

MIAMI BEACH

PLANNING DEPARTMENT


Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 24, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **File No. 1467 – 960 Ocean Drive–Ocean's Ten – Progress Report**

BACKGROUND

September 26, 2000

Planet Hollywood International received a Conditional Use Permit (CUP) in order to operate a restaurant with an outdoor entertainment establishment on the first floor of the Edison Hotel and the adjacent courtyard.

September 24, 2002

Sobe USA, LLC, was issued a modification to the CUP to change the name of the owner/operator of the outdoor entertainment establishment.

October 13, 2017

At the direction of the Planning Board, a Cure Letter was issued regarding open violations and complaints about the operation of the establishment.

PROGRESS REPORT

Staff research of city records found that, within the last year, the following violations are showing in the city's records at the time of this writing:

Case Number	Main Address	Case Type	Case Status	Open Date	Closed Date
CC2017-03618	960 OCEAN DR	City Code Violation	Notice of Violation	09/02/2017	09/02/2017
SV2017-03431	960 OCEAN DR	Sanitation Violation	Notice of Violation	08/27/2017	
CC2017-02949	960 OCEAN DR	City Code Violation	Fine Paid	06/01/2017	08/16/2017
NC2017-02714	960 OCEAN DR	Noise Complaint	Fine Paid	02/18/2017	03/02/2017
CC2016-01705	960 OCEAN DR	City Code Violation	Fine Owed	12/22/2016	12/29/2016
CC2016-01267	960 OCEAN DR	City Code Violation	Fine Paid	10/24/2016	01/24/2017

STAFF ANALYSIS

Below is a list of the conditions of the attached Modified CUP that are related to the violations and complaints discussed at the last Planning Board meeting:

1. The Planning Board shall maintain jurisdiction on this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify or cancel the Conditional Use approval at the time of the progress report, to impose additional conditions to address possible noise and security problems and to determine the timing and need for further progress reports.

9. The applicant shall be responsible for maintaining the frontage and exterior of the building and the property in excellent condition, including keeping the alley at the rear (west side) of the building, and the sidewalk, curb and gutter in front of the building in a clean and sanitary condition, free of all refuse at all times.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the conditions of the CUP and the scheduling periodic progress reports, if necessary.

TRM/MAB/TUI

F:\PLAN\PLB\2017\10-24-17\PB 1467 - 960 Ocean Drive-prg rpt\PB 1467 - 960 Ocean Dr Oct 2017 prg rpt.docx

MIAMI BEACH

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

PLANNING DEPARTMENT

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

October 6, 2017

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

940 Ocean Dr LLC
C/O Nakash Holding LLC
1400 Broadway 15th Floor
New York, NY 10018

Sobe USA LLC d/b/a Oceans Ten
960 Ocean Drive
Miami Beach, FL 33139

Re: Planning Board File No. 1467 – 960 Ocean Drive

Dear Sir/Madam:

A Modified Conditional Use Permit (MCUP) for an outdoor entertainment establishment was issued on September 24, 2002 to Sobe USA, LLC. It has come to the Planning Department's attention that complaints have been made regarding the operational conditions contained in the attached conditional use permit (MCUP.)

In light of the aforementioned complaints and the inconsistencies with the following conditions of approval contained in the Conditional Use Permit, **you are requested to appear at the October 24, 2017 Planning Board hearing** for a verbal progress report:

1. The Planning Board shall maintain jurisdiction on this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify or cancel the Conditional Use approval at the time of the progress report, to impose additional conditions to address possible noise and security problems and to determine the timing and need for further progress reports

The following warnings, violations and open offenses are still showing in the City's records as of this writing:

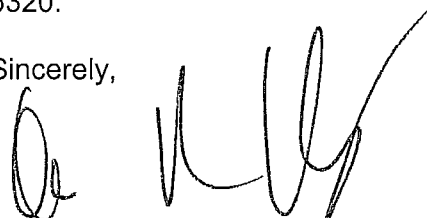
Case Number	Main Address	Case Type	Case Status	Open Date	Closed Date
CC2017-03618	960 OCEAN DR	City Code Violation	Notice of Violation	09/02/2017	09/02/2017
SV2017-03431	960 OCEAN DR	Sanitation Violation	Notice of Violation	08/27/2017	
CC2017-02949	960 OCEAN DR	City Code Violation	Fine Paid	06/01/2017	08/16/2017
NC2017-02714	960 OCEAN DR	Noise Complaint	Fine Paid	02/18/2017	03/02/2017
CC2016-01705	960 OCEAN DR	City Code Violation	Fine Owed	12/22/2016	12/29/2016
CC2016-01267	960 OCEAN DR	City Code Violation	Fine Paid	10/24/2016	01/24/2017

Please be advised that at the time of the progress report, in accordance with the provisions of City Code Section 118-194(3), the Planning Board may consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings. Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings, this issue may be placed at the next available meeting of the Board. In the event the Board takes any of the enforcement actions, the applicant shall reimburse the Planning Department for all monies expended to satisfy notice requirements and to copy, prepare or distribute materials in anticipation of the public hearing.

If a modification/revocation hearing is set at that public hearing, 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 revoke the approval, modify the conditions thereof, or impose additional or supplemental conditions.

If you have any questions, please do not hesitate to contact Ms. Tui Munday at (305) 673-7000 ext. 6320.

Sincerely,



Thomas R. Mooney, AICP
Planning Director

TRM\TUI

F:\PLAN\PLB\GEN-CORR\CURE LETTERS\ 960 Ocean Dr - CURE LTR Oct 2017.docx

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

PROPERTY: 960 Ocean Drive – Planet
Hollywood

FILE NO: 1467

IN RE: The application by Sobe USA,
LLC, requesting a modification
to the Conditional Use permit to reflect a change in operator for the Planet
Hollywood restaurant located in the Edison Hotel at 960 Ocean Drive

LEGAL

DESCRIPTION: Lots 1 and 2 Block 14 Ocean Beach Addition. No. 2, as recorded in PB 2-
56, Public Records of Miami-Dade County, Florida.

MEETING DATE: September 24, 2002

MODIFIED CONDITIONAL USE PERMIT

The applicant, Sobe USA, LLC, filed an application with the Planning Director for a Conditional Use Permit pursuant to Section 142-213 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for a modification of a previously granted Conditional Use Permit 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 MXE Mixed Use Entertainment 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 Ordinance;

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, 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 on this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify or cancel the Conditional Use approval at the time of the progress report, to impose additional conditions to address possible noise and security problems and to determine the timing and need for further progress reports.
2. This Conditional Use approval is for the Sobe USA LLC only. Any substantive change in the operation from a restaurant/bar with entertainment, or change of operator, shall require review and approval by the Planning Board as an amendment to this 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.
3. The speakers previously placed under the canopy at the mezzanine level bar at the rear (west side) of the courtyard shall not be replaced anywhere at this location. Applicant shall adhere to the recommendations contained in the "Analysis of Outdoor Sound Systems and Proposals for All Star Cafe/Planet Hollywood," prepared by Will Pirkle, BA, BM, MSEE and dated September 7, 2000.
4. All performances shall be limited to the existing stage located at the rear (west side) of the courtyard, with sound levels that are not audible more than 100 ft. to the east of the property line, nor audible from the adjacent properties to the south, north and west.
5. Dance performances, either in the open courtyard or the front porch of the subject property, shall not be permitted.
6. Special "teen night" promotions, "all-ages" events, "wet t-shirt" or "bikini" contests shall be prohibited.
7. Volume of sound shall not exceed that which is permitted under the Miami-Dade County Noise Ordinance.
8. The hours of live performances shall be limited to 1:00 A.M. Sunday through Thursday and 3:00 A.M. on Friday and Saturday.
9. The applicant shall be responsible for maintaining the frontage and exterior of the building and the property in excellent condition, including keeping the alley at the rear (west side) of the building, and the sidewalk, curb and gutter in front of the building in a clean and sanitary condition, free of all refuse at all times.
10. Queuing or gathering of people on the sidewalk in front of the establishment, in order to listen to the musical performance without entering the premises, shall be prohibited. In the event that there is queuing of people in this area, which impedes the free-flow of pedestrians on the sidewalk, the operator shall be required to have restaurant staff take action to remove such crowds from the sidewalk.

11. The clear pedestrian path on the sidewalk in front of the establishment shall be no less than that which is required by the City's Sidewalk Cafe Ordinance. In the event there is queuing of patrons in this area which impedes the clear path, the operator shall be required to remove tables and chairs from the sidewalk area to allow the free flow of pedestrian traffic.
12. The applicant shall provide, at its own expense, security personnel to prevent loitering and/or unauthorized use of the premises after business closing hours.
13. The outdoor performances approved by this Conditional Use permit shall be accessory to the normal operation of a theme restaurant operated by Sobe USA LLC at this location. Tables and chairs with food and beverage service must be present on the front porch and courtyard areas at all times during any performance.
14. Any modifications to the existing courtyard or building structures, inclusive of the installation of speakers or any other accessories, shall be reviewed and approved by design and preservation staff, and a Building Permit shall be obtained prior to any work being conducted on the premises.
15. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to operating as an entertainment establishment.
16. This Conditional Use Permit shall be recorded in the Public Records of Dade County at the expense of the applicant.
17. 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.
18. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

Dated this _____ day of _____, 2002.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Jorge G. Gomez, AICP, Planning Director
FOR THE CHAIRMAN

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Jorge G. Gomez, AICP, Planning Director of 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
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department ()

F:\PLAN\PLB\2002\September\1467 Sobe mod cu prmt.doc



OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 10/5/2017

Property Information	
Folio:	02-3234-008-0010
Property Address:	960 OCEAN DR Miami Beach, FL 33139-5013
Owner	940 OCEAN DR LLC C/O NAKASH HOLDING LLC
Mailing Address	1400 BROADWAY 15TH FLOOR NEW YORK, NY 10018
PA Primary Zone	6501 COMMERCIAL - MIXED USE ENTERTAINMENT
Primary Land Use	3921 HOTEL OR MOTEL : HOTEL
Beds / Baths / Half	0 / 0 / 0
Floors	5
Living Units	38
Actual Area	25,423 Sq.Ft
Living Area	25,423 Sq.Ft
Adjusted Area	23,387 Sq.Ft
Lot Size	13,000 Sq.Ft
Year Built	1935



Assessment Information			
Year	2017	2016	2015
Land Value	\$5,850,000	\$5,850,000	\$5,850,000
Building Value	\$2,750,000	\$2,350,000	\$2,350,000
XF Value	\$0	\$0	\$0
Market Value	\$8,600,000	\$8,200,000	\$8,200,000
Assessed Value	\$8,600,000	\$8,200,000	\$7,603,557

Benefits Information				
Benefit	Type	2017	2016	2015
Non-Homestead Cap	Assessment Reduction			\$596,443
Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).				

Short Legal Description	
OCEAN BEACH ADDN NO 2 PB 2-56 LOTS 1 & 2 BLK 14 LOT SIZE 100 X 130	

Taxable Value Information			
	2017	2016	2015
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$8,600,000	\$8,200,000	\$7,603,557
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$8,600,000	\$8,200,000	\$8,200,000
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$8,600,000	\$8,200,000	\$7,603,557
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$8,600,000	\$8,200,000	\$7,603,557

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
05/01/2008	\$24,750,000	26381-4891	Other disqualified
09/01/2004	\$10,250,000	22754-0558	Other disqualified
09/01/1996	\$0	00000-00000	Sales which are disqualified as a result of examination of the deed
09/01/1996	\$4,050,000	17359-2656	Deeds that include more than one parcel

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:



OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 10/5/2017

Property Information	
Folio:	02-3234-008-0010
Property Address:	960 OCEAN DR Miami Beach, FL 33139-5013
Owner	940 OCEAN DR LLC C/O NAKASH HOLDING LLC
Mailing Address	1400 BROADWAY 15TH FLOOR NEW YORK, NY 10018
PA Primary Zone	6501 COMMERCIAL - MIXED USE ENTERTAINMENT
Primary Land Use	3921 HOTEL OR MOTEL : HOTEL
Beds / Baths / Half	0 / 0 / 0
Floors	5
Living Units	38
Actual Area	25,423 Sq.Ft
Living Area	25,423 Sq.Ft
Adjusted Area	23,387 Sq.Ft
Lot Size	13,000 Sq.Ft
Year Built	1935



Assessment Information			
Year	2017	2016	2015
Land Value	\$5,850,000	\$5,850,000	\$5,850,000
Building Value	\$2,750,000	\$2,350,000	\$2,350,000
XF Value	\$0	\$0	\$0
Market Value	\$8,600,000	\$8,200,000	\$8,200,000
Assessed Value	\$8,600,000	\$8,200,000	\$7,603,557

Benefits Information				
Benefit	Type	2017	2016	2015
Non-Homestead Cap	Assessment Reduction			\$596,443
Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).				

Short Legal Description
OCEAN BEACH ADDN NO 2 PB 2-56 LOTS 1 & 2 BLK 14 LOT SIZE 100 X 130

Taxable Value Information			
	2017	2016	2015
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$8,600,000	\$8,200,000	\$7,603,557
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$8,600,000	\$8,200,000	\$8,200,000
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$8,600,000	\$8,200,000	\$7,603,557
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$8,600,000	\$8,200,000	\$7,603,557

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
05/01/2008	\$24,750,000	26381-4891	Other disqualified
09/01/2004	\$10,250,000	22754-0558	Other disqualified
09/01/1996	\$0	00000-00000	Sales which are disqualified as a result of examination of the deed
09/01/1996	\$4,050,000	17359-2656	Deeds that include more than one parcel

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:



ALEXANDER I. TACHMES, ESQ.
PARTNER
SHUTTS & BOWEN LLP
200 SOUTH BISCAYNE BOULEVARD
SUITE 4100
MIAMI, FLORIDA 33131
DIRECT (305) 347-7341
FAX (305) 347-7754
EMAIL ATACHMES@SHUTTS.COM

October 16, 2017

Chairperson and Members of the Miami Beach Planning Board
1700 Convention Center Drive
Miami Beach, FL 33139

RE: Progress Report -- Oceans Ten, 960 Ocean Drive

Dear Chairperson and Members:

We represent SOBE USA LLC, the owner of Oceans Ten, located at 960 Ocean Drive. Our client is in receipt of a letter from the Miami Beach Planning Department asking us to appear for a progress report at the Planning Board meeting of October 24, 2017. In advance of our progress report later this month, we would like to provide you with some facts related to Oceans Ten.

The letter we received from the City alleges that there are "inconsistencies" with our conditional use permit. Although we have agreed to appear before the Planning Board to provide a progress report, we are unaware of any violation of or inconsistencies with our conditional use permit.

The owners of Oceans Ten, Catherine and Anthony Arrighi, have been long time investors and developers on Ocean Drive. The first investment made by the Arrighi family on Ocean Drive was many years ago. In addition to Oceans Ten, the family also owns two other restaurants on Ocean Drive and one restaurant opening soon in the area south of 5th Street. The family's businesses have generated millions of dollars in tax revenue to the City over the years, added millions of dollars to our economy and produced hundreds of jobs. Our client has been a fine corporate citizen of our City and is dedicated to progress on Ocean Drive and elsewhere.

Although there was some discussion at the last Planning Board meeting of possible violations on the part of Oceans Ten, we wanted to set forth the clear facts of our client's record. At the present time, our client has no open code violations. With regard to noise citations, our client has received only one valid noise complaint in the last twelve months. (Based on the above excellent record, we were frankly surprised to have been called for a progress report before the Board.)

We are aware that City records show a number of invalid noise complaints. The great majority of these complaints appear to have been filed by a single individual, who used to live to the west of our property and who would call Code Compliance repeatedly for allegedly loud music in the area. Even though this individual's complaints were repeatedly deemed invalid, she continued to call Code Compliance over and over again with complaints that had no merit. We do not believe it is fair to attribute negative impressions about Oceans Ten based on invalid noise complaints that Code Compliance has independently determined to be without merit.

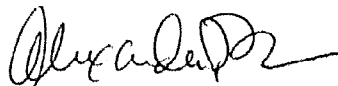
We also would like the Planning Board to know that we take seriously the satisfaction of our customers and are working hard in that area. To address that issue, our client has recently hired one of Miami's most famous restaurant operators, Steve Haas, who will soon commence a top-to-bottom review of our employee training procedures and will implement a training program for all employees. Again, our client is committed to improving the customer experience and the retention of Mr. Haas is clear evidence of that commitment.

Finally, although we are agreeing to appear on October 24th for a progress report, please keep in mind that the City Code and the Planning Department letter to our client require that any proposed action relating to our conditional use permit be based on "competent substantial evidence." Invalid noise complaints do not constitute competent substantial evidence.

We look forward to seeing you on October 24th and are happy to answer any of your questions. Thank you.

Sincerely,

Shutts & Bowen LLP

A handwritten signature in black ink, appearing to read "Alexander I. Tachmes".

Alexander I. Tachmes, Esq.

cc: Tom Mooney, Planning Director
Eve Boutsis, Esq., Chief Deputy City Attorney

AIT/sm