

MIAMI BEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: February 27, 2018

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 17-0167 f.k.a. File No. 1488. 959 West Avenue – Oliver's
Bistro.**

The applicant, Pleasant Ways Inc., d/b/a Oliver's Bistro, is requesting a modification to a previously issued Conditional Use Permit in order to operate a full service restaurant in Bay 15 that exceeds the number of seats currently allowed and to remove the provision allowing beer and wine sales only, pursuant to Section 118, Article IV of the City Code.

RECOMMENDATION:

Approval with conditions

HISTORY

February 27, 2001 – A conditional use permit (CUP) was approved to operate a multi-level parking garage after midnight with retail on the ground floor, located in the RM-2 zoning district. At that time, the board approved the following condition related to the uses in the ground floor retail bays:

“The permissible commercial and retail uses in this structure shall be the following uses or similar in nature as determined by the Planning Director: art galleries, bakery, barber/beauty parlor, convenience store, dry cleaning (no cleaning on premises), sales of newspapers/magazine, and professional offices, including but not limited to attorney, accountant, architect, etc. If desired, a coffee-shop or restaurant shall be permitted, with 30 seats or less and which closes for business no later than 11:00 p.m.”

August 27, 2002 – A modification to the CUP was approved, in order to allow the operation of a larger restaurant and to modify the closing time for the same restaurant (Oliver's.) At that time the board modified the commercial space condition by adding:

“...Only one full service restaurant with a full kitchen, on Bay 14 as shown on floor plan submitted with this application, with a maximum of 59 seats, inclusive of outdoor seating, shall be allowed within the commercial component of this garage structure. Any outdoor seating for the 59-seat restaurant shall not exceed 16 seats. This full service restaurant shall close at 12:00 midnight.”

April 26, 2011 – Another modification to the previously approved modified conditional use permit was approved to add 24 seats to the existing 30-seat coffee shop in Bay 1 (Starbucks). At that time, the board approved the following additional condition:

“The existing Starbucks located at the northwest corner of West Avenue and 10th Street shall be permitted to increase the number of seats from 30 to 54. The location of the outdoor tables and chairs shall be coordinated with staff. In addition, no liquor, beer or wine shall be sold or served in this establishment.”

October 28, 2014 – A fourth modification was approved in order to allow the operation of a second larger restaurant (The Daily Creative Foods) with 105 seats. At that time the board approved a final order with operational conditions and explicitly limited the two restaurant spaces to a beer and wine license only (see the attached final order.)

ZONING / SITE DATA

Legal Description:	Lots 8 through 15 inclusive, Block 3, amended plat of Fleetwood Subdivision, as recorded in PB 28-24, of the Public Records of Miami-Dade County, Florida.
Zoning District:	RM-2 Residential multifamily, medium intensity
Future Land Use Designation:	RM-2 Residential multifamily, medium intensity
Land Uses:	East: Commercial uses North: Surface parking lot South: Residential building West: Residential with commercial uses on ground floor

THE PROJECT:

The applicant has submitted plans entitled "Oliver's Bistro" as prepared by Telesco Associates, Inc and dated 11/28/17.

The applicant is proposing an after-the-fact increase in seats from 59 to 85 seats with 41 inside and 44 seats outside on private property. They are seeking to modify the conditions of their previous MCUP approval to increase the cap on the total number of seats, to increase the number of outside seats, and to remove the limitation of beer and wine sales only.

BACKGROUND:

The five story parking garage with accessory retail space at 901-963 West Avenue obtained Design Review Approval (DRB) on February 22, 2001. The project required three variances; two for setbacks and one to allow for deeper retail spaces. The Board of Adjustments (BOA) approved the variances on March 2, 2001.

The building received its final Certificate of Occupancy (CO) in March 2003. Originally, it consisted of 679 parking spaces and had 17 retail bays. In addition to the required parking for the commercial uses on site, the garage also contains required parking for the Southgate Towers, a residential building located directly across West Avenue to the west.

Section 142-213 lists commercial or noncommercial parking lots and garages in an RM-2 zoning district as a conditional use. In addition, Section 130-68 (2)(b)(1) of the city code, allows a parking garage on West Avenue, south of 11th Street, in an RM-2, adjacent to an RM-3 district, to have first floor retail space.

Section 130-69.5 of the land development regulations of the city code requires that in addition to other requirements, all parking garages and parking lots that are located within 100 feet of a

residential use or district that intend to operate after midnight, shall obtain conditional use approval.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Article 4, Sec. 118-192:

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 proposed project is consistent with the objectives of the comprehensive plan, to enhance the desirability and quality of existing and/or new medium density multi-family residential areas.

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 proposed use is not anticipated to degrade the LOS for the surrounding area below the thresholds that have been established.

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

Consistent – Section 130-68 (2)(b)(1) of the City Code allows a parking garage on West Avenue, south of 11th Street, in an RM-2, adjacent to an RM-3 district, to have first floor commercial space.

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

Consistent – The project should not adversely affect the public health, safety, morals and general welfare.

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

Consistent – Any additional parking required for this use can be provided in the garage structure (see analysis.)

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

Partially Consistent – Staff will recommend conditions to try to mitigate any adverse impacts on the surrounding neighborhood and provide safeguards for the protection of the residential character of the neighborhood.

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 – Although there are other commercial spaces and food service establishments on the ground floor of the parking structure, the commercial component is a requirement of the city code for a main use garage. In addition, these uses are

encouraged in order to provide an urban and pedestrian experience for this residential neighborhood.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations 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

When the Gumenick Garage was approved in 2001, concerns were expressed relative to the intensity of the uses that would be permitted in the commercial component of the garage. In this

regard, the Board required that these uses be limited to less intense, service-oriented businesses, such as art galleries, barber/beauty parlor, professional offices and similar uses, so that the added traffic generated would not create a detrimental impact on the immediate neighborhood.

Additionally, the Board required that if a restaurant-type use was contemplated, that it be limited to a coffee-shop type restaurant with 30 seats or less, which closed for business no later than 11:00 PM. Thirty seats would enable a restaurant or coffee shop to obtain a beer and wine license, but not a full liquor license (4COP) which requires 60 seats according to City Code. The rationale for these restrictions was that the West Avenue corridor is a residential neighborhood and any commercial use that may be permitted should not negatively impact the neighborhood. The Board also added restrictions on entertainment to the CUP for all of the retail bays.

Since the original Planning Board approval in 2001, the Final Order has been modified three times to expand on the allowable accessory uses: (1) to allow a full service restaurant on the south side of the building (currently Oliver's,) (2) to allow a large coffee shop on the north side of the property (currently Starbucks,) and (3) to allow for a large bakery/café in three bays (currently The Daily Creative Foods.) In all three of these cases, the Board limited seating in a way that would preclude them from obtaining a full liquor license or explicitly restricted the use to beer and wine sales only, and limited the hours.

Staff does not object to most of the components of the current application, as it has been demonstrated that the West Avenue Corridor has been enhanced by the type of neighborhood friendly commercial uses currently operating in the garage. The type of food and beverage establishments that are currently licensed in the garage have enhanced the urban character, added a pleasant pedestrian experience along West Avenue, and added vitality to the neighborhood.

But due to the restaurant being located directly across the street from two residential buildings, staff does have some concerns about the noise generated from patrons sitting outside and drinking until 12:00 AM. While the residential building on West Avenue is setback from the street in a manner that allows for an additional buffer from the commercial uses proposed in the subject garage, and will have some commercial uses on the ground floor as well, the building across 9th Street, to the south, does not have the same buffer.

In the past, the Board has placed a limitation on the number of seats located on the outside private property for this restaurant of 16 seats. Staff does not see an issue with increasing the number of overall seats or outdoor seats, but staff recommends limiting the outdoor seating to the same amount of seats as the neighboring establishment (The Daily Creative Foods) and limiting the ability to order drinks to patrons purchasing meals.

Parking Requirements:

It is important to note, that the building is near trolley stops and there are many transit options within a block of the structure. Pedestrians and bicycle use are prevalent in the area and there is a heavily used Deco Bike stand directly to the north of 10th Street on West Ave.

Section 130-68 (2)(b) of the city code requires that for main use garages in residential zoning districts, the commercial component of the garage not exceed 25% of the floor area ratio (FAR) and that the combination of the commercial uses and the required parking for those uses are less than 50% of the FAR of the structure. The parking garage has 679 parking spaces per the

inspection notes from the Certificate of Occupancy (CO). The graph below shows the total square footage of the commercial spaces and the total required parking spaces for the commercial space, inclusive of the applicant's project:

Use	Seats	SF	Parking	PB file	Unit #
Retail or office		14,484	48.28		5-7, 11-14, 16-17
Restaurants					
Starbucks	52	1500	13	1488 V3	1
Giotto	30	1000	7.5	1488 V1	2
Coral Cafe	30	1375	7.5	1488 V1	3
The Daily	105	4038	26.25	1488 V4	8, 9, 10
Oliver's	85	1800	21.25	1488 V2	15
Totals rounded up	302	24,197	124		
Parking Spaces in Garage					
Garage			679		
Required by onsite uses			124		
Balance			555		

Retail space and ground floor offices have the same parking requirement: 1 space per 300 SF and restaurants require 1 space per 4 seats per section 130-32.

STAFF RECOMMENDATIONS

In view of the foregoing analysis, staff recommends the Conditional Use Permit be approved, subject to the conditions enumerated in the attached Draft Order, which address the inconsistencies with the aforementioned Conditional Use Review Guidelines.

ZONING/SITE MAP



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

PROPERTY: 959 West Avenue, Miami Beach, Florida

FILE NO. PB 17-0167 f.k.a. 1488

IN RE: The applicant, Pleasant Ways Inc., d/b/a Oliver's Bistro, requested a modification to a previously issued Conditional Use Permit in order to operate a full service restaurant in Bay 15 that exceeds the number of seats currently allowed and to remove the provision allowing beer and wine sales only, pursuant to Section 118, Article IV of the City Code.

LEGAL DESCRIPTION: Lots 8 through 15 inclusive, Block 3, amended plat of Fleetwood Subdivision, as recorded in PB 28-34, of the Public Records of Miami-Dade County, Florida

MEETING DATE: February 27, 2018

MODIFIED CONDITIONAL USE PERMIT

The applicant, Pleasant Ways Inc., d/b/a Oliver's Bistro, requested a modification to an existing Conditional Use Permit previously issued to Gumenick Family Investments #2 Ltd pursuant Chapter 118, Article IV, "Conditional Use Procedure," of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for a 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 of the record for this matter:

That the property in question is located in the RM-2, Multi-Family Medium Intensity 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 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.

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 conditions below, which have been accepted by the applicants:

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 give a written progress report to the Board. 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 future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. 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.
3. Prior to the issuance of a building permit, 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.
4. The permissible commercial and retail uses in this structure shall be neighborhood services type businesses or similar in nature as determined by the Planning Director, such as but not limited to the following uses: art galleries, bakery, barber/beauty parlor, convenience store, dry cleaning (no cleaning on premises), sales of newspapers/magazine, bank branches, and professional offices. Prohibited uses in the structure shall be neighborhood impact establishments, entertainment establishments, outdoor bars, tattoo parlors, liquor stores, gun dealers, kennel services, and the retail sales or rental of adult materials.
5. Food and beverage establishments shall be permitted, with 30 seats or less, and which close for business no later than 11:00 PM with the exception of the following:
 - a. Bay 1, located at the northwest corner of the structure, shall be permitted to have a coffee shop with a maximum of 54 seats, inclusive of outdoor seating. Any outdoor seating for the 54-seat coffee shop shall not exceed 16 seats and shall close by 11:00 PM. In addition, no alcoholic beverages shall be sold or served in this establishment.
 - b. Bays 8-10, as indicated in the CUP file, shall be permitted to have a restaurant with a maximum 105 seats, inclusive of outdoor seating. Any outdoor seating for the 105-seat restaurant shall not exceed 32 seats and shall close by 10:00 PM. In addition, only a 2-COP (Beer and Wine) alcoholic beverage license may be permitted at this establishment.
 - c. Bay 15, located at the southwest corner of the structure, shall be permitted to have one full service restaurant with a maximum of 59 85 seats, inclusive of outdoor seating may be permitted. Any outdoor seating for the 59 85-seat restaurant shall not exceed 46 32 seats. This full service restaurant shall close no later than 12:00 AM midnight. In addition, only a 2-COP (Beer and Wine) a full liquor alcoholic beverage license may be permitted at this establishment. All liquor sales to patrons sitting outside shall be limited to patrons who are also ordering food.

The operational conditions of this Conditional Use Permit in relation to Bay 15 are predicated on Pleasant Ways Inc., d/b/a Oliver's Bistro, as tenant/operator, of the restaurant. Any change of tenant/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.

6. The Applicants agree to the following operational conditions prospectively for all permitted and accessory uses (due to new leases, changes in tenants, etc) and shall bind itself, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any future/modified contract or assignment:
 - a. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
 - b. Air conditioned 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.
 - c. Garbage dumpster covers shall be closed at all times except when in active use.
 - d. Garbage pickups and service deliveries shall not take place between 7:00 PM and 7:00 AM. Daily trash service shall be required.
 - e. The outdoor umbrellas associated with all new establishments shall be reviewed and approved by staff before a building permit is issued and inspected before the certificate of occupancy or business tax receipt, whichever comes first.
7. In the outdoor seating area, only pre-recorded background music played at a volume that does not interfere with normal conversation shall be allowed. Any other form of entertainment including a DJ shall be prohibited both inside and outside the building.
8. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the parking facility.
9. The operator shall be responsible for operating this facility in an orderly, clean and quiet manner so that neighboring residents are not disturbed. The sounding of car alarms, automobile horns and screeching of tires shall be prohibited. Two signs, one addressing City Code provisions regarding car alarms, and one prohibiting the screeching of tires and sounding of horns (see attached examples), shall be posted on the site so they are plainly visible by users of the facility.
10. ~~Prior to the issuance of a Temporary Certificate of Occupancy (TCO) or Certificate of Occupancy (CO),~~ signature of Planning staff on the State alcohol beverage license application, the operational conditions as referenced above (to be determined by staff), shall be posted on site, in a location and manner to be reviewed and approved by staff. Additionally, staff shall inspect the premises for compliance with the maximum number of seats, both indoors and outdoors prior to said signature.

11. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the accessory restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise.
12. Delivery trucks under 10,000 pounds shall only be permitted to make deliveries from the alley (Alton Court). Delivery trucks larger than 10,000 pounds shall be made in accordance with the City's parking and loading requirements.
13. The applicant, operator and/or owner, both now and in the future, shall abide by all the documents and statements submitted with this application, as well as all conditions of this Order.
14. Any substantial modifications to the plans submitted and approved as part of this application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans.
15. 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.
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, of the City Code.
17. Within a reasonable period of time after receipt of the executed Conditional Use Permit, the applicant, at its sole expense, shall record it in the Public Records of Miami-Dade County, and return the recorded instrument to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
18. 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.
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 permit.
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.

