Board scheduled a revocation/modification hearing for June 25, 2024.

REVOCATION/MODIFICATION HEARING VIOALTION AND COMPLAINT HISTORY

On May 21, 2024, the attached cure letter was sent to 1100 West Investment, LLC, the applicant of the modified CUP. This MCUP was last modified by the Planning Board on January 22, 2019.

Subsequent to the issuance of the cure letter on March 28, 2024, the Planning Department has been made aware of the following violations that have been issued to the subject property:

CUP2024-00072 & NC2024-28056, 4/6/2024
Arrival time: 10:28 PM
Departure time: 12:30 AM

Status: Appealed (SMA2024-0443 scheduled for 7/18/2024, 1:30pm)
Link to Special Master Agenda:
CMB - Special Magistrate (miamibeachfl.gov)

I was dispatched to 1100 West Ave on a noise complaint for loud music. Upon my arrival, I raised CCA Russell to see if the complainant Joell wanted to meet. He did not. I proceeded to survey for loud music from the complainant's address behind 1000 West. I heard loud Latin music immediately when I went behind the building and it grew louder as I walked toward 1100 West. I walked over to 1100 west and spoke with the manager Marc who got the head of security to take me back to where the music was playing. There was a live band playing Latin music with a drummer in the back. While I was there two more

loud music complaints came in. They were asked to turn off the music and the hotel staff had it turned off. I advised Marc that the hotel would be getting a noise violation (NC2024-28056) and a Conditional Use Permit violation. He signed for both and I answered his questions. M. Flesher / 762

For the conditional use permit violation, they are in violation of the noise ordinance, in violation of using percussion instruments outside, and for having a live band without a special event permit. M. Flesher / 762

(1) Sections: 142-153, 118-194, 114-8. Failure to operate your business in accordance with your conditional use permit.

REF: Violating the terms of the conditional use permit by violating the noise ordinance, violating condition J by using percussion instruments outdoors on the premises, violating condition L. by having a live band without a special event permit.1st offense BWC Used
M. Flesher / 762



Photo from code case CUP2024-00072

CUP2024-00073, 4/27/2024
5:52pm
Status: Appealed (SMA2024-04497, scheduled for 7/3/2024, 9:00 am)
Link to Special Master Agenda:
CMB - Special Magistrate (miamibeachfl.gov)

An inspection, prompted from a phone complaint from Dispatch, revealed the following: Upon my arrival to the complainant's location, 1200 West Ave., I heard no music. I stepped onto the rear pool area and faint music is heard. I walk through the pool deck towards the shared gate between 1200 and 1100 West Ave. As I approach the gate music is heard

but it is not loud or excessive. The complainant did not want to meet. I could not gauge the noise level from their vantage point.
As a courtesy, I went to 1100 West Ave. and spoke to the Security Officer, India. India escorted me to the pool area and I observed the DJ lower the music/bass levels.

Due to the presence of a DJ, a Notice of Violation for violating condition 7(n) of the Conditional Use permit is issued.

Sections: 142-153, 118-194, 114-8. Failure to operate your business in accordance with your conditional use permit.

REF: DJ operating in the pool area. This is in violation of condition 7(J) in the Conditional Use Permit (CUP). CUP Condition Notice of Violation issued, Body worn camera footage captured, photos taken,
CCO AL Pena 746



Photo from code case CUP2024-00073

The following is a list of the noise complaints received this year. Note this does not include any proactive code cases where code compliance staff monitored the property and no violation was issued.

NC2024-27660, 2/2/2024
Arrival time: 8:25 PM
Departure time: 8:50 PM

I was dispatched to 1100 West Ave for a noise compliant. Upon my arrival, I raised CCA McLean to contact the complainant, Susanna, to see if she would like to meet. She did not answer the phone. I proceeded to survey from the pool area of 1200 west for loud music. I could not hear any music, coming from the direction of 1100 west, only living noises of people talking. I proceeded to 1100 West and asked to be let in the pool area to survey for music. I was taken there by security and when I arrived, I could hear music

lightly playing at an ambient level.
Complainant did not answer the phone
No violation observed
Disposition: Music was not loud or excessive
BWC Used
M. Flesher / 762

NC2024-27717 2/10/2024
1:38 PM Arrival
2:43 PM Departure
Code Compliance received a complaint from dispatch regarding loud music in the pool area. The complainant was contacted but did not want to meet. From the street I could hear no music, from the front of the hotel I could hear no music, from the lobby of the hotel I could not hear any pool music. When I stepped through the doors to the pool area, I could hear music, but it was not unreasonably loud or excessive. I met with Emily, the pool area manager. We had the music lowered and bass lowered as a courtesy. While I was entering my notes the complainant called again. I assessed the music again and it did not seem as though it was turned back up. It sounded lower than before. Emily lowered the master volume control from her end as a courtesy. She also explained that this resident who is complaining has registered complaints with the hotel because they will not let her out of her lease early. To me, this sounded like a civil issue between the complainant/tenant and the hotel. The complainant called again to speak with a supervisor. CCA Rios explained we were happy to assess the music from their unit, but they did not want this. No violation observed. Music not unreasonably loud nor excessive.
P Godsill 756
BWC used.

NC2024-27718, 2/10/2024
I was dispatched to a complaint about loud music coming from the Mondrian with the complainant, Susanna, living next door at 1200 West Ave. Upon arrival, I could not hear any noise while on the sidewalk in front of 1100 or 1200 West Ave. ACCA McLean attempted to call Susanna and she didn't want to meet. While waiting to hear back from Susanna, I walked around the front of 1200 West Ave and could hear no noise. I then walked to the Mondrian and back to the pool area. I observed music being played but it was at an ambient level and no DJ. I spoke with pool manager Emily, who said the DJ left 'a long time ago'.
No Violation Observed: Music not unreasonably loud nor excessive
CCO G Frank 760
BWC used

NC2024-27083, 2/23/2024
Arrival: 9:37 PM
Departure: 10:00 PM
I responded to a loud music complaint that was reported to be coming from 1100 West Ave. I arrived at the location and had CCA Russell reach out to the complainant to see if they wanted to meet. A short time later he advised that there was no answer from the complaint. I proceeded with my inspection and made contact with security at 1100 West ave. I advised them of the complaint and together we went to the rear of the property where music was heard coming from the restaurant at the property. The music heard was not unreasonably loud/excessive and was scheduled to be turned off at 10PM. No violation observed.

NC2024-27878, 3/5/2024
Arrival: 7:43 PM
Departure: 7:53 PM
I responded to a noise complaint reported to be coming from the poll area at 1100 west ave. I arrived at the location and made contact with security and informed them of the complaint. The music palying in the pool area was not unreasonably loud/excessive. The music was immediately lowered. No violation osberved
BWC Used
H.Castillo 738

NC2024-27905, 3/10/2024
Arrival: 8:29 PM
Departure: 8:50 PM
I responded to a loud music complaint reported to be coming from The Mondrian located at 1100 West Ave. I arrived at the location and walked to the rear of the complainant address. While standing in the complainant pool area music heard was not unreasonably loud/excessive. I then walked over to 1100 West Ave where contact was made with security for the Mondrian. together we went to the rear of the property (pool area) where there was no one. However the music for the pool area had accidently been left on. Security immediately had it turned off. No violation observed.
BWC Used
H.Castillo 738

NC2024-27924, 3/14/2024
Arrival time: 8:52 PM
Departure time: 9:25 PM
I received a complaint from dispatch referencing loud music coming from 1100 West Ave. Upon my arrival I raised my supervisor to see if the complainant wanted to meet. The supervisor informed me the call went straight to voicemail. I proceeded to 1000 West Ave where the complainant had complained from and surveyed the music. The music was not loud nor excessive. I then walked to 1100 West Ave where the music was coming from. I spoke with one of the managers in charge at moment and advised him the reasoning for my arrival. The volume of the music was turned further down prior to my arrival at 1100 West Ave. No violation observed.
Complainant did not answer.
Music not loud nor excessive.
No violation observed,
BWC
PCCO Munio 763

NC2024-28053, 4/6/2024
LOUD MUSIC
Arrival: 3 45 PM
Departure: 4:27 PM
Ref: Loud music coming from 1100 West Ave.
Disposition: Music lowered upon arrival; No violation observed.
A. Maya 723
BWC used.
I was dispatched to address a noise complaint regarding loud music at 1100 West Avenue. Upon my arrival, I met with the complainant at her residence located at 1200 West Avenue, Penthouse 4. Upon entering her unit, I did not hear any music playing. The complainant informed me that the music had been lowered prior to my arrival.
I then proceeded to 1100 West Avenue and spoke with the hotel manager regarding the

complaint. Music was not loud nor unreasonably at the time of my inspection. The manager assured me that they understood the concern and would ensure that the music volume was kept at an appropriate level. I did not observe any violations during my visit. Overall, the situation was resolved amicably, and the necessary steps were taken to address the noise complaint effectively.
A. Maya 722
BWC used.

NC2024-28243, 5/4/2024
ARRIVAL: 4:21 PM
DEPARTURE: 5:19 PM
A noise complaint, from Dispatch revealed the following: I park the City vehicle in the vicinity of the location noted by the complaint, case NC2024-28243, ADDITIONAL INFORMATION, 1200 West Ave, see photos. I go to the unit specified by CCA Blanco, 1120. I knock on the door and I am greeted by the resident. I state I am present for the noise complaint. The resident states that they did not put in a noise complaint. I then go to 1000 West Ave., due to the fact that the Condo goes by the same name, MIRADOR. I go to unit 1120, there is no answer. After consulting with CCA Blanco and dispatch via phone and radio, I am told that the correct QTH for the complainant is within the MONDRIAN, 1100 West Ave., unit 1120. I walk to 1100 West Ave. Upon my arrival to 1100 West Ave. I am greeted by security personnel, Cary and Brandon. In the lobby, the music is not loud or excessive. They escort me to unit 1120. Upon my arrival to unit 1120 I am greeted by the complainant, Angie. I state my name and affiliation with the City of Miami Beach. Angie stated that the music is coming from the pool area and, at that moment, is not loud. Angie claims that when Code Compliance Officers arrive, the managers of the Condo lower the music and raise it when the officers depart, forcing the complainant to call back. Angie claims that she and the neighboring MIRADOR condos have complained, repeatedly, since 2014. I explained to Angie that, at this moment, the music is not loud or excessive and no notice is written. I encouraged her to continue calling us so we may inspect, when the need arises.
No violation issued, music not loud or excessive,
Body worn camera footage captured,
CCO AL Pena 746

STAFF ANALYSIS

The subject hotel is located on West Avenue, which is primarily a high-density residential area of the City. The subject building was converted into a condominium hotel in the mid-2000's and is located between two high-rise residential buildings. While hotel uses and the customary accessory uses associated with hotels were allowed in the RM-3 zoning district at the time the building was converted, hotels are no longer permitted in the West Avenue corridor.

Due to the overall size of the venues and the outdoor areas on the site, a CUP was required. The conditions of the CUP are structured to promote the peaceful co-existence of the hotel's accessory uses and the nearby residential uses. The applicant is required to appear before the board is because violations have been issued for failure to comply with the conditions of the CUP.

The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted noise complaints:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The Board reserves the right to modify the Conditional Use approval at the time of a progress report

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

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.

5. With respect to the operation of the property, 1100 West Investments, LLC and its affiliates, are in addition to the applicant, responsible for compliance with the conditions.

7.i. No speakers shall be affixed to and located on the exterior of the premises, except as may be required for fire or building code purposes, and except for the ground installed speakers such as the Bose FreeSpace 360P Series II Loudspeaker (or substantial equivalent) as described in The Audio Bug, Inc.'s report dated September 19, 2008, intended to limit noise disbursement with the intent to distribute sound within a limited radius of each speaker, with sound projected downward or laterally not vertically. Additional speakers may be added to more evenly distribute sound, provided that:

(i) Such speakers are consistent with the type of speakers described in the aforementioned report,

(ii) The location of such speakers are consistent with The Audio Bug, Inc.'s design plan for the pool deck dated September 10, 2013, and

(iii) The volume of the music shall not exceed background levels. For purposes of this provision, “background levels” shall mean levels that do not interfere with normal conversation.

With the exception of the covered areas in the exterior of the Property (including the cabanas), no audio amplified equipment shall be operated on the Pool Deck later than 10:00 p.m. Sundays through Thursdays and 11:00 p.m. Fridays and Saturdays. Audio amplified equipment may also be played until 11:00 p.m. on the Sunday that is closest in time to each of the following holidays: Thanksgiving, Christmas, New Year’s Eve, Labor Day, Memorial Day, July 4th and Easter. With respect to said covered areas, no audio amplified equipment shall be operated beyond 2:00 a.m. No speakers shall be located on the property boundaries and all speakers shall be placed in such a way that they direct sound inward away from the neighboring properties.

7.j. In the exterior common areas, the use of percussion instruments shall not be permitted on the premises, outdoors on the premises, or on open air portions of the premises, or within any rooms or facilities operating on the premises with doors or windows that open directly onto the exterior except as explicitly permitted under a Special Event permit.

7.k. Portable audio or amplified equipment, (inclusive of loudspeakers, radio receivers, television sets, musical instruments, or other machines or devices for the producing or reproducing of sound) shall not be permitted on the pool deck or rooftop. But television sets will be allowed if their sound systems use the sound system described in paragraph 7(i).

7.l. No outdoor live music shall be permitted at any time, except as may be permitted in a valid Special Event permit issued by the City with prior notice to the adjoining properties upon

application for such a permit and prior to its issuance. No such permit shall include the use of percussion instruments, as described in subsection 7(j), unless it is explicitly approved by the Special Event Permit. Any such Special Event Permit shall be for a private noncommercial party or charitable event and shall be limited to no more than one day in any given month and during national holidays.

7.n. Entertainment, as defined in Section 142-1361 of the Code of the City of Miami Beach, Florida, shall be prohibited on exterior portions of the property, except as may be permitted in a Special Event permit issued by the City.

7.r. In addition to the limitations specified herein, to the extent permitted by law, the 1100 West and successors and assigns shall prohibit on the premises noise that is prohibited under the City of Miami Beach noise ordinance, Chapter 46, Article IV, as it may be amended from time to time.

10. Only the sound system operated and controlled by hotel management shall be permitted. Any extraneous or independent sound system that may be brought by DJs, promoters, performers or any other individuals shall be strictly prohibited.

21. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation or the occupant load should there be complaints about loud, excessive, unnecessary, or unusual late night noise.

22. 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.

25. 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 114-7 of the Code and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators 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 permit.

Staff would note that unless associated with an approved special events permit, entertainment, which includes, but is not limited to DJ's, as well as music played at a volume that interferes with normal conversation, is prohibited. Of note are the following flagrant violations of the CUP:

- On April 6, 2024, a violation (as noted above) was issued for having a live band without a special events permit. Condition 7.j. prohibits the use of percussion instruments, which were part of the live band.

- On April 27, 2024, a violation (as noted above) was issued for the presence of a DJ on the exterior of the property. A DJ is only allowed as part of a Special Event permit and a search of the city records indicates that there was no approved special event permit for the property on that date.

Both above cases have been appealed to the Special Magistrate and are scheduled to be heard on July 3, 2024 and July 18, 2024. Considering these appeals, staff recommends that the Board

hear testimony from the applicant and the public and continue the revocation/modification hearing to the July 30, 2024 meeting.

STAFF RECOMMENDATION

Staff recommends that the Planning Board continue the revocation/modification hearing to July 30, 2024.

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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

March 28, 2024

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

1100 West Investments LLC
2200 Biscayne Boulevard
Miami, FL 33137

Re: Cure Letter regarding Planning Board File No. PB0616-0034, a.k.a. PB File No. 1898 - 1100 West Avenue.

Dear Sir/Madam:

On October 28, 2008, a Conditional Use Permit (CUP) was issued to the subject property for a Neighborhood Impact Establishment, which was subsequently modified several times. On January 22, 2019, the Planning Board and the applicant agreed to an amendment to the CUP, allowing access to areas subject to the modified CUP for inspection by the city, as a result of a prior Cure Letter (see attached CUP).

It has come to the Planning Department's attention that nine (9) noise complaints have been received for the pool area between January 1, 2024 and March 24, 2024.

The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted noise complaints:

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

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.

5. With respect to the operation of the property, 1100 West Investments, LLC and its affiliates, are in addition to the applicant, responsible for compliance with the conditions.

7.n. Entertainment, as defined in Section 142-1361 of the Code of the City of Miami Beach, Florida, shall be prohibited on exterior portions of the property, except as may be permitted in a Special Event permit issued by the City.

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22. 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.

25. 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 114-7 of the Code and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators 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 permit.

In accordance with Condition No. 21 of the CUP, “The Planning Board shall retain the right to call the operators back before them and modify the hours of operation of the occupant load should there be complaints about loud, excessive, unnecessary, or unusual late night noise.” In light of the nine (9) noise complaints received in the past three months, **you are requested to appear at the April 25, 2024 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 Section 2.5.2.5 of the Land Development Regulations of the City Code (LDR’s), 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 June 25, 2024 agenda 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 Michael Belush at (305) 673-7000 ext. 26258 or via email at MichaelBelush@MiamiBeachFL.gov.

Sincerely,

DocuSigned by:
for TRM
DEC3ECF2EB68404...
Thomas R. Mooney, AICP
Planning Director

TRM\MB

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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 1100 West Avenue

FILE NO: PB0616-0034, fka File No. 1898.

IN RE: The application for a modification to a previously issued Conditional Use Permit to change the ownership/operator, pursuant to Section 118, Article IV of the City Code.

LEGAL DESCRIPTION: Lots 7 and 8 and north 50 feet of Lot 9, Alton Beach Realty Co., as recorded in Plat Book 6, Page 12 of the Public Records of Miami-Dade County, Florida, as described in Declaration of Condominium recorded in Official Records Book 25780, Page 0498 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: August 23, 2016, January 22, 2019

MODIFIED CONDITIONAL USE PERMIT

The applicant, 1100 West Investments, LLC, filed an application with the Planning Director for a Conditional Use Permit pursuant to Section 118-193 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for Conditional Use 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 record for this matter:

That the property in question is located in the RM-3, Residential High Intensity zoning district;

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 City Code;

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 if the following conditions are met.

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 which were amended by the Board, that the modification to the

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Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed: Strikethrough denotes deleted words; underlining denotes new language:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. 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 1100 West Investments, LLC as owner of the property and its affiliates as operator of property. Subsequent owners or operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein. Any change to the ownership interests in 1100 West Investments, LLC exceeding twenty-four (24%) percent of the ownership interests in 1100 West Investments, LLC, shall be deemed to create a "subsequent owner" of the property requiring said owner to appear before the Board to affirm their understanding of the conditions listed herein.

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

4. The applicant, 1100 West Investments, LLC and its affiliates, as operator of the property, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Conditional Use Permit.

5. With respect to the operation of the property, 1100 West Investments, LLC and its affiliates, are in addition to the applicant, responsible for compliance with the conditions.

6. The maximum number of people that shall be permitted at any one time in each of the interior and exterior areas of each of the lounge, pool bar, and restaurant shall be as set forth on Page A-1.0, dated April 19, 2007 and signed September 25, 2008 of the site plans submitted as part of the Application.

7. The applicant, West Investments, LLC shall comply with all of the following operational conditions:

    a. The hours of operations shall be as proposed by the applicant:

        (i) Restaurant 7:00 a.m. until midnight, except on weekends and holidays they shall be 2:00 a.m. indoors and 12:00 a.m. outdoors.

        (ii) Sunset Lounge: 11:00 a.m. until 5:00 a.m. seven days per week in the air-conditioned interior area: 11 a.m. until 2:00 a.m. seven days per week on the pool deck portion: provided that security personnel are posted at each of the access points to the outdoor terrace and pool deck at 2:00 a.m. with the responsibility of preventing access to those areas after 2:00 a.m.

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(iii) Pool Bar counter: 9:00 a.m. until 10:00 p.m. Sunday through Thursday and until 11:00 p.m. Friday and Saturday, as well as the Sunday that is closest in time to each of the following holidays: Thanksgiving, Christmas, New Year's Eve, Labor Day, Memorial Day, July 4th and Easter, provided the applicant obtains a variance from the Board of Adjustment. Otherwise, the bar counter shall close from 8:00 PM until 9:00 AM seven days a week.

(iv) All exterior clean-up activities relating to the restaurant, sunset lounge and pool bar counter operations, including the depositing of trash and recycling, shall cease one (1) hour following the close of daily operations at 2:00 a.m. seven days a week and all exterior set-up activities for said venues shall not commence before 6:30 a.m. in the covered areas and 8:00 a.m. in the uncovered areas of the pool deck.

b. 1100 West Avenue shall install landscaping in the area near the north and south property lines in order to create a transition between the Property and the neighbors to the north and south, and in order to attempt to create a sound buffer and reasonable artificial light buffer. The type, size and quantity of the landscaping will be subject to City staff review and approval.

c. 1100 West Avenue shall install and maintain sound buffering panels along its north and south property lines in order to create additional sound buffering, subject to City review and approval.

d. The outdoor bar that is located close to the Mirador North property line, shall be moved to the area near the south boundary of the Property, the exact location of which will be at 1100 West's sole discretion but no closer than south of the east/west median line as defined as Line A on Exhibit B (copy attached).

e. After 8:00 P.M, and before 8:00 AM, all tables and chairs that are used for meal service in the rear of the Property shall be confined to the covered areas. Lounge chairs or day beds with accessory tables are allowed around entire pool area for lounge or bar service. No service shall occur on the Pool Deck after 11:00 PM except for table service in the cabanas. North and south cabanas service will be limited to groups of 6 or less individuals and food service will end at 12:00 Midnight and drink service at 2:00 AM.

f. 1100 West Avenue will make the south service entrance the property's primary service access. Additionally, 1100 West Avenue will build and use a trash room only on the South side of its property; all access to the trash room for pickup and delivery shall be along the south side of 1100 West. In the event of an emergency or other extraordinary event or circumstance beyond the control of the applicant, such as war, strike, riot, crime or act of nature, the limitation shall not apply.

g. Unless required by law, and no reasonable alternative could be found, no additional mechanical equipment will be located near the north or south areas of the Property.

h. During all operating hours of the marina, the marina will be staffed by an attendant and will be under 24 hour surveillance. No loudspeakers shall be affixed to marina facilities except as may be required for fire or building code purposes, or necessary for operation of a marina. Any such amplification devices shall be utilized solely for marina operations, not for entertainment or non-operational purposes.

i. No speakers shall be affixed to and located on the exterior of the premises, except as may be required for fire or building code purposes, and except for the ground installed speakers such as the Bose FreeSpace 360P Series II Loudspeaker (or substantial equivalent) as described in The Audio Bug, Inc.'s report dated September 19, 2008, intended to limit noise disbursement with the intent to distribute sound within a limited radius of each speaker, with sound projected downward or laterally not vertically. Additional speakers may be added to more evenly distribute sound, provided that:

(i) Such speakers are consistent with the type of speakers described in the aforementioned report,

(ii) The location of such speakers are consistent with The Audio Bug, Inc.'s design plan for the pool deck dated September 10, 2013, and

(iii) The volume of the music shall not exceed background levels. For purposes of this provision, "background levels" shall mean levels that do not interfere with normal conversation.

With the exception of the covered areas in the exterior of the Property (including the cabanas), no audio amplified equipment shall be operated on the Pool Deck later than 10:00 p.m. Sundays through Thursdays and 11:00 p.m. Fridays and Saturdays. Audio amplified equipment may also be played until 11:00 p.m. on the Sunday that is closest in time to each of the following holidays: Thanksgiving, Christmas, New Year's Eve, Labor Day, Memorial Day, July 4th and Easter. With respect to said covered areas, no audio amplified equipment shall be operated beyond 2:00 a.m. No speakers shall be located on the property boundaries and all speakers shall be placed in such a way that they direct sound inward away from the neighboring properties.

j. In the exterior common areas, the use of percussion instruments shall not be permitted on the premises, outdoors on the premises, or on open air portions of the premises, or within any rooms or facilities operating on the premises with doors or windows that open directly onto the exterior except as explicitly permitted under a Special Event permit.

k. Portable audio or amplified equipment, (inclusive of loudspeakers, radio receivers, television sets, musical instruments, or other machines or devices for the producing or reproducing of sound) shall not be permitted on the pool deck or rooftop. But television sets will be allowed if their sound systems use the sound system described in paragraph 7(i).

l. No outdoor live music shall be permitted at any time, except as may be permitted

in a valid Special Event permit issued by the City with prior notice to the adjoining properties upon application for such a permit and prior to its issuance. No such permit shall include the use of percussion instruments, as described in subsection 7(j), unless it is explicitly approved by the Special Event Permit. Any such Special Event Permit shall be for a private noncommercial party or charitable event and shall be limited to no more than one day in any given month and during national holidays.

m. Rooftop use shall be solely for unit owners, their lessees, invitees and guests, and hotel guests.

n. Entertainment, as defined in Section 142-1361 of the Code of the City of Miami Beach, Florida, shall be prohibited on exterior portions of the property, except as may be permitted in a Special Event permit issued by the City.

o. Commercial fireworks shall not be permitted on the property, except as may be permitted during events held pursuant to a Special Event Permit issued by the City.

p. Temporary lighting equipment used in connection with events or productions on the Pool Deck shall be placed in such a way to minimize spillover onto neighboring properties. In no event shall such lighting be turned on between midnight and 7:00 a.m. seven days a week, except as may be permitted in a Special Event permit issued by the City.

q. 1100 West shall install signage on the property instructing vehicular traffic to refrain from noise from honking truck, car horns, and car alarms, subject to the review and approval of staff.

r. In addition to the limitations specified herein, to the extent permitted by law, the 1100 West and successors and assigns shall prohibit on the premises noise that is prohibited under the City of Miami Beach noise ordinance, Chapter 46, Article IV, as it may be amended from time to time.

8. The installation plan for the updated 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.

9. When the sound system is completely installed, but before operations begin, it shall be tested under the supervision of Mr. Donald J. Washburn, president of The Audio Bug, Inc., but before the Business Tax Receipt has been issued, to ensure that all aspects of the system's performance comply with The Audio Bug, Inc.'s report dated September 19, 2008 as well as The Audio Bug, Inc.'s design plan for the pool deck dated September 10, 2013. Operations shall not begin until staff has received and approved in writing a final written report by Mr. Washburn which states that as tested, the system complies with all the aforementioned reports and supporting materials.

10. Only the sound system operated and controlled by hotel management shall be permitted. Any extraneous or independent sound system that may be brought by DJs, promoters, performers or any other individuals shall be strictly prohibited.

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11. Hotel security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of the lounge.

12. Prior to the issuance of a Certificate of Occupancy or Certificate of Completion, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy or Certificate of Completion. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt.

13. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

14. The westbound approach of the 11th Street and West Avenue intersection shall be re-striped by adding a thru-arrow to the existing painted left-turn arrow in order to show the allowed through-movement into the project.

15. The landscaping that may be proposed for the edge along the sidewalk shall not exceed a maximum height of two feet in order to provide adequate sight distance at the north (exit) driveway. Any revision to the landscaping plan shall be submitted to staff for review and approval.

16. A "DO NOT ENTER" sign facing the street, shall be installed at the north driveway. In addition, removable bollards shall be installed so that a right-turn only movement is permitted. Bollards may be removed during special events to allow the flow of traffic with security personnel or off-duty officers directing traffic.

17. The applicant shall coordinate with the Public Works Department any proposed street improvements, including but not limited to the re-striping of the 11th Street and West Avenue intersection.

18. Food and beverage service to boat patrons shall be permitted, except that no food and beverage sales shall be provided to vessels docked at the south marina. No other services shall be provided to vessels docked on the property. The applicant shall satisfy the required parking for a commercial marina by either providing the required spaces, or paying a fee in lieu of providing the required parking.

19. Access to the open rooftop area on the top floor, located between two groups of units, facing east, shall be limited to unit owners, their lessees, their respective social invitees and their guests, and hotel guests. In the open rooftop area, none of the following shall be permitted at any time: (a) any musical instrument or any sound-producing device, instrument, system, or component of any kind, or (b) any social or commercial event or function of any kind, or (c) flashing or spinning lights.

20. The maximum number of persons on the Pool Deck shall not exceed 299 persons, except during special events. For purposes hereof, the term "Pool Deck" shall mean as designated on Exhibit "A," attached hereto and incorporated herein, as the "Pool Deck." Without limitation, the Pool Deck shall exclude any covered areas in the exterior of the Property. Any expansion of the MCUP approved site and/or floor plan shall require the review and approval of the Planning Board.

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21. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation or the occupant load should there be complaints about loud, excessive, unnecessary, or unusual late night noise.

22. 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.

23. 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.

24. 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.

25. 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 114-7 of the Code and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators 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 permit.

26. The applicant agrees and shall be required to provide access to areas subject to this MCUP (not including private residences or hotel rooms) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the terms and conditions of this MCUP.

27. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

Dated this 23rd day of January, 2019.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush

MB

Michael Belush, Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 23 day of JANUARY, 2019, by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

VICTOR NUNEZ
MY COMMISSION #GG129397
EXPIRES: JUL 30, 2021
Bonded through 1st State Insurance

{NOTARIAL SEAL]

Notary:
Print Name
Notary Public, State of Florida
My Commission Expires: JULY 30, 2021
Commission Number: GG129397

Approved As To Form:
Legal Department (1/23/19

Approved As To Form: Legal Department ( )

Filed with the Clerk of the Planning Board on 1/24/19)

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