

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 8, 2018

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 16-0069 fka File No. 1361 –1236 Ocean Drive–Il Giardino.
Revocation/Modification Hearing**

BACKGROUND

October 20, 1998

Le Deux Fontaines restaurant received a Conditional Use Permit (CUP) in order to operate an outdoor entertainment establishment limited to a non-amplified jazz band at 1230-1238 Ocean Drive.

May 23, 2006

Hosteria Romana 2, LLC was issued a modification to the CUP to change the name owner/operator of an outdoor entertainment establishment and remove the limitation on amplification of a jazz band or similar ensemble.

July 27, 2010

Reta Ocean Drive, LLC applied for and was granted a Modified Conditional Use Permit (MCUP) to change the name of the owner/operator and remove the condition limiting entertainment to a jazz band and allow for entertainment level amplified music with volume controls conforming to the sound study provided.

February 22, 2011

As a result of a progress report due to numerous noise violations, the MCUP was further modified by the Planning Board to compel the applicant to conduct another sound study and install the speakers in accordance with the new plan.

November 15, 2011

The Planning Board modified the MCUP further to remove the ability for the applicant to have amplified music outdoors that is played at an entertainment levels as a result of continued violations and noise complaints.

April 24, 2012

The MCUP was suspended by the Planning Board for one month due to non-compliance with the modified Planning Board order.

May 22, 2012

The Board modified the MCUP to change some conditions regarding the awning structure and sprinkler system.

December 20, 2016

The Board issued a MCUP to Il Giardino, LLC for an outdoor entertainment establishment in order to change the name of the restaurant and the name of the owner/operator.

<i>July 11, 2017</i>	At the direction of the Planning Board, a Cure Letter was issued regarding open violations and complaints about the operation of the establishment.
<i>July 27, 2017</i>	The Board heard from the applicant at a progress report in response to the Cure Letter. There was a discussion and the Board requested that a public hearing be set to consider a revocation, modification or imposition of additional conditions due to code violations and complaints.
<i>September 26, 2017</i>	The Board modified the CUP to not allow outdoor entertainment for 60 days from September 26, 2017 and continued a progress report to the October 24, 2017 meeting. The Board also continued the modification and revocation hearing to November 21, 2017.
<i>November 21, 2017</i>	The Board held a modification and revocation hearing, extended the suspension of outdoor entertainment for 30 days, and continued the modification and revocation hearing to December 19, 2017.
<i>December 19, 2017</i>	The Board modified the CUP to not allow outdoor entertainment for 60 days from November 21, 2017 and continued the modification and revocation hearing to the February 27, 2018 meeting.
<i>February 27, 2018</i>	The applicant paid for the peer review of the new submitted sound study conducted by the applicant's sound engineer and a field study which were presented to the Board. The Board re-instated the applicant's outdoor entertainment CUP with a modified speaker plan and set a progress report for the May 22, 2018 meeting.

UPDATE

As of the writing of this report, there have not been any new violations issued to the operator of this establishment since their last Planning Board progress report. Additionally two of the prior cases have been closed (shown in the graph below in italics.)

PROGRESS REPORT

Staff research of city records found the following history of violations in the city's records since the CUP was issued to the current operator:

Case Number	Main Address	Case Type	Description	Case Status	Open Date
CC2017-03254	1236 OCEAN DR	City Code Violation	Sidewalk Café violations	Fine Paid	07/14/2017
CC2017-03255	1236 OCEAN DR	City Code Violation	Resort Tax payments	Closed	07/14/2017
SV2017-02747	1236 OCEAN DR	Sanitation Violation	Trash not in the container	Closed	06/19/2017
ZV2017-01122	1236 OCEAN DR	Zoning Violation	Selling cigars in unapproved area	Fine Paid	05/26/2017
SMA2017-00488	1236 OCEAN DR	Special Master Appeal	Failing to itemize bill for tax and tip	Closed	04/18/2017
SMA2017-00517	1236 OCEAN DR	Special Master Appeal	Alcoholic beverages in to-go cups	Closed	05/17/2017
SMA2017-00676	1236 OCEAN DR	Special Master Appeal	Appeal of CC2017-03254	Appeal	08/08/2017
SV2017-04090	1236 OCEAN DR	Sanitation Violation	Food around dumpster	Fine Owed	11/05/2017
CC2017-04047	1236 OCEAN DR	City Code Violation	Alcoholic beverages in to-go cups	Appeal	11/02/2017
NC2017-05055	1236 OCEAN DR	Noise Complaint	Loud music from restaurant	Written Warning	11/09/2017
NC2017-05141	1236 OCEAN DR	Noise Complaint	Loud music from sidewalk café	Written Warning	11/17/2017
SMA2017-00850	1236 OCEAN DR	Special Master Appeal	Appeal of SV2017-04090	Appeal	11/16/2017
SMA2017-00874	1236 OCEAN DR	Special Master Appeal	Appeal of CC201-04047	Closed	12/05/2017
CC2017-04305	1236 OCEAN DR	City Code Violation	Unopen beer bottles on display	Closed	12/24/2017

STAFF ANALYSIS

Below is a list of the conditions of the attached Modified CUP that are related to the violations and complains discussed at the last Planning Board meeting:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. 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).
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.
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.
20. As proffered by the applicant, the applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.

STAFF RECOMMENDATION

Staff recommends that the Planning Board consider any progress that the operator has made in complying with the requirements of the CUP, and discuss discontinuing the progress reports until such time as it may become necessary in the future.

TRM/MAB/TUI