

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: March 27, 2018

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **File No. 2077 – 2038 Collins Avenue (202-218 21st Street) -Bagatelle**

BACKGROUND

February 27, 2001

Just Around the Corner, LLC was granted a Conditional Use Permit (CUP), File No. 1493, for a multi-level parking garage with retail on the ground floor. This approval included a condition that states: "Nightclubs, dance halls, bars or any kind of neighborhood impact establishment shall not be permitted."

April 30, 2003

Just Around the Corner, LLC and POP Development, LLC requested a substantial amendment to the existing CUP (File no. 1493) with a new File No. 1609 which was approved by the Board (File No. 1609 superseded the previous order). The substantial amendment consisted of an extension of the valet parking garage to the east along 20th Street and introducing a residential component above ground level commercial spaces facing Collins Avenue and 21st Streets.

June 22, 2004

Just Around the Corner, LLC and POP Development, LLC applied for a Modified CUP (MCUP) File No. 1609 and were approved. The modification included the following language: Condition # 3 *"Dance halls, bars or any kind of neighborhood impact establishment shall only be permitted along Collins Avenue. Any entertainment establishment that may be proposed for this property, regardless of occupant load shall be reviewed by the Planning Board for conditional use approval as agreed by the applicant."*

July 24, 2007

A new applicant, Park Place Development, LLC requested a modification to the MCUP to among other things create two new restaurant spaces, which was approved by the Board.

February 28, 2012

Park Place Development, LLC requested a modification to the MCUP to add a lounge use on 20th Street. There was a long discussion that included the intensity of the restaurants (number of seats), traffic, parking and the location of the various venues. The MCUP retained the previous condition, but reworded and moved to condition #11 *"Any additional dance hall, bar, or entertainment establishment that may be proposed for this property, regardless of occupant load shall be reviewed by the Planning Board for conditional use approval as agreed by the applicant, and shall only be permitted, if permitted, along Collins Avenue or 20th Street."*

- August 28, 2012 Park Place Development, LLC was granted a modification to the MCUP to add a restaurant and reconfigure the previously approved restaurant spaces. In order to streamline the process, and allow for future reconfigurations without returning to the Planning Board every time there is a change of floor plan, the Board approved the following condition # 12. *"Notwithstanding Condition No. 11 above, Parc Place Development, LLC, as owner of the property, shall be enabled to allocate, divide or sub-divide the commercial spaces within the property for different uses to either retail, eating and drinking establishments, or other commercial spaces such as a spa, gym, or similar, and re-allocate parking spaces according to need without having to amend the Permit every time one of these re-allocations, divisions or sub-divisions of spaces takes place, as long as it is not one of the uses specified in the Permit that require Planning Board approval. Any re-allocation, division or subdivision of the commercial spaces shall be limited to the number of parking spaces provided within the garage and shall be submitted to Planning Department staff for review and re-certification that enough parking spaces remain available for all uses within the building."*
- March 4, 2015 Bagatelle Miami, LLC, opened a restaurant located on the first floor at the southwest corner of Collins Avenue and 21st Street, with a 153 seats approved on the Building Certificate of Use (BCU) and an occupant content for 155 persons approved by the Fire Department.
- December 15, 2015 Bagatelle Miami, LLC, requested Conditional Use approval for an entertainment establishment, pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) which requires that any additional entertainment establishments be reviewed by the Planning Board, regardless of occupant load.

PROGRESS REPORT

The applicant was sent a Cure Letter on March 9, 2018 regarding open violations and complaints regarding the operation of their restaurant. Most noticeably, the applicant appears to be operating an entertainment establishment without being authorized and not building the retractable double door vestibule that was a condition of their final order.

Staff research of city records found that the following violations are showing in the city's records as of this writing. A more detailed explanation of each of these violations is attached:

Case Number	Main Address	Case Type	Case Status	Open Date
SMN2018-00039	2000 COLLINS AVE	Special Master Noise Appeals	Appeal of NC2018-05967	01/22/2018
ZV2018-01573	2000 COLLINS AVE	Zoning Violation	Notice of Violation	01/20/2018
ZV2018-01521	2000 COLLINS AVE	Zoning Violation	Notice of Violation	01/10/2018

In the interest of clarity, the entire building includes 205-237 20th Street; 221 20th Street; 220 21st Street; and 2000-2038 Collins Avenue. The building permits for Bagatelle are under 2038 Collins Avenue, the Business Tax Receipt (BTR) for this space is issued under 2000 Collins Ave

#2, and the physical address is 202-218 21 Street.

STAFF ANALYSIS

Below is a list of the conditions of the attached Modified CUP that are related to the violations and complains:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. Ninety days after the issuance of the Business Tax Receipt or after general commencement of operations, whichever comes later, the applicant shall provide a progress report to the Planning Board. 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).
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.
5. The applicant shall permit and install a folding door entrance vestibule, subject to Certificate of Appropriateness approval, prior to any certificate of completion (BCC), or a BTR approval for entertainment, whichever approval comes first.
6. The Applicant agrees to the following operational conditions for all permitted and accessory uses 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 contract or assignment:

 - a. The vestibule shall be in place from 9:00 PM to 3:00 AM, Monday thru Saturday and 1:00 PM thru 3:00 AM on Sundays, or when entertainment is occurring.
 - b. The folding door vestibule shall be in place at all times the entertainment (DJ) is occurring.

 - f. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study. A final sound transmission test and report which includes the performance of sound systems and sound attenuation devices, shall be submitted for the reasonable review and approval of both Planning Department staff and the Boulton Condominium Association, prior to the issuance of a Certificate of Use or Business Tax Receipt.

9. 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.

In light of the inconsistencies with the above CUP conditions, as well as the absence of any documentation from the applicant advising of corrective actions or measures to ensure

compliance with the CUP in the future, the Board should consider the issue of noncompliance and consider setting a modification/revocation hearing.

STAFF RECOMMENDATION

Staff recommends that the Planning Board continue the progress report to a date certain of April 17, 2018, and set a modification hearing for April 17, 2018, at which time modifications to the CUP related to operations can be considered.

TRM/MAB/TUI

F:\PLAN\SPLB\2018\3-27-18\PB 17-0091 - 2000 Collins Ave - master prg rpt\Master CUP\PB 17-0091 fka 1609 - 2000 Collins Ave March 2018 prg rpt.docx

Details on the violations for Bagatelle (Planning Board File no. 2277)

SMN2018-00039 2000 COLLINS AVE Special Master Appeal of NC2018-05967 01/22/2018

Arrival: 1:00am

Upon arrival of 332 21st St., (which was the address given to dispatch) I was met by the complainant. The complainant advised that he was complaining about the music at the Bagatelle, which is located at 220 21st St. He informed me that he wanted me to go to one of the hotel rooms located in the Boulan in order to hear the music. Due to an additional complaint being made for the same address, officer Donovan Saffo (745) was onsite as well. Officer 745 and myself, were then escorted to room #216 in the Boulan. The room was empty with no occupants. When asked where the occupants were, the complainant stated that they'd complained about the music after being there for 5 minutes and that he had to move them to the penthouse. Officer 745 and myself then went to the back bedroom of the hotel suite, where we could hear plainly audible music playing. We stayed there for several minutes and could still hear the music. We left the suite and went back downstairs. Outside we could not hear any music. Therefore, in an effort to ensure that the music was coming from the Bagatelle as stated by the complainant, I asked Officer 745 to go back up to the room while I went to the Bagatelle. With the officer on the phone, I approached the Bagatelle. The door was opened a few times due to patrons coming in and out, allowing me to clearly hear the music playing. I asked Officer 745 what type of music he could hear. From his description of the music, I was able to determine that it was the same music coming from the Bagatelle. I asked to speak with a manager and informed him of the complaint. I asked if he could have the music turned down and he did so. While still on the phone, Officer 745 stated that the music had been turned down. The manager came back outside and I informed him that I would be issuing a violation due to the music being excessive and unreasonably loud. A second offense was issued and posted due to the refusal to sign.

Departure: 2:50

ZV2018-01573 2000 COLLINS AVE Zoning Violation Notice of Violation 01/20/2018

Violation of the conditional use due to a loud music complaint that was valid and second violation was issued

ZV2018-01521 2000 COLLINS AVE Zoning Violation Notice of Violation 01/10/2018

Sections 142-153, 118-194, 114-8: Failure to operate your business in accordance with your conditional use permit.

After additional research from Management and the Finance Department the establishment does not have a current Business Tax Receipt as well as Failing to comply with the following conditions of your CUP.#1,#5, #6(c),#6(d), #6(f),#7,#9,#12,#13

Inspection took place with assistance from CCO Madariaga. This case was issued in reference to the establishment not having Dance and Entertainment present at the restaurant as well as not complying with the conditions of the CUP. Upon arrival we visited the establishment and business was closed. We then noticed that the workers were in preparation for the evening shift. We knocked on the door and spoke to the General Manager Philippe Vincenzi in reference to our inspection. We educated him about the Business Tax Receipt in reference to Dance and Entertainment as well as The conditions of your CUP. Mr. Vincenzi informed me that he will immediately stop all activities for compliance until all requirements are met.

Body camera in use.

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

March 9, 2018

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Bagatelle Miami, LLC
2000 Collins Ave #2
Miami Beach, FL 33139

Re: Planning Board File No. 2077 – 2038 Collins Avenue (202-218 21st Street)

Dear Sir/Madam:

A Conditional Use Permit (CUP) for an entertainment establishment pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) was issued to Bagatelle Miami, LLC on December 15, 2015. It has come to the Planning Department's attention that violations have been issued by the Code Compliance Department regarding the CUP's operational conditions and that required building permits have not been finalized.

In light of the aforementioned code violations and the inconsistencies with the following conditions of approval contained in the Conditional Use Permit, **you are requested to appear at the March 27, 2018 Planning Board hearing** for a verbal progress report:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. Ninety days after the issuance of the Business Tax Receipt or after general commencement of operations, whichever comes later, the applicant shall provide a progress report to the Planning Board. 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).
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.
5. The applicant shall permit and install a folding door entrance vestibule, subject to Certificate of Appropriateness approval, prior to any certificate of completion (BCC), or a BTR approval for entertainment, whichever approval comes first.

6. The Applicant agrees to the following operational conditions for all permitted and accessory uses 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 contract or assignment:

- c. The vestibule shall be in place from 9:00 PM to 3:00 AM, Monday thru Saturday and 1:00 PM thru 3:00 AM on Sundays, or when entertainment is occurring.
- d. The folding door vestibule shall be in place at all times the entertainment (DJ) is occurring.

- f. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study. A final sound transmission test and report which includes the performance of sound systems and sound attenuation devices, shall be submitted for the reasonable review and approval of both Planning Department staff and the Boulon Condominium Association, prior to the issuance of a Certificate of Use or Business Tax Receipt.

9. 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.

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

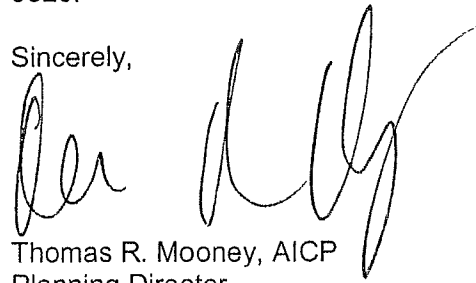
Case Number	Main Address	Case Type	Case Status	Open Date
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ZV2018-01573	2000 COLLINS AVE	Zoning Violation	Notice of Violation	01/20/2018
ZV2018-01521	2000 COLLINS AVE	Zoning Violation	Notice of Violation	01/10/2018

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.

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,

A handwritten signature in black ink, appearing to read 'Tom Mooney', with a long, sweeping horizontal line extending to the right.

Thomas R. Mooney, AICP
Planning Director

TRM/TUI

F:\PLAN\PLB\GEN-CORR\CURE LETTERS\PB 2042 - 2000 Collins Ave - Ora CURE LTR March 2018.docx

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

PROPERTY: 2038 Collins Avenue (202-218 21st Street)

FILE NO. 2277

IN RE:

The applicant, Bagatelle Miami, LLC., requested Conditional Use approval for an entertainment establishment, pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) which requires that any additional entertainment establishments be reviewed by the Planning Board, regardless of occupant load, and pursuant Section 118, Article IV and Section 142, Article V. .

LEGAL

DESCRIPTION: Lots 1, 2, 3, 4, 6 and 8 of Block C of Amended map of Ocean Front property of Miami Beach Improvement Company Subdivision as recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: December 15, 2015

CONDITIONAL USE PERMIT

The applicant, Bagatelle Miami, LLC, filed an application with the Planning Director pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) which requires that any additional entertainment establishments be reviewed by the Planning Board, regardless of occupant load, and pursuant Section 118, Article IV and Section 142, Article V. 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 CD-3 - Commercial, High 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 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.

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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 Business Tax Receipt (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 Bagatelle Miami, LLC, as operator of this Conditional Use Permit consisting of a restaurant, alcoholic beverage establishment, and entertainment establishment, with approximately 155 seats.
3. 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.
4. 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.
5. The applicant shall permit and install a folding door entrance vestibule, subject to Certificate of Appropriateness approval, prior to any certificate of completion (BCC), or a BTR approval for entertainment, whichever approval comes first.
6. The Applicant agrees to the following operational conditions for all permitted and accessory uses 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 contract or assignment:
 - a. The hours of operation shall be within the hours allowed in the Landlord's CUP: 10:00 AM to 3:00 AM for the interior dining area and 10:00 AM to 1:00 AM for the outdoor café.
 - b. A Disk Jockey (DJ) shall be the only form of entertainment allowed at the restaurant.
 - c. The vestibule shall be in place from 9:00 PM to 3:00 AM, Monday thru Saturday and 1:00 PM thru 3:00 AM on Sundays, or when entertainment is occurring.
 - d. The folding door vestibule shall be in place at all times the entertainment (DJ) is occurring.
 - e. The patron occupant content shall be a maximum of 155 persons, or as determined by the Fire Marshall, whichever is lower.

- f. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study. A final sound transmission test and report which includes the performance of sound systems and sound attenuation devices, shall be submitted for the reasonable review and approval of both Planning Department staff and the Boulan Condominium Association, prior to the issuance of a Certificate of Use or Business Tax Receipt.
- g. In the outdoor seating area, only pre-recorded background music played at a volume that does not interfere with normal conversation shall be allowed with a distributive sound system as designed by a sound engineer and controlled by the general manager. Entertainment shall be prohibited.
- h. Wall mounted speakers shall be strictly prohibited on the exterior walls.
- i. 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.
- j. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- k. Any queuing of patrons shall occur inside the restaurant only. Security staff shall monitor the crowds to ensure that there will not be any outdoor queuing.
- l. Security staff shall monitor patron circulation and occupancy levels.
- m. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
- n. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to historic preservation staff review and approval.
- o. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- p. Delivery trucks shall not idle in the loading zone.
- q. 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. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
- r. Garbage dumpster covers shall be closed at all times except when in active use.
- s. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalk in front of the establishment, 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.

7. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a BTR to operate this entertainment establishment.
8. 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.
9. 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.
10. 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.
11. Within a reasonable time after applicant's receipt of this Conditional Use Permit as signed and issued by the Planning Director, the applicant shall record it in the Public Records of Miami-Dade County at applicant's expense and then return the recorded instrument to the Planning Department. No building permit or certificate of completion shall be issued until this requirement has been satisfied.
12. 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.
13. 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 27th day of JANUARY, 2016.

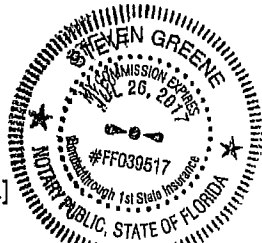
PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, Planning and Zoning Manager
For Chairman

MB

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 27th day of January,
2016, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a
Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



{NOTARIAL SEAL}

Approved As To Form:
Legal Department

Greene 1/27/16

Notary:
Print Name
Notary Public, State of Florida
My Commission Expires:
Commission Number: 07-26-2017

Filed with the Clerk of the Planning Board on 2/11/2016 *MB*

MB