

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. 2042 – 2000 Collins Avenue - Ora**

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amendment to the existing CUP (File no. 1493) with a new File No. 1609 which was approved by the Board (File No. 1609 superseded the previous order).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."*

February 28, 2012 Ocean First Group, LLC received a separate Conditional Use Permit (CUP) for a neighborhood impact establishment consisting of an alcoholic beverage establishment, entertainment establishment, and dance hall with an occupant content of more than 200 persons (under File No. 2042.)

July 28, 2015 Zilkatur, LLC requested a Modified Conditional Use Permit (MCUP) for a change of ownership for a neighborhood impact establishment (NIE.)

PROGRESS REPORT

The applicant was sent a Cure Letter on March 9, 2018 regarding open violations and complaints regarding the operation of their night club. Since the cure letter was issued, additional information was received by the Planning Department regarding the recent operation of the night club (photo attached.)

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
NC2018-06359	2000 COLLINS AVE	Noise Complaint	Notice of Violation	02/24/2018
NC2018-06356	2000 COLLINS AVE	Noise Complaint	Written Warning Notice	02/23/2018
CC2018-04821	2000 COLLINS AVE	City Code Violation	Notice of Violation	02/21/2018
CC2018-04822	2000 COLLINS AVE	City Code Violation	Notice of Violation	02/21/2018
SMA2018-00943	2000 COLLINS AVE	Special Master Appeals	Appeal of NC2018-05989	01/22/2018

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, Business Tax Receipt (BTR,) physical address for Ora are under 2000 Collins Avenue, but the doors are located midblock facing 20th 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.
16. In the event that there is queuing of people on the sidewalk, stanchions shall delineate the area to allow for the free-flow of pedestrians. Security staff shall monitor the crowds

- to ensure that they do not interfere with the free-flow of pedestrian on the public sidewalk.
17. Security staff shall monitor patron circulation and occupancy levels during the hours of operation.
 19. 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.
 24. 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



Details on the noise violations for Ora nightclub (Planning Board File no. 2042)

NC2018-06359 2000 COLLINS AVE Noise Complaint Notice of Violation 02/24/2018

Arrival: 1:10AM

Shortly after service was received from Noise Case #NC2018-06356, I made contact with "Anthony" from the front desk, and also the hotel guest. The hotel guest stated he could still hear the music and expected that the music be "unplugged" so that he could sleep.

I went back to the corner of 20th and Collins Ave. DOA did not have the music level at an unreasonably loud level/ and the music was not plainly audible at 100ft. I then requested for "Anthony" to escort me to the service area hallway-which is where I was able to asses the noise level coming from Ora's two doors, one door that remained closed and another door that was propped open for service personnel. The music was unreasonably loud and excessive, therefore I returned back to my car to retrieve a violation.

I proceeded to "Ora" and requested to speak with the Manager on Duty. Jermaine from Director of Security came out to speak with me. I advise him that the music was unreasonably loud and excessive and entering into a hotel guests unit. I also informed "Jermaine" that the service back door was open, which was allowing the music to emit from the club. Jermaine was advised that since a Written Warning was issued back on 1/21/2018. That this would be a 1st Offense Violation which carries a \$250.00. Immediate compliance was achieved. The Director Security contacted the "GM" who came out and was also briefed on the violation issued and he permitted "Jermaine" to sign for the notice of violation.

Once service was obtained, I then returned to my vehicle and in passing the hotel guest was outside and stated that I should enter the club and "Shut them down" . I advised the hotel guest that I could not do that, that I have to allow the business a time-frame to comply before escalating. Upon my departure, I attempted to make contact with "Anthony" but he had still not returned from his off-site visit to the Clinton Hotel.

Departure: 1:40AM

NC2018-06356 2000 COLLINS AVE Noise Complaint Written Warning Notice02/23/2018

Arrival: 12:14AM

Upon arrival to the reported noise complaint location of 220 21st Street to meet with the Front Desk Agent of Boulan "Anthony" on behalf of hotel guest that was complaining about loud music. I went up to the unit of the complainant in #210. Inspection within the unit revealed the music coming in from outside on the east-side and it could so be heard from the west-side of the unit near the entrance.

I proceeded to the restaurant DOA which is on the corner of 20th and Collins. As I arrived, there was music playing outside on the patio. Further inspection inside the establishment revealed the bass was

high. I made contact with the MOD "Arnuent Espananel" in reference to the complaint. Mr. Espananel had the music outside turned off outside and significantly reduced the music level inside the establishment. Immediate compliance was achieved. However, due to the fact that I was able to hear the music coming into the unit from the outside patio, a Written Warning was issued to the business.

Shortly after service was received, I made contact with "Anthony" from the front desk, and also the hotel guest. The hotel guest stated he could still hear the music and expected that the music be "unplugged" so that he could sleep.

I went back to the corner of 20th and Collins Ave. DOA did not have the music level at an unreasonably loud level/ and the music was not plainly audible at 100ft. I then requested for "Anthony" to escort me to the service area hallway-which is where I was able to assess the noise level coming from Ora's two doors, one door that remained closed and another door that was propped open for service personnel. The music was unreasonably loud and excessive, therefore I returned back to my car to retrieve a violation. Case Number NC2018-06359 was generated. See Notes.

SMA2018-00943 2000 COLLINS AVE Special Master Appeal of NC2018-0598 01/22/2018

Arrival: 1:30am

While conducting a proactive inspection in the area of 2000 Collins Ave Unit #2, excessive and unreasonably loud music could be heard. In order to find out the source of the music, I walked through the hallway in the middle of the two buildings. I then went to the fifth and second floors of the Boulan hotel, where it was determined that the music was coming from 2000 Collins Ave Unit #1, club ORA. Dispatch was raised and a case for a oral warning was generated and issued to club Ora. The management was contacted and advised of the excessive and unreasonably loud music. They were informed that an oral warning would be issued, the music had to be turned down and would be re evaluated in 15 minutes. The music was turned down and after 15 minutes had passed, the level was reassessed from the second floor of the Boulan with staff from the Ora accompanying me. The music was no longer excessive and unreasonably loud.

Departure: 2:00am

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**

Zilkatur, LLC d/b/a Ora
C/O Tripp, Scott PA
110 SE 6th Street
15th FL
Ft. Lauderdale, FL 33301

Re: Planning Board File No. 2042 – 2000 Collins Avenue

Dear Sir/Madam:

A Modified Conditional Use Permit (MCUP) for a change of ownership for a neighborhood impact establishment (NIE) was issued to Zilkatur, LLC on July 28, 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.

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.
19. 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.

24. 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:

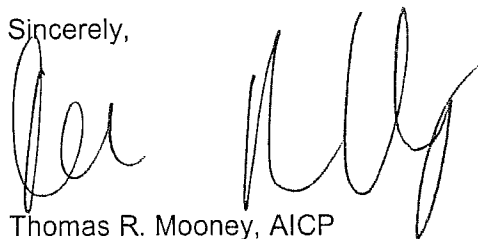
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SMA2018-00943	2000 COLLINS AVE	Special Master Appeals	Appeal of NC2018-05989	01/22/2018

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,



Thomas R. Mooney, AICP
Planning Director

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

PROPERTY: 2000 Collins Avenue – (spaces 11 and 12 along 20th Street)

FILE NO: 2042

IN RE: The applicant, Zilkatur, LLC, requested a Modification to a previously issued Conditional Use Permit to change the name of the owner/operator from Ocean First Group, LLC., to Zilkatur, LLC., pursuant to Section 118, Article IV.

LEGAL DESCRIPTION: Lot 1, 2, 3, 4 and the east 25.5 feet of Lot 6, 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: July 28, 2015

MODIFIED CONDITIONAL USE PERMIT

The applicant, Zilkatur, LLC, filed an application with the Planning Director to modify a previously approved Conditional Use Permit to change the name of the operator from Ocean First Group, LLC., to Zilkatur, LLC., pursuant to Section 118 Article IV. of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for Conditional Use 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 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, and accepted by the applicant, that the Modification to the previously approved Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions: Underlining denotes new language and ~~strikethrough~~ denotes stricken language from the previous Order.

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The applicant shall provide a progress report to the Board in 90 days after the revised Business Tax Receipt has been issued. 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 Modified Conditional Use Permit is issued to ~~Ocean First Group, LLC~~ Zilkatur, LLC as operator of this Neighborhood Impact Establishment consisting of an alcoholic beverage establishment, entertainment establishment, and dance hall with an occupant content of more than 200 persons. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
3. Any change of operator or 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 Modified Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. The hours of operation shall be as proposed by the applicant, Sunday through Saturday from 10:00 p.m. to 5:00 a.m. However, the establishment shall close at 5:00 a.m. and keep closed the place of business and not allow any patron or other persons, other than those employed by the establishment, to remain therein between the hours of 5:00 am and 8:00 am.
6. As requested by the applicant, the patron occupant load shall be a maximum of 707 people, or any lesser number as may be determined by the Fire Marshall. The applicant shall obtain a final occupant load from the City before the issuance of a Business Tax Receipt
7. A full business/operation plan for any change of owner/operator that includes details of the operation, as well as security and crowd control, shall be submitted to staff for review and approval prior to the CO or issuance of a new BTR, whichever occurs first.
8. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
9. All "wet T-shirt," "thong" or "bikini" events shall be prohibited.
10. Sound transmission tests on the curtain wall facing 20th Street shall be conducted prior to the finalization of the sound attenuation design for the establishment. A final sound transmission report which includes the performance of sound systems and sound attenuation devices shall be submitted to staff for review and approval prior to a Temporary Certificate of Occupancy, or final Certificate of Occupancy, whichever occurs first.

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11. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to historic preservation staff review and approval.
12. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
13. The City's concurrency requirements can be achieved and satisfied through payment of mitigation fees or by entering into an enforceable development agreement with the City. The Transportation and Concurrency Management Division shall make the determination of the project's fair-share mitigation cost. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit. Without exception, all concurrency fees shall be paid prior to the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy.
14. The applicant shall obtain a Certificate of Occupancy prior to the issuance of a Business Tax Receipt.
15. 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.
16. In the event that there is queuing of people on the sidewalk, stanchions shall delineate the area to allow for the free-flow of pedestrians. Security staff shall monitor the crowds to ensure that they do not interfere with the free-flow of pedestrian on the public sidewalk.
17. Security staff shall monitor patron circulation and occupancy levels during the hours of operation.
18. 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.
19. 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.
20. 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.
21. 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.
22. Within a reasonable time after applicant's receipt of this Conditional Use Permit as signed

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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.

23. 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.
24. 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 25th day of AUGUST, 2015

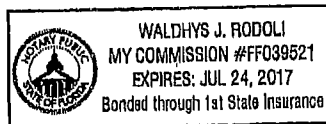
PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

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

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 25th day of August, 2015, 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}



Waldhys J. Rodoli
Notary:

Print Name
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department on Jeff Bent (8/25/2015)

Filed with the Clerk of the Planning Board on 08/25/2015 (JS)

MBS