

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

PROPERTY: 1236 Ocean Drive

FILE NO. PB16-0069 f.k.a., PB 1361

IN RE: On December 20, 2016, the applicant, Il Giardino, LLC, was granted a modification to a previously issued Conditional Use Approval to change the owner/operator for an outdoor entertainment establishment, pursuant to Section 118, Article IV of the City Code. On September 26, 2017, the Planning Board suspended the Conditional Use Permit (CUP) for 60 days at a public hearing to consider a revocation, modification or imposition of additional conditions to the existing CUP due to code violations and complaints. On November 21, 2017, the Planning Board suspended the CUP for an additional 30 days. On December 19, 2017, the Planning Board scheduled another public hearing to consider a revocation, modification or imposition of additional conditions to the "suspended" CUP, and heard whether to modify, revoke or extend the suspension.

LEGAL DESCRIPTION: Lots 4 and 5, Block 17, of Ocean Beach, FLA. 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: December 20, 2016, September 26, 2017, November 21, 2017, and December 19, 2017

MODIFIED CONDITIONAL USE PERMIT

The applicant, Il Giardino, LLC, filed an application with the Planning Director to modify a previously approved Conditional Use Permit for an outdoor entertainment establishment in order to change the owner/operator, pursuant to Section 118, Article IV 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;

MB

PB16-0069 f.k.a., PB 1361 -1236 Ocean Drive
December 19, 2017

Page 2 of 5

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 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 recommendation, that a Conditional Use Permit as requested and set forth above be **GRANTED**, subject to the following conditions to which the applicant has agreed: Underlining denotes new language and ~~strike through~~ denotes stricken language from the previous Order.

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The Board reserves the right to modify the Conditional Use approval at the time of the progress report, in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for further 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, Il Giardino, LLC, for the restaurant now known as Mia Bella Roma. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Any substantive change in the operation from a restaurant shall require review and approval by the Planning Board as an amendment to this Modified Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board within 90 days of the change in ownership or operator to affirm their understanding of the conditions listed, herein.
3. Music, whether live or recorded, amplified or non-amplified, shall not be played at a volume that is defined as entertainment, i.e. louder than ambient background music (defined as at a level that does not interfere with normal conversation). Special "teen night" promotions and "all-ages" events are prohibited. The sound system's maximum volume shall be limited to the volume which is permitted by the Noise Ordinance. No third party sound system shall be allowed; only the house sound system shall be used. Following installation and testing, the sound system shall be locked and password protected, so that its volume can never be changed by a person other than an owner or the restaurant Manager on Duty (MOD) or to a volume which would violate the City's Noise Ordinance. The house sound system, shall, in all respects, be installed, tested, and operated so that it complies with the specifications and requirements of the April 11, 2011 proposal by The Audio Bug, Inc. and with this Modified Conditional Use Permit, and a report on such installation, testing, and compliance, shall be submitted to staff for review and approval no later than 30 days prior to the July 26, 2011 Board hearing.

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PB16-0069 f.k.a., PB 1361 -1236 Ocean Drive
December 19, 2017

Page 3 of 5

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.
5. Based upon the testimony at the September 26, 2017, ~~and November 21, 2017, and December 19, 2017~~ hearings, the Planning Board specifically ordered, that ~~in addition to the limitations set forth in condition number 3 above,~~ all outdoor entertainment shall not be allowed for ~~30 days from November 21, 2017~~ an additional 60 days from December 20, 2017. The CUP under this PB16-0069 are suspended for ~~30~~ 60 days. All indicia of the CUP, as delineated in the site plan by the Audio Bug, Inc and dated April 11, 2011 shall be removed from the outdoor seating and outdoor premises of this location. No speakers shall be allowed outdoors (except for any speakers required for Life Safety purposes) during the suspension.
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.
7. The receipt of a written warning pursuant to section 46-158, Code of the City of Miami Beach, Florida, or a notice of violation of section 46-152, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, shall be deemed a violation of this Modified Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
8. The applicant shall be responsible for maintaining the frontage and exterior of the building and the property in excellent condition, including keeping the sidewalk, curb and gutter in front of the building in a clean and sanitary condition, free of all refuse, at all times. When sweeping the sidewalks, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.
9. The existing awnings at the first level of the east elevation have not been permitted and shall be removed. New awnings, composed of woven fabric, with a low profile and minimum pitch, may be permitted; the final details, dimensions, color, material, location and method of attachment of any awnings shall be subject to Certificate of Appropriateness approval.
10. Any sign that may be desired shall be submitted to staff for review and approval.
11. The applicant shall complete the installation of the awnings and sprinkler system and advise staff before the July 24, 2012 meeting. Staff shall in turn notify the Board informally.

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*PB16-0069 f.k.a., PB 1361 -1236 Ocean Drive
December 19, 2017*

Page 4 of 5

12. This Modified Conditional Use Permit, as signed and issued by the Planning Director, shall be recorded in the Public Records of Miami-Dade County.
13. The establishment and operation of this Modified Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-7 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.
14. The applicant shall satisfy code violations, outstanding liens, past due City bills, if any, to the satisfaction of the City prior to the issuance of this Modified Conditional Use permit before a Modified Certificate of Use/Business Tax Receipt is approved.
15. Street flyers and handouts shall not be permitted, including handbills from third-party promotions. Violation of this condition shall be deemed a violation of this Modified Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.
16. 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.
17. 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.
18. 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.
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. As proffered by the applicant, the applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.

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PB16-0069 f.k.a., PB 1361 -1236 Ocean Drive
December 19, 2017

Page 5 of 5

Dated this 28th day of DECEMBER, 2017.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

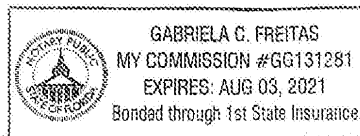
BY:

Michael Belush
Michael Belush, Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 28th day of December, 2017, 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.

[NOTARIAL SEAL]



Notary:

Print Name: Gabriela C Freitas

Notary Public, State of Florida

My Commission Expires: 8-3-21

Commission Number: GG131281

Approved As To Form:
Legal Department

[Signature] 12/27/17

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Filed with the Clerk of the Planning Board on

Jessie Guey 1/8/18

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