

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: December 19, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 16-0069 fka File No. 1361 –1236 Ocean Drive–Il Giardino.
Revocation/Modification Hearing**

BACKGROUND

October 20, 1998

Le Deux Fontaines restaurant received a Conditional Use Permit (CUP) in order to operate an outdoor entertainment establishment limited to a non-amplified jazz band at 1230-1238 Ocean Drive.

May 23, 2006

Hosteria Romana 2, LLC was issued a modification to the CUP to change the name owner/operator of an outdoor entertainment establishment and remove the limitation on amplification of a jazz band or similar ensemble.

July 27, 2010

Reta Ocean Drive, LLC applied for and was granted a Modified Conditional Use Permit (MCUP) to change the name of the owner/operator and remove the condition limiting entertainment to a jazz band and allow for entertainment level amplified music with volume controls conforming to the sound study provided.

February 22, 2011

As a result of a progress report due to numerous noise violations, the MCUP was further modified by the Planning Board to compel the applicant to conduct another sound study and install the speakers in accordance with the new plan.

November 15, 2011

The Planning Board modified the MCUP further to remove the ability for the applicant to have amplified music outdoors that is played at an entertainment levels as a result of continued violations and noise complaints.

April 24, 2012

The MCUP was suspended by the Planning Board for one month due to non-compliance with the modified Planning Board order.

May 22, 2012

The Planning Board modified the MCUP to change some conditions regarding the awning structure and sprinkler system.

December 20, 2016

The Planning Board issued a MCUP to Il Giardino, LLC for an outdoor entertainment establishment in order to change the name of the restaurant and the name of the owner/operator.

- July 11, 2017* At the direction of the Planning Board, a Cure Letter was issued regarding open violations and complaints about the operation of the establishment.
- July 27, 2017* The Planning Board heard from the applicant at a progress report in response to the Cure Letter. There was a discussion and the Board requested that a public hearing be set to consider a revocation, modification or imposition of additional conditions due to code violations and complaints.
- September 26, 2017* The Planning Board modified the CUP to not allow outdoor entertainment for 60 days from September 26, 2017 and continued a progress report to the October 24, 2017 meeting. The Board also continued the modification and revocation hearing to November 21, 2017.
- November 21, 2017* The Planning Board held a modification and revocation hearing, extended the suspension of outdoor entertainment for 30 days, and continued the modification and revocation hearing to December 19, 2017.

UPDATE

As of the writing of this report, there have been two new notices of violations since the last hearing:

CUP2017-00012 11/29/2017 Failure to operate the business in accordance with the conditional use permit, specifically not complying with the locations, sizes, and orientation of the house sound system plan submitted on April 11, 2011 (condition No. 4 of the MCUP.)

CC2017-04047 11/25/2017 Allowing patrons to walk off site with alcoholic beverages in plastic cups (a violation of City Code Section 70-87(a)(3).)

PROGRESS REPORT

Staff research of city records found the following history of violations in the city's records since the CUP was issued to the current operator:

Case Number	Main Address	Case Type	Description	Case Status	Open Date
CC2017-03254	1236 OCEAN DR	City Code Violation	Sidewalk Café violations	Fine Paid	07/14/2017
CC2017-03255	1236 OCEAN DR	City Code Violation	Resort Tax payments	Closed	07/14/2017
SV2017-02747	1236 OCEAN DR	Sanitation Violation	Trash not in the container	Closed	06/19/2017
ZV2017-01122	1236 OCEAN DR	Zoning Violation	Selling cigars in unapproved area	Fine Paid	05/26/2017
SMA2017-00488	1236 OCEAN DR	Special Master Appeal	Failing to itemize bill for tax and tip	Closed	04/18/2017
SMA2017-00517	1236 OCEAN DR	Special Master Appeal	Alcoholic beverages in to-go cups	Closed	05/17/2017
SMA2017-00676	1236 OCEAN DR	Special Master Appeal	Sidewalk Café vio #CC2017-03254	Appealed	08/08/2017
SV2017-04090	1236 OCEAN DR	Sanitation Violation	Food around dumpster	Fine Owed	11/05/2017

STAFF ANALYSIS

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

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).
4. All components of the house sound system shall at all times have the locations and the orientations identified in the April 11, 2011 report by the Audio Bug, Inc.
6. 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 unreasonably loud, excessive, unnecessary, or unusual noise.
20. As proffered by the applicant, the applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.

In light of the inconsistencies with the above MCUP conditions, as well as the absence of any documentation from the applicant advising of corrective actions or measures to ensure compliance with the MCUP in the future, the Board should consider the issue of noncompliance and consider modifying the conditions of the MCUP, or revoking the MCUP.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss modifying or revoking the MCUP.

TRM/MAB/TUI