

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Planning Board

TO: Chairperson and Members  
Planning Board

DATE: January 23, 2018

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB 17-0158 - 1060 Ocean Drive – I Lov305**

The applicant, ILOV305 I, LLC, is requesting Conditional Use approval for a Neighborhood Impact Establishment, with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code.

#### **RECOMMENDATION**

Approval with conditions

#### **BACKGROUND**

*October 10, 2017*

The Historic Preservation Board (HPB) reviewed and approved a Certificate of Appropriateness (COA) for modifications to the ground level public interior spaces. (HPB 17-0138).

#### **ZONING / SITE DATA**

Legal Description:

Lot 1, Block 15, "Ocean Beach Addition No.2", according to the plat thereof, as recorded in Plat Book 2 at page 56 of the public records of Miami-Dade County, Florida.

Zoning:

MXE (Mixed-Use Entertainment)

Future Land Use Designation:

MXE (Mixed-Use Entertainment)

Surrounding Uses:

North: Hotel and restaurant uses  
West: Commercial and residential uses  
South: Hotel and restaurant uses  
East: Lummus Park  
(See Zoning/Site map at the end of the report)

#### **THE PROJECT**

The applicant has submitted plans entitled "ilov305" as prepared Echeverria Design Group, dated November 29, 2017. The applicants are seeking a conditional use permit in order to operate the existing space with a proposed interior restaurant seat count of 175, occupant load of 232, and a sidewalk café with 42 seats.

The proposed entertainment component will consist of both a DJ and live entertainment which will take place indoors.

**COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:**

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Section 118, Article IV, Sec. 118-191 and Sec. 118-192 (a):

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 Comprehensive Plan. The MXE future land use category allows eating and drinking establishments.

2. **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.**

**Consistent** – 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. Traf Tech, Inc, was retained by the applicant to produce a traffic Study.

3. **Structures and uses associated with the request are consistent with this Ordinance.**

**Consistent** – Entertainment and Neighborhood Impact Establishments are permitted as conditional uses in the MXE Zoning District and are consistent with the Land Development Regulations. These comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Planning Department prior to the issuance of a Business Tax Receipt (BTR).

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

**Partially Consistent** – The proposed project may adversely affect the general welfare of nearby residents and businesses if delivery, waste removal, and other operations are not controlled. Staff is recommending conditions to mitigate the potential negative impacts. The facility would have to comply with all applicable laws and regulations prior to the issuance of a Business Tax Receipt.

5. **Adequate off-street parking facilities will be provided.**

**Consistent** – The property has no parking requirements and will be serviced by a valet operator. The valet drop-off/pick up area is located on Ocean Drive and the valet operator will park vehicles at the garage located at 1041 Collins Avenue.

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

**Partially Consistent** – Staff is recommending conditions to try to mitigate any adverse impacts on the surrounding neighbors.

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

**Consistent** – The proposed uses for the project are permitted in the MXE zoning district.

While there are other conditional uses and large venues in the area, adverse impacts are not expected from the geographic concentration of such uses, if the impacts are properly controlled.

#### **NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES**

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

The LOI and the operations plan submitted with the application detail the proposed operation associated with the project. Also, see analysis in this report.

- (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.**

The project does not have any off-street parking requirements, however valet parking will be offered with the valet station located on Ocean Drive. The valet operator will park vehicles at the garage located at 1041 Collins Avenue. See the LOI and the traffic study prepared by Traf Tech, Inc, for the full description of the valet operation.

- (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.**

The operations plan and LOI indicates that the restaurant has sufficient space inside for patrons waiting to gain access to the restaurant. There will be no queuing on the public sidewalk.

- (4) A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.**

Per operational plan, the applicant will provide security staff during the weekends and holidays. Patron age restrictions will be enforced by applicant's staff.

- (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.**

See evaluation of valet operations prepared by Traft Tech, Inc, for the full details. Please refer to the separate memo provided by the Transportation Department.

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

The operations plan contains a "Deliveries & Sanitation" section that explains that the refuse collection takes place from the existing enclosed space located on the west end of the building and it will take place daily from 7:00 a.m. to 10:00 a.m.

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

The applicant provided a sound study prepared by Eduard Dugger + Associates, PA, and a peer review was performed by Arpeggio Acoustic Consulting, LLC. The entertainment component will consist of both a DJ and live entertainment which will take place indoors, with no outdoor entertainment and no outdoor speakers.

The sound study conclusion mentions that the sound generated by the restaurant will mostly be contained within its structure and the ambient sound pressure levels along this area of Ocean Drive are consistently at a level which would be unlikely to be increased by the proposed project indoor operations.

Arpeggio concluded that the sound study report prepared by ED+A provides valuable information to establish existing ambient sound levels in the area. However the peer reviewer has some concerns about noise emanating from the venue when the doors are open. Due to the concerns expressed, staff is requesting a field test to be performed before business operations commence with staff present to demonstrate that the anticipated audio levels proposed by the applicant with the doors of the venue open and the music played at the proposed levels will not be audible on the east side of Ocean Drive. If sound is plainly audible from the east side of Ocean Drive, staff will recommend that the sound system or speakers be adjusted. See the attached sound study peer review.

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

The proposed venue is surrounded by other hotels and commercial uses, however one mixed-use commercial and residential building is located on the west side across from Ocean Court, for this reason staff is recommending conditions to mitigate any potential negative impacts from the operations of this project on surrounding properties.

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

There are multiple NIE's and Outdoor Entertainment Establishments within blocks of this property. There is a list of NIE's and Outdoor Entertainment Establishments approved by the Board in this area provided in the analysis. Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

**COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development 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.**

**Not Applicable**

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

**Not Applicable**

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**Not Applicable**
- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.  
**Not Applicable**
- (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**
- (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**
- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.  
**Not Applicable**
- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.  
**Not Applicable**
- (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.  
**Not Applicable**
- (10) Where feasible and appropriate, water retention systems shall be provided.  
**Not Applicable**

## **ANALYSIS**

### **Project Description and Operations**

The applicant, ILOV305 I LLC, is the proposed tenant of the restaurant space located on the ground floor and second floor within the originally constructed Bon Air Hotel. The restaurant space has been vacant since 2004.

The proposed restaurant use includes entertainment with a proposed interior restaurant seat count of 175, occupant load of 232 and a sidewalk café with 42 seats.

The requested hours of operation are as follows:

Sunday through Thursday from 11:00 a.m. to 2:00 a.m.

Sunday on which a holiday falls: 11:00 to 4:00 a.m.

Friday and Saturday from 11:00 a.m. to 4:00 a.m.

### **Valet Parking and Access**

Access to the property for pedestrians is from Ocean Drive through a main entrance for the restaurant lobby located on the ground floor.

Patrons arriving as passengers in automobiles or for valet drop off will use the valet station located on Ocean Drive.

Valeted vehicles will be parked in the in parking garage located at 1041 Collins Avenue. See valet operations analysis in the traffic study provided by the applicant and prepared by Traf Tech, Inc.

### **Deliveries and Sanitation**

The refuse collection takes place from the existing enclosed space located on the west end of the building and it will take place daily from 7:00 a.m. to 10:00 a.m.

The operation plan propose that the restaurant will utilize the existing loading dock for delivery and receiving, located on Ocean Court, however no proposed hours for deliveries have been provided. See Delivery and Sanitation Analysis. As per provided site plan, there will be additional loading spaces on 11<sup>th</sup> Street. These loading spaces will be subject to the review and approval of the Parking Department, otherwise the applicant will have to identify additional/alternate loading areas nearby the property that are approved by the Parking Department.

The proposed project may adversely affect the general welfare of nearby residents and businesses if delivery, waste removal, and other operations are not controlled. Staff is recommending conditions to mitigate the potential negative impacts. The entire project would have to comply with all applicable laws and regulations in order to obtain a building permit.

### **Sound**

Eduard Dugger + Associates, PA, commissioned by the applicant, conducted a sound study. Arpeggio Acoustic Consulting, LLC, commissioned by the City and paid for by the applicant, conducted a peer review. Due to the historic nature of the property, some of the typical sound attenuation methods that have been used at other locations, such as a double door vestibule, are not proposed in this instance, as providing such would impact the historic integrity of the space.

The peer reviewer has some concerns about noise emanating from the venue when the doors are open. Staff is concerned about the noise being at excessive levels on the sidewalk in front of the property and across the street (east side of Ocean Drive) when the doors are open.

Due to the concerns expressed, staff would recommend that a field test be performed before the commencement of business operations with staff present to demonstrate that the anticipated audio levels proposed by the applicant with the doors of the venue open and the music played at the proposed levels will not be plainly audible on the east side of Ocean Drive. If the sound is audible from the east side of Ocean Drive, staff would recommend that the sound system and/or speaker locations be modified to minimize the spill-over of sound onto Ocean Drive. See the attached sound study peer review.

Also, the following are the Board approved NIE's and Outdoor Entertainment Establishments on Ocean Drive:

Address	Bussiness	CUP	PB File No.
900 Ocean Drive	Mango's	NIE	1387
960 Ocean Drive	Ocean Ten	NIE	1467
1020 Ocean Drive	Cleverlander	NIE	1456
1236 Ocean Drive	il Giardino	OEE	1361
1300 Ocean Drive	Café Cardozo	OEE	1653

**RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the application for a Conditional Use Permit be approved, subject to the conditions enumerated in the attached draft order, which address the inconsistencies noted in the aforementioned Conditional Use review criteria.

TRM/MAB/AG

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ZONING/SITE PLAN



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

**PROPERTY:** 1060 Ocean Drive

**FILE NO.** PB 17-0158

**IN RE:** The applicant, ILOV305 I, LLC, requested Conditional Use approval for a Neighborhood Impact Establishment, with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code.

**LEGAL**

**DESCRIPTION:** Lot 1, Block 15, "Ocean Beach Addition No.2", according to the plat thereof, as recorded in Plat Book 2 at page 56 of the public records of Miami-Dade County, Florida.

**MEETING DATE:** January 23, 2018

**CONDITIONAL USE PERMIT**

The applicant, ILOV305 I, LLC, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment pursuant to Chapter 118, Article IV, and Chapter 142, Article V of the City Code. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

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

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

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

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

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

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

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

**IT IS THEREFORE ORDERED**, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to ILOV305 I, LLC, as tenant/operator, of this Neighborhood Impact Establishment consisting of a restaurant. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for the entire facility:
  - A. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of the proposed 175 interior seats and potential sidewalk café with up to 42 seats, with the criteria listed below:
    - i. The CUP shall have a maximum occupant content for the interior of approximately 232 persons or any lesser such occupant content as determined by the Fire Marshal.
    - ii. The indoor portions of the project may operate:  
Sunday through Thursday from 11:00 a.m. to 2:00 a.m.  
Sunday on which a holiday falls: 11:00 to 4:00 a.m.  
Friday and Saturday from 11:00 a.m. to 4:00 a.m.
    - iii. Entertainment of any kind shall be prohibited in the outdoor porch and sidewalk café area in the front of the building.
    - iv. A sound field test shall be performed before commencement of business operations with staff present to demonstrate that the anticipated audio levels proposed by the applicant with the doors of the venue open and the music

played at the proposed levels shall not interfere with normal conversation on the exterior of the premises.

- v. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. 60 days after opening, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed.
  - vi. Televisions shall not be located anywhere in the exterior areas of the property.
  - vii. Exterior speakers, with the exception of those permitted for life safety purposes, shall be prohibited on the exterior of the premises.
- B. The applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.
  - C. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
  - D. Delivery trucks shall not be allowed to idle in the loading zone.
  - E. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
  - F. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 AM.
  - G. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
  - H. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
  - I. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
  - J. Garbage dumpster covers shall be closed at all times except when in active use.

- K. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
  - L. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
  - M. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
  - N. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
  - O. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
  - P. Any future sidewalk café shall be subject to Public Works approval and the Ocean Drive Sidewalk Café Design Guidelines, if applicable. Such approvals shall be granted prior to the installation of any sidewalk café furniture, including but not limited to chairs, tables, and umbrellas.
  - Q. The hostess stand, podium and menu board shall be prohibited in the public right of way. and should be placed in the front porch. There shall not be any queuing or a staffed podium in front of 1060 Ocean Drive.
- 7. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.
  - 8. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Business Tax Receipt.
  - 9. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department prior to the issuance of a Business Tax Receipt.
  - 10. The Developer's Traffic Engineer shall collect all necessary data and conduct a signal warrant analysis no later than 60 days from approval of this application. Such signal warrant analysis shall be submitted to the Transportation Department for review and approval.
  - 11. Prior to receiving approval for construction, the applicant shall identify locations, acceptable to the Transportation Department and Public Works Department, for bicycle

racks to be installed in the Public Right-of-Way. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.

12. The applicant shall conduct an updated valet parking analysis 60 days after opening of the venue. The updated valet parking analysis shall include weekday peak hour and weekend peak hour analysis.
13. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this entertainment establishment.
14. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
15. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
16. 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.
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 Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
19. 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.
20. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2018.

