

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: September 24, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 19-0285 – 940 Ocean Drive – Havana 57**

An application has been filed requesting Conditional Use Approval for a Neighborhood Impact Establishment, open-air entertainment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V, Division 6 of the City Code.

RECOMMENDATION

Continuance to a future date

ZONING / SITE DATA

Legal Description:

Lots 3 and 4, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

Zoning:

MXE (Mixed-Use Entertainment)

Future Land Use Designation:

MXE (Mixed-Use Entertainment)

Surrounding Uses:

North: Hotel and Restaurant

West: Mixed use and residential multifamily

South: Hotel and bar

East: Lummus Park

(See Zoning/Site map at the end of the report)

THE PROJECT

The applicant has submitted plans entitled "Havana Ocean 10, LLC DBA Havana 1957" as prepared by G & S Infrastructure, INC, dated July 25, 2019. The applicant is requesting a conditional use permit for a neighborhood impact establishment with a proposed total occupancy of 220 persons.

The proposed entertainment component will consist of both a DJ and live entertainment which will take place both indoors and outdoors (existing courtyard and ocean side covered porch), which meets the definition of open air and outdoor entertainment (see the definitions below.)

Sec. 142-1361. - Definitions.

Open air entertainment establishment means a commercial establishment which provides entertainment, as defined in this section, indoors or in an enclosed courtyard or area which by

its design is open to the outside, thereby enabling the entertainment to be audible outdoors.

Outdoor entertainment establishment means a commercial establishment which provides outdoor entertainment as defined in this section.

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Section 118, Article IV, Sec. 118-191 and Sec. 118-192 (a):

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 request is consistent with the Comprehensive Plan. The MXE future land use category allows eating and drinking establishments. Outdoor entertainment is only allowed as a conditional use.

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 proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

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

Consistent – Entertainment, Outdoor Entertainment and Neighborhood Impact Establishments are permitted as conditional uses in the MXE Zoning District and are consistent with the Land Development Regulations. These comments shall not be considered final zoning review or approval. These and all zoning matters shall require final review and verification by the Planning Department prior to the issuance of a Business Tax Receipt (BTR).

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

Partially Consistent – The proposed project may adversely affect the general welfare of nearby residents and businesses if delivery, waste removal, and other operations are not controlled. Staff is recommending conditions to mitigate the potential negative impacts. The facility will have to comply with all applicable laws and regulations prior to the issuance of a Business Tax Receipt.

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

Consistent – There is no parking on-site, and no parking is required. Parking for patrons of the venue will be by self-parking, or patrons can also use valet ramps nearby. See the staff analysis.

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

Partially Consistent – Staff is recommending conditions to mitigate any adverse impacts on the surrounding neighbors.

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.**

Partially Consistent – The proposed uses for the project are permitted in the MXE zoning district as conditional uses. The following are some of the Neighborhood Impact Establishments, outdoor entertainment and entertainment establishments approved nearby. There is a high concentration of entertainment establishments within the immediate area, including such establishments directly abutting this property to the north and to the south. If not carefully controlled, such concentration could negatively impact the surrounding neighborhood.

Address	Bussiness	CUP	PB File No.
900 - Ocean Drive	Mango's	NIE	1387
928 - Ocean Drive	Voodoo Lounge	NIE	PB18-0252
960 Ocean Drive	Oceans Ten	NIE	1467
1020 Ocean Drive	Clevelander	NIE	1456
1052 Ocean Drive	The Palace	OEE	PB17-0171
1060 Ocean Drive	ILOV305	NIE	PB17-0158
1236 Ocean Drive	Il Giardino	OEE	1361

NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for a neighborhood impact establishment, the Planning Board shall apply the following supplemental review criteria in addition to the standard review guidelines for conditional uses pursuant to chapter 118, article IV:

1. **An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.**

Consistent- The LOI and the operations plan submitted with the application detail the proposed operation associated with the project. See analysis.

2. **A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, self-park, shared parking, after-hour metered spaces and the manner in which it is to be managed.**

Consistent- There is no parking on site, and no parking is required. Parking for the patrons of the venue will be by self-parking and valet parking is also available for the building with the valet station located in front of the property on Ocean Drive.

3. **An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises would be controlled.**

Not Consistent – The response from the applicant to this review criteria indicates that managers and staff will address any crowd control. Staff believes that a detailed crowd control plan is required, especially as outdoor entertainment is proposed within the front porch along Ocean Drive. See analysis.

4. **A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.**

Not Consistent – The response from the applicant to this review criteria indicates that managers and senior staff will address security and that all servers are trained to check for ID's for patron age restrictions. Staff believes this is insufficient. See analysis.

5. **A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.**

Consistent- A Valet operations analysis was provided.

6. **A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.**

Consistent- The applicant proposes that trash pick-up would take place from 7:00 AM to 10:00 AM from the existing air-conditioned trash room located at the north west side of the building on Ocean Court.

7. **A noise attenuation plan which addresses how noise would be controlled to meet the requirements of the noise ordinance.**

Partially Consistent- The applicant provided a sound study prepared by Eduard Dugger + Associates, PA, and a peer review was performed by Arpeggio Acoustic Consulting, LLC. See attached report and analysis.

8. **Proximity of proposed establishment to residential uses.**

Not Consistent- The property abuts a residential building on the west side and is surrounded by other hotels and commercial uses. Staff is recommending conditions to mitigate any potential negative impacts from the operations of this venue on surrounding properties.

9. **Cumulative effect of proposed establishment and adjacent pre-existing uses.**

Not Consistent- There are multiple NIE's and Outdoor Entertainment Establishments within the immediate vicinity. Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development 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

Preface

The venue is located on the ground floor in the historic lobby area of the Breakwater hotel, as well as the front porch along Ocean Drive and within the existing courtyard. The applicant is requesting a Conditional Use Permit for a Neighborhood Impact Establishment with open air and outdoor entertainment.

Staff must preface this analysis by noting very serious concerns with the extensive inappropriate alteration of the historic public interior space, as clearly evidenced in the photos below. Havana 57 has done significant damage to the iconic character of one of the most prominent buildings on Ocean Drive. The interior has been completely consumed by inappropriate elements

including track lighting, strobe lighting, dark paint colors, including black, TV screens on the windows, and signs and other structures obscuring the recreated faux fireplace. All of this was done without obtaining a certificate of appropriateness.

The photo below shows the existing conditions of the historic lobby, looking from the entrance to toward the southwest (with the fireplace in the background below the Cabaret sign):



In comparison, the photo below shows the historic lobby (looking south from the entrance), after the building and lobby was renovated and restored about 5 years ago.

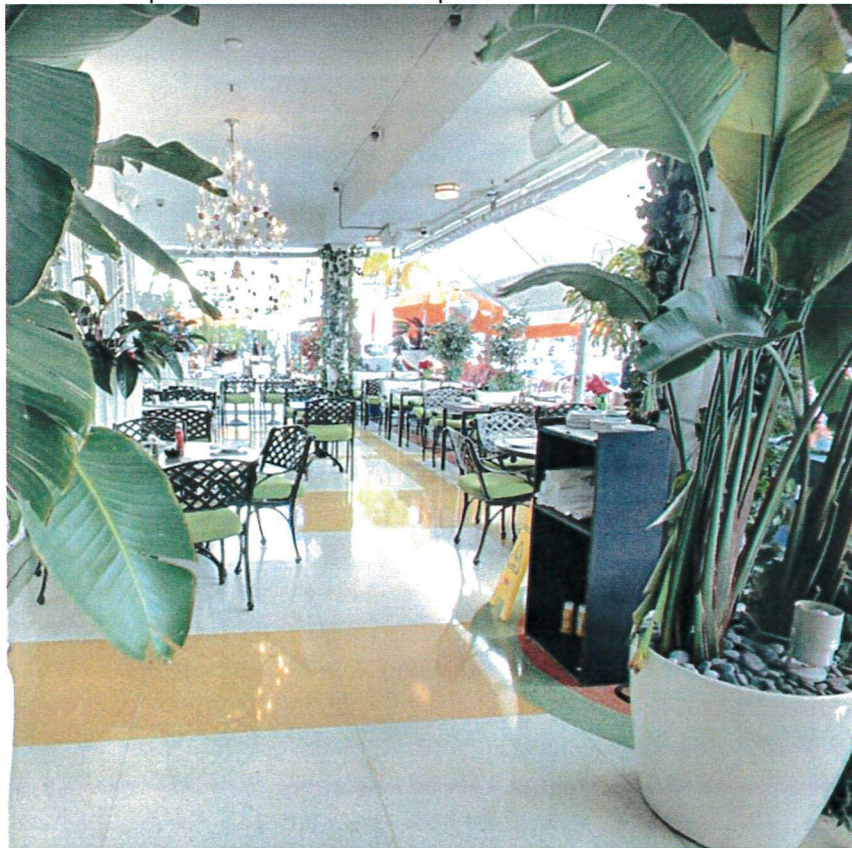


The entire ground floor was restored when the building was renovated to include the one-story roof top addition (approved in 1998) and constructed in approximately 2010.

The below photo shows the current state of the front porch.



The below photo shows the front porch from 2015.



Staff has forwarded this unauthorized work to Code Compliance for enforcement action. In light of these serious concerns, as well as operational concerns noted below, staff recommends that the Board continue the application to a future date, and not discuss the merits of the current application until such time that all certificate of appropriateness issues are addressed. However, should the Board decide to proceed with the application at this time, the following analysis is provided regarding the proposed CUP.

Project Description and Operations

Currently, the restaurant/bar includes indoors areas, a courtyard, an outdoor porch and a sidewalk café with an occupancy load of 178 with entertainment located indoors.

The proposed occupancy load is 220. An occupancy above 199, with entertainment, is considered a Neighborhood Impact Establishment, which is a Conditional Use in the MXE zoning district. In addition, the applicant is proposing outdoor entertainment and open-air entertainment for the existing courtyard located on the south side of the building and the covered porch facing Ocean Drive.

The applicant has identified three areas and three options to operate the venue, Area 1 (interior bar and restaurant), Area 2 (Covered Porch), and Area 3 (Hotel Courtyard).

The three options that are proposed are identified but it is not clear when they occur, the letter of intent states that it will be used during different periods the restaurant is open (see LOI, operational plan and sound analysis below).

As per the plans, sound study, letter of intent and operational plan, the breakdown of the areas, the occupancy, the proposed hours, and whether entertainment is proposed are as follows:

LOCATION	OCCUPANCY	PROPOSED HOURS	ENTERTAINMENT
Interior Bar & Restaurant at Historic Lobby (Area 1)	87	Restaurant and Bar area : 8:00 AM to 5:00 AM Live entertainment DJ: Monday through Friday 12:00 PM to 5:00 AM Weekends and Holidays 11:AM to 5:00 AM Live entertainment Band: 7:00 PM to 3:00 AM Live entertainment dancers: 7:00 PM to 3:00 AM	YES
Covered Ocean Terrace (Area 2)	71	Restaurant : 8:00 AM to 5:00 AM Live entertainment DJ: Monday through Friday 12:00 PM to 5:00 AM Weekends and Holidays 11:AM to 5:00 AM Live entertainment dancers: 7:00 PM to 3:00 AM	YES Background sound only played at a volume that does not interfere with normal conversation
Hotel Courtyard (Area 3)	62	Restaurant : 8:00 AM to 5:00 AM Live entertainment DJ: Monday through Friday 12:00 PM to 5:00 AM Weekends and Holidays 11:AM to 5:00 AM Live entertainment dancers: 7:00 PM to 3:00 AM	YES Background sound only played at a volume that does not interfere with normal conversation
TOTAL OCCUPANCY:	220		

Staff is not supportive of the proposed outdoor entertainment within the covered porch (Area 2) even if the sound is background music at a volume that does not interfere with normal conversation, due to concerns over pedestrian circulation and safety, as further noted under the 'Pedestrian Circulation' and 'Security' descriptions below.

Sound

Eduard Dugger + Associates, PA, commissioned by the applicant, conducted a sound study. Arpeggio Acoustic Consulting, LLC, commissioned by the City and paid for by the applicant, conducted a peer review.

The applicant is proposing to continue to feature entertainment indoors and background level music on the front porch while introducing background level live entertainment to the outdoor courtyard.

The applicant is proposing three different operational configurations:

Option 1 includes one performance area providing entertainment inside. The same music will be routed to the exterior speaker systems in the courtyard and front porch at ambient background sound levels. It should be noted that, as per Section 142-546 (b)(1), "Commercial

establishments fronting on Ocean Drive, except retail establishments, may only place or install outdoor speakers within 20 feet of the property boundary facing Ocean Drive or a side street, if such speakers are played at ambient levels”.

Option 2 includes one performance area providing entertainment inside. This music will also be routed to the exterior speaker system on the porch at ambient background sound levels. Live music will be provided by a second performer at ambient background sound levels in the courtyard.

Option 3 includes one live performance area on the front porch with music played at ambient background sound levels in this area. The same music will be routed to the interior restaurant at entertainment or background sound levels. Music will be provided by a second live performer at ambient background levels within the courtyard.

The entertainment component will consist of a DJ, entertainment and live outdoor entertainment (dancers) with outdoor speakers located in the Courtyard. The sound study mentions that the sound output on the three zones can be controlled independently by the management.

The Sound study concludes that “... *The Hotel guest rooms surrounding the courtyard on its three sides would be most exposed to sound generated therein..*” It also states that “ *It is recommended that the volume controls be accessible only to management and/or designated engineering staff. It is also important that all performers utilize Havana 1957’s sound system and associated loudspeakers and that no additional loudspeakers are added to any of the areas for any performances. When there is entertainment indoors, it is preferable that doors leading into the courtyard be closed so as not to increase exterior sound levels. Alternatively, music levels indoors could be reduced if the courtyard doors are open.*”

Arpeggio agreed with the assertions presented, assuming sound levels are kept to a moderate sound level that might also be deemed compatible with the hotel guestrooms bordering the courtyard and rooms at 928 Ocean Drive (Ocean Blue Hotel).

Arpeggio concluded that “...*In order to address potential impact on these rooms at 928 Ocean Drive, ED+A recommends several measures, all of which we concur with. These measures include the following:*

- 1. Subwoofers should not be used in the courtyard.*
- 2. Only the Havana 1957 audio system should be used by performers.*
- 3. When there is entertainment indoors, courtyard doors should remain closed.*
- 4. Sound system volume controls should be accessible only to restaurant management and/or designated engineering staff.*
- 5. Low-frequency content should be adjusted and limited to address potential transmission through lightweight glazing assemblies.*

Arpeggio recommend that a site visit be conducted with representatives from 928 Ocean Drive where a music simulation is conducted. Individuals should be located in noise-sensitive rooms along the north side of 928 Ocean Drive while music is played in the courtyard such that an agreeable sound level limit is achieved. (see Sound study peer review).

The applicant is proposing entertainment within the courtyard with audio levels that do not exceed normal conversation levels.

Although it may be true that the applicant’s hotel rooms on the property will be most affected by

outdoor entertainment within the courtyard, if the restaurant fosters an atmosphere with loud music, hotel guests will have a lesser expectation of a quiet sleeping environment. It appears that the windows of the adjacent hotel to the south are original, non-impact windows.

In consideration of the applicant's desire to have entertainment within the courtyard, and the consideration for hotel guests staying at 920 Ocean Drive staff is recommending the following conditions:

Audio from the subject property, including low-frequency vibrations, shall not be plainly audible or felt, within the interior of the hotel units (with the windows and doors closed) of the abutting building to the south, after 9pm. See condition 6 c of the draft order.

Lastly, staff would also note that the location and type of speakers also requires a Certificate of Appropriateness.

Pedestrian circulation

Although the applicant is proposing a DJ and live performers on the front porch with music played at ambient background levels, staff is concerned with the limited sidewalk area available and the blocking of the sidewalk from passers-by stopping in the sidewalk to view a performance. When combined with the sidewalk café conditions, the pedestrian path between the sidewalk café seating area and the curb is very narrow.

Having a show with dancers that can be observed and heard from the sidewalk will likely result in pedestrian backup on the sidewalk. The current width of the sidewalk is too narrow to allow sound and visual distractions to the pedestrian experience. Even if pedestrians or vehicles do not fully stop to observe, the collective slow down can still cause congestion. Tourists and residents could be adversely impacted by the already congested Ocean Drive west side walk. Without a natural way to escape the crowd, pedestrians would be forced to avoid the area by stepping into the street to avoid the crowd which is a dangerous condition.

Staff would also note that the crowd control and security plan provided by the applicant is inadequate, with a simple notation indicating that such issues would be handled by the staff and managers. This is unlike other applications that have been approved where there are dedicated security staff to control crowds and ensure proper pedestrian circulation along the sidewalk.

In light of the pedestrian circulation and safety concerns staff recommends against any form of entertainment on the outdoor front porch.

Security

Staff also has concerns that the security and patron age restrictions are only handled by the senior staff and managers unlike other applications that have been approved where there are dedicated security staff and cameras to support the security operations.

Valet Parking and Access

Patrons arriving as passengers in automobiles for valet drop off will use the valet station located on Ocean Drive. Access to the property for pedestrians is from Ocean Drive. Please see the valet parking analysis provided with the application as well as the memo from the Transportation Department for details.

Code Compliance

Attached to this report is a list of complaints, violations and special master cases related to the venue over the last 12 months. It is important to highlight the fact that the applicant has a track record of engaging in open air entertainment on the front porch without having any approvals for such operation. The venue has a business license to operate a restaurant with an occupancy load of less than 200 with indoor entertainment only.

Conclusion

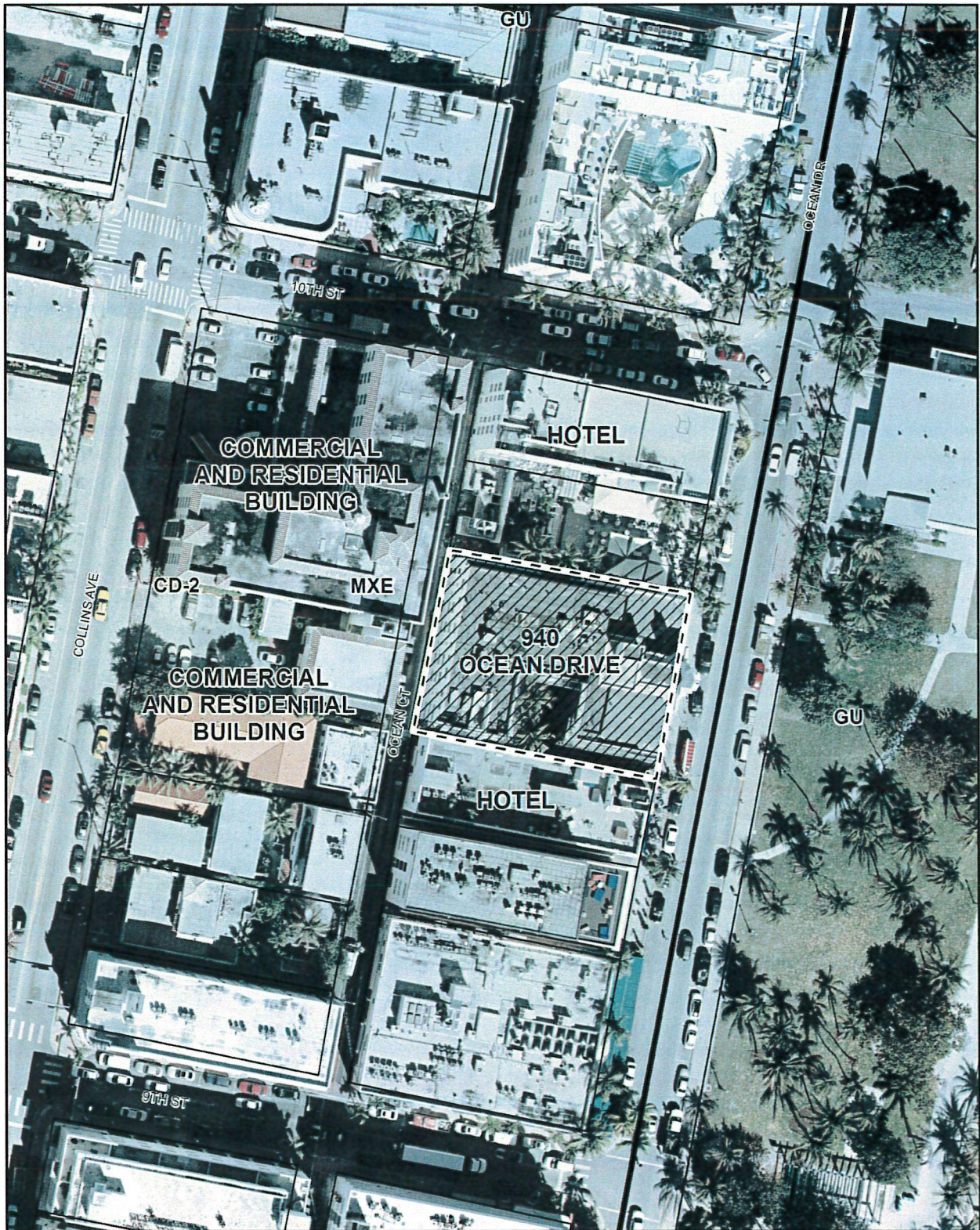
In view of the foregoing analysis, including the inconsistencies with the Neighborhood Impact Establishment Review Guidelines, the unauthorized work in the historic lobby and the failure to seek or obtain a Certificate of Appropriateness for the numerous modifications to the historic lobby and front terrace which have completely obscured the historic integrity of these spaces, as well as the track record of violations, staff strongly recommends that the application be continued to a future date until all of these concerns are fully addressed.

RECOMMENDATION

In view of the foregoing analysis, and inconsistencies with the aforementioned Neighborhood Impact Establishment Review Guidelines, staff recommends that the application for a Conditional Use Permit be continued to a future date. However should the Board approve the application, at a minimum staff would recommend any approval be in accordance with the attached draft Order.

TM/MAB/AG

ZONING/SITE PLAN



0 15 30 60 90 120 150
Feet



Case: CC2018-06706
Case Status: Fine Owed
Open Date: 12/09/2018
Close Date:

City Of Miami Beach Case Notes Summary
Printed on: 9/11/2019
Page 1 of 1

Case Description: Section 12-5: Conducting a Special Event without a permit.
RE: DJ/Live entertainment not on Business Tax Receipt
2nd Offense: \$2,500.00
A.PEREZ736

Note Text	Created By	Date
Created invoice for mailout	codebaqa	05/15/2019
Administrator Approval, service obtained/proof of posting, by the issuing officer. Appeal withdrawn and fine not paid. Approved to issue City Bill, case turned into City Bill box in Code Compliance today to process. .R.Thomas	codethor	05/12/2019
Sent to CCA Thomas for review/city bill	CODEPerA	05/09/2019
SP Master Annette Cannon presided over hearing. Violator retracted appeal and advised that the violation will be paid.	CODEPerA	05/09/2019
Filed in Appeal drawer	CodeAGuJ	03/24/2019
Action / progress form given to CCO and file given to Ms. Smith, Records Supervisor to file in Centralized file system. R. Thomas/ 710	codethor	03/05/2019
Case has been appealed, file retained at my desk	CODEPerA	12/22/2018
CASE PROCESSED & PREPARED FILE FOLDER	codegrac	12/21/2018
I will turn the case over to clerical today for processing. R.Thomas/710	codethor	12/18/2018
Corrections made returned to CCA Thomas for processing.	CODEPerA	12/18/2018
Returned to CCO Perez to add additional info and received by date in workflow. R. Thomas/ 710	codethor	12/17/2018
Sent to CCA Thomas for processing.	CODEPerA	12/17/2018
I rcv'd a complaint from dispatch in reference to a DJ being at 940 Ocean Dr. Upon my arrival to the area, (Havana 1957) I saw a Dj inside of the restaurant. I then spoke with the manager on duty, Luis and asked him if he could provide me with the BTR to see if the restaurant had live entertainment to which he responded by saying that it did not. A business License search revealed that thew business had an active business tax receipt but did not have live entertainment on their license. A history check revealed that this is a second offense within a 12 month period. Luis then signed on the violation, service obtained.	CODEPerA	12/10/2018

Case: NC2018-09231
Case Status: No Violation Issued
Open Date: 12/01/2018
Close Date: 12/01/2018

City Of Miami Beach Case Notes Summary
Printed on: 9/11/2019
Page 1 of 1

Case Description: LOUD MUSIC

No violation issued.

Exemption Granted - Ocean Drive 9th to 11th street - Allowed

BWC used

Note Text

Created By

Date

Arrival: 5:12 PM

CODEJARJ

12/01/2018

Departure: 5:37PM

We, CCO Moreira and I, arrived to the location and contacted dispatch to ask for the complainant information so we could meet and I could explain the Ocean Drive rules on the noise ordinance. Complainant did not want to meet. We proceeded to the location and spoke with the manager and informed her of the complaint. We explained that they are exempt to the South, North and East but if we heard the music on the West of the property that they could receive a violation. We walked to the back of the property and the music was not loud and/or excessive.

No violation issued. Exemption has been granted for the location.

BWC.

J.Jarquin 729/ P. Moreira 740

Case: NC2018-09061
Case Status: No Violation Issued
Open Date: 11/16/2018
Close Date: 11/17/2018

City Of Miami Beach Case Notes Summary
Printed on: 9/11/2019
Page 1 of 1

Case Description: LOUD MUSIC

Arrival 10:22pm

Note Text

Created By

Date

Arrival 10:22 PM

CODERosR

11/17/2018

Departure 12:30 AM

Upon arrival to the complaint I ascertained the noise from the south of 9th st and West of the property. The music I heard was not unreasonably loud nor excessive. I heard music coming from the general area but was not unreasonably loud. As I approached the restaurant the music coming from Havana 1957 at 940 ocean dr was above ambient. I made contact with the manager on duty Miguel Bethia and explained that the music was not loud nor excessive but it was above ambient level; as well as he did not have approvals for the DJ or the speakers on the porch area. Special Event Violation was issued CC2018-06595. No violations issued for noise as the DJ was removed as well as the music was not loud or excessive. No Violation issued

BWC USED

BWC USED

R Rosquete 737

LOUD MUSIC COMING FROM THE HOTEL BRICK HOUSE

pingburl

11/16/2018

Case: CC2019-07683
Case Status: Closed
Open Date: 07/24/2019
Close Date: 08/30/2019

City Of Miami Beach Case Notes Summary

Printed on: 9/11/2019

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Case Description: Violation of Section 70-125:

An inspection of the above premises on this date revealed the presence of GRAFFITI. Unfortunately your property has been vandalized and, as the property owner, you are responsible for removal of this graffiti. Prompt removal of graffiti is the most effective way of combating it.

Note Text	Created By	Date
As per CCA case J. Caicedo has been closed/Placed paperwork in close case cabinet.	CODEGarY	08/30/2019
I received paperwork from the zone officer. Case is in compliance and can be closed. I placed paperwork in clerical's inbox to close case.	CODECAIJ	08/30/2019
Left in CCA Caicedo inbox to be closed.	CODEJefM	08/29/2019

Case: CC2019-07683
Case Status: Closed
Open Date: 07/24/2019
Close Date: 08/30/2019

City Of Miami Beach Case Notes Summary
Printed on: 9/11/2019
Page 2 of 3

Case Description: Violation of Section 70-125:

An inspection of the above premises on this date revealed the presence of GRAFFITI. Unfortunately your property has been vandalized and, as the property owner, you are responsible for removal of this graffiti. Prompt removal of graffiti is the most effective way of combating it.

Note Text

Created By
CODEJefM

Date
08/29/2019

From: Jason Johnson <jason@firstlooksolutionspm.com>
Sent: Thursday, August 22, 2019 11:57 AM
To: Jefferson, Mounia <MouniaJefferson@miamibeachfl.gov>
Subject: Re: CC2019-07683 - 940 Ocean Drive

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE
CAUTION WHEN REPLYING AND OPENING LINKS OR
ATTACHMENTS]

Good morning,

Hoping your day is off to a great start.

Yes, the graffiti has been removed and I am attaching a picture as well.
The property is available for re-inspection so the violation can be closed.
Thank you for your assistance and attention to this matter.

Have an amazing day!

Regards,

Jason Johnson
First Look Solutions, LLC
Project Manager - Consultant
jason@firstlooksolutionspm.com
(786)498-2560

From: Jefferson, Mounia <MouniaJefferson@miamibeachfl.gov>
Sent: Wednesday, August 21, 2019 6:13:56 PM
To: Jason Johnson <jason@firstlooksolutionspm.com>
Subject: Re: CC2019-07683 - 940 Ocean Drive

Good evening,

I hope all is well. I will attach the picture of the graffiti that prompted this violation. I have the availability to re-inspect the property tomorrow if the graffiti has been removed.

Regards,
Sent from my iPad

On Aug 21, 2019, at 6:04 PM, Jason Johnson
<jason@firstlooksolutionspm.com> wrote:
[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE
CAUTION WHEN REPLYING AND OPENING LINKS OR
ATTACHMENTS]
Hi Officer Jefferson,

I am contacting you on behalf of the 940 Ocean Drive LLC regarding violations CC2019-07683. Per Operations Management, they get graffiti often but they address it immediately. I did not observe any graffiti when I

Case: CC2019-07683
Case Status: Closed
Open Date: 07/24/2019
Close Date: 08/30/2019

City Of Miami Beach Case Notes Summary
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Case Description: Violation of Section 70-125:

An inspection of the above premises on this date revealed the presence of GRAFFITI. Unfortunately your property has been vandalized and, as the property owner, you are responsible for removal of this graffiti. Prompt removal of graffiti is the most effective way of combating it.

Note Text

checked after finding this violation in the Citizen Self Service portal.
Please, can you provide visual proof of the graffiti so that I may ensure that it has been removed? Thank you!

Created By

Date

Regards,

Jason Johnson
First Look Solutions, LLC
Project Manager - Consultant
jason@firstlooksolutionspm.com
(786)498-2560

Progress check. Graffiti removed from the rear of the property.
Compliance achieved.

CODEJefM

08/22/2019

During sanitation detail I noticed graffiti at the rear of the property.
Created violation to be sent certified.

CODEJefM

07/24/2019

Case: ZV2018-02183
Case Status: Closed
Open Date: 09/01/2018
Close Date: 09/21/2018

City Of Miami Beach Case Notes Summary
Printed on: 9/11/2019
Page 1 of 1

Case Description: Section 138-5 (b): Displaying a pennant, banner, streamer or other fluttering, spinning or similar type sign and advertising devices.

RE: Banner on Breakwater property
A.PEREZ736

Note Text	Created By	Date
Case closed	CODEHODK	09/21/2018
Submitted to be closed	coderomm	09/07/2018
Banners removed. Compliance achieved, sent to ACA Romero for case closure	CODEPerA	09/04/2018
Hand delivered NOV. Left at the front desk with Dana K. today at 9:07pm.	CODEJeffM	09/02/2018
While on patrol of Ocean Dr. I noticed 2 banners posted on the Breakwater Hotel. A history check was conducted and no prior violation of the section was issued. Violation issued.	CODEPerA	09/01/2018

Case: CC2018-06595
Case Status: Fine Paid
Open Date: 11/16/2018
Close Date:

City Of Miami Beach Case Notes Summary
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Case Description: Section 12-5

Ref- Having a DJ without proper permitting

Note Text	Created By	Date
Dropped into city bill box	coderrmm	11/25/2018
Fine paid, Turned into CCA Romero to be closed	CODERosR	11/24/2018
Customer paid full amount of city bill. Finance Department explained that their system is currently under an update for year end closing on Tyler and payments will be processed in a couple days, possibly on Wednesday. Uploading copy of receipt under documents.	codebaqa	11/19/2018
CREATED AN INVOICE FOR A WALK IN CUSTOMER	CODERuiC	11/19/2018
Upon arrival to the noise complaint NC2018-09061, I observed a DJ with his equipment and speakers on the porch area outside the structure playing music that was above ambient. I made contact with the manager on duty Miguel Bethia, and explained to him of the complaint that we received. I asked him for his Business tax receipt, conditional use permit (CUP), or special event permit in reference to the DJ and speakers set up on the porch. He provided the business tax receipt which did not have endorsement for dance and entertainment and could not produce a CUP or special event permit for the entertainment. I explained and educated him on the city ordinances and told him to had to cease and desist with the DJ as well as removing the speakers. I issued a first offense for Conducting a special event without an approved permit. The DJ ceased playing music and the speakers were removed. BWC USED Notice of violation issued	CODERosR	11/17/2018

Case: SV2019-10633
Case Status: Notice of Violation
Open Date: 08/24/2019
Close Date:

City Of Miami Beach Case Notes Summary
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Case Description: Section 90-100: Allowing trash and garbage to overflow in a container, can or dumpster.
Ref: Overloaded garbage receptacle
24hrs to comply
BWC Used

Note Text	Created By	Date
I received paperwork from the zone officer. Case is in compliance and can be closed. I placed paperwork in clerical's inbox to close case.	CODEConG	08/29/2019
Action sheet turned in to CCA Contreras to have case closed.	CODECasH	08/26/2019
Progress check violation for overflowing garbage receptacle. Property is now in compliance and container is no longer overflowing.	CODECasH	08/25/2019
While on a proactive patrol of Ocean Ct I observed an overloaded garbage receptacle at the rear of 940 Ocean Drive. Notice of violation issued.	CODECasH	08/24/2019

Case: SMA2018-01767
Case Status: Closed
Open Date: 12/19/2018
Close Date: 05/09/2019

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Case Description: CC2018-06706 APPEALED TO SM OFFICE ON 12/17/2018

Note Text	Created By	Date
BOX #JA-76 - GRM #000998322	CLERNevC	06/07/2019
PETITIONER WITHDREW THEIR REQUEST TO APPEAL 5-9-2019	CLERNevC	06/07/2019
CC2018-06706 APPEALED TO SM OFFICE ON 12/17/2018	CLERNevC	12/19/2018

Case: SV2019-07757
Case Status: Closed
Open Date: 01/18/2019
Close Date: 01/30/2019

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Case Description: Violation of Section 90-100: Illegally disposing of industrial or bulky waste.
REF: Three wood pallets in the rear of property (2 on the North side, 1 on the South side)
History check conducted, 1st offense
NOV issued, hand delivered to FOH Manager, Sandra Perez

Note Text	Created By	Date
CLOSED	codegrac	01/30/2019
Compliance obtained approved to close case and submitted to staff.	CODEBYAT	01/26/2019
Paperwork completed and case submitted to CCA Byars for review to close. I. Hanna 728	CODEHani	01/22/2019
Progress check conducted 1/19/19, all wood pallets removed. Compliance achieved. BWC I. Hanna 728	CODEHani	01/22/2019
While conducting an alleyway inspection on Ocean Court I observed illegal dumping of three wood pallets in the rear of 940 Ocean Drive. BWC was activated and photos taken of violation. A history check was conducted, 1st offense. NOV issued, hand delivered to Front of House Manager, Sandra Perez, with 24 hours to comply. I. Hanna 728	CODEHani	01/18/2019

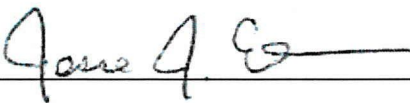


**Sound Study Peer Review for
Neighborhood Impact Establishment and
Outdoor Entertainment Establishment at
940 Ocean Drive, Miami Beach, Florida
(Havana 1957)
PB 19-0285**

Prepared for:

**Miami Beach Planning Department
1700 Convention Center Drive
Miami Beach, Florida 33139**

Prepared by:



**Jesse J. Ehnert, INCE Bd. Cert., Principal
Arpeggio
1947 Aspen Drive, NE
Atlanta, Georgia 30345
jehnert@arpeggiollc.com
404-277-6528 (Direct)**

July 18, 2019

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1 Introduction

This report documents a peer review of an acoustic study conducted for the City of Miami Beach related to a request for a Conditional Use Permit for a Neighborhood Impact Establishment and Outdoor Entertainment Establishment at Havana 1957 located at 940 Ocean Drive. The reviewed report, prepared by Edward Dugger + Associates (ED+A) and dated June 17, 2019 describes the current property layout and environs, the proposed operational changes, summarizes results of a site noise survey, and provides conclusions and recommendations.

2 Project Description

The restaurant, Havana 1957, is currently located on the first floor of the three-floor Hotel Breakwater South Beach. The restaurant currently hosts entertainment inside the restaurant as well as background level music on the front terrace along Ocean Drive. The property has a courtyard where operational changes are being proposed on its south side which is bordered by the interior of the restaurant to the east, Hotel Breakwater spaces to the north and west, and Ocean Blue Hostel (with Voodoo Lounge on the first floor) immediately to the south at 928 Ocean Drive. North of the hotel (and not immediately adjacent to the courtyard) is Edison Hotel at 960 Ocean Drive. Across Ocean Drive to the east of the hotel is Lummus Park. The area, being in the Mixed Use Entertainment District, is not zoned Residential. Properties in the immediate area generally operate as hotels and/or transient residential housing with restaurants/bars on the first floor.

The venue is currently allowed to have entertainment indoors and music at background levels on the front terrace between noon and 5 am Monday through Friday and between 11 am and 5 am on weekends and holidays. Three different operation changes are being proposed:

- Option 1 would allow for indoor performances to be routed to exterior speaker systems on the courtyard and terrace at background levels.
- Option 2 would allow for indoor performances to be routed to the exterior speaker system on the terrace at background levels. Music would be provided by a second performer at background sound levels in the courtyard.
- Option 3 would allow for one performance area on the front terrace providing music at background sound levels in this area. The same music would be routed to the interior restaurant at entertainment or background sound levels. Music would be provided by a second performer at background sound levels in the courtyard.

As part of the operational changes, no new loudspeakers would be installed on the front terrace; however, either three or four new loudspeakers would be installed on hotel façade surfaces in the courtyard. The terrace, courtyard, and interior zones would be separately controlled.

3 Comments

The sound study report prepared by ED+A provides a detailed analysis of the ambient sound levels at the site, as gleaned from a thorough site noise survey conducted near the center of the courtyard from Monday, April 1, 2019 to Sunday, April 7, 2019. This survey provided statistical and average sound level data for five-minute and one-hour intervals throughout the duration. The report identifies the residual background sound level (as defined by the L_{90}) to be generally between 60 and 65 dBA during most daytime hours while sound levels rose to generally between 65 to 75 dBA on Friday and Saturday nights. The report points out that music clarity and low-frequency content in audio recordings made during this time hint at noise sources at ground level with the elevated levels possibly being due to activities related to Pride Week.

ED+A correctly asserts that the areas that would most likely to be affected by operational changes in the courtyard are guests of the Breakwater Hotel in rooms bordering the east, west, and north sides of the courtyard as well as people in rooms at 928 Ocean Drive (Ocean Blue Hostel) bordering the south side of the courtyard. It is not known what the use of these rooms is or what the nature of the building façade, including windows, is at these locations.

In order to address potential impact on these rooms at 928 Ocean Drive, ED+A recommends several measures, all of which we concur with. These measures include the following:

1. Subwoofers should not be used in the courtyard.
2. Only the Havana 1957 audio system should be used by performers.
3. When there is entertainment indoors, courtyard doors should remain closed.
4. Sound system volume controls should be accessible only to restaurant management and/or designated engineering staff.
5. Low-frequency content should be adjusted and limited to address potential transmission through lightweight glazing assemblies.

With respect to item 5 above, we recommend that a site visit be conducted with representatives from 928 Ocean Drive where a music simulation is conducted. Individuals should be located in noise-sensitive rooms along the north side of 928 Ocean Drive while music is played in the courtyard such that an agreeable sound level limit is achieved. This limit, quantified in both A-weighted and C-weighted decibels (dBA and dBC, respectively) should be documented and adhered to by Havana 1957. In addition, suitable hours of operation (which were not identified in the ED+A report) should be established, taking note that background sound in the courtyard currently appears to reduce significantly at approximately 3 am.

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

TRANSPORTATION DEPARTMENT

MEMORANDUM

TO: Michael Belush, AICP, Planning and Zoning Manager

FROM: Jose R. Gonzalez, PE, Director *JRG for*

DATE: September 9, 2019

SUBJECT: 940 Ocean Drive – Valet Queueing Analysis

The Transportation Department has reviewed the subject Valet Queueing Analysis submitted by the applicant as part of the Planning Board application for 940 Ocean Drive. The applicant is requesting permission to activate the existing ground floor restaurant with entertainment/dance. The development currently operates as a 99-room hotel and a 220-seat restaurant served by valet parking. The development does not provide any off-street parking.

The trip generation analysis was determined based on information obtained from the Institute of Transportation Engineers' (ITE) Trip Generation Manual (10th Edition). According to the ITE manual, the most appropriate "land use" category for the proposed development was Land Use 310 – Hotel and Land Use 931 – Quality Restaurant. The proposed development is anticipated to generate approximately 59 net new trips during the typical Saturday peak hour of generator.

The following trip reduction factors and percentages have been applied to the trip generation analysis:

- 20% multimodal reduction factor,
- Internal capture rates for proposed land uses;
 - 5% for the Hotel, 7% for the Quality Restaurant.
- Pass-by trip capture rate;
 - 44% for Restaurant.

The valet queueing analysis was based on the methodology outlined in ITE's Transportation and Land Development publication. The maximum length of queue anticipated at the valet drop-off/pick-up area, at the required 95% confidence level, is four (4) vehicles during the peak hour on a Saturday. Based on the valet analysis provided by the applicant's traffic engineer, the valet area will require eight (8) valet attendants for drop-off and pick-up operations to accommodate the anticipated demand and available capacity.

CONDITION

Given that the development will rely solely on valet parking and the demand is based on an estimated approximation, the developer shall provide an updated valet operations analysis 60 days following opening of the restaurant using data collected in the field.

Please feel free to contact me if you have any questions on the above.

cc: Josiel Ferrer-Diaz, P.E., Assistant Transportation Director
Firat Akcay, Transportation Analyst

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

PROPERTY: 940 Ocean Drive — Havana 57
FILE NO. PB 19-0285

IN RE: An application has been filed requesting Conditional Use Approval for a Neighborhood Impact Establishment, open-air entertainment and an Outdoor Entertainment Establishment with an occupant content in excess of 200 persons, pursuant to Chapter 118, Article IV, and Chapter 142, Article V, Division 6 of the City Code.

LEGAL DESCRIPTION: Lots 3 and 4, Block 14 of OCEAN BEACH ADDITION NO. 2, according to the plat thereof recorded in Plat Book 2, Page 56 of the public records of Miami Dade County, Florida.

MEETING DATE: September 24, 2019

CONDITIONAL USE PERMIT

The applicant, 940 Ocean Drive LLC, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment and Outdoor Entertainment Establishment pursuant to Chapter 118, Article IV, and Chapter 142, Article V 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;

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.

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 BTR. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, including modification to the hours of operation, 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 940 Ocean Drive LLC, any changes in ownership of 50% (fifty percent) or more stock ownership, or the equivalent, shall require the new owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owner and acknowledging acceptance of all conditions established herein prior to the issuance of a new Business Tax Receipt.
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.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. Prior to the issuance of any approval for uses approved herein, including but not limited to, applicable certificates of occupancy, certificates of use, and a business tax receipt, the applicant shall either obtain a certificate of appropriateness for all modifications made to the lobby, courtyard and porch, or remove all such modifications, in a manner satisfactory to historic preservation staff.
7. The Applicant agrees to the following operational conditions for the entire facility:
 - a. The CUP shall have the following maximum occupant content (including within the interior and exterior portion located on private property) for the Courtyard, interior, restaurant and ocean terrace: Less than 220 persons, or any lesser such occupant content as determined by the Fire Marshal.
 - b. The indoor restaurant and bar may remain open:
Monday through Sunday from 8:00 a.m. to 5:00 a.m. and indoor entertainment shall be allowed.
 - c. The courtyard may remain open with outdoor entertainment:
Monday through Sunday from 8:00 a.m. to 3:00 a.m.

Audio from the subject property, including low-frequency vibrations, shall not be plainly audible or felt, within the interior of the hotel rooms at 928 Ocean Drive

(Ocean Blue Hotel with the windows and doors closed) of the abutting building to the south, after 9pm.

The doors on the west side of the restaurant leading to the courtyard shall remain closed at all times except when patrons, and staff need to use this access.

- d. The restaurant operations at the front porch may remain open:

Monday through Sunday from 8:00 a.m. to 5:00 a.m. with no entertainment.

- e. At all times that entertainment is operating anywhere on the subject property, a restaurant shall be open with food service, a full menu, and operating kitchen.
- f. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times.

Subwoofers shall not be utilized or installed in the courtyard, the front porch, or anywhere on the exterior of the premises.

The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Within 60 days of this approval, the sound system in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review, to verify that it is operating as designed. A sound field test shall be performed with staff present to demonstrate that the sound system will comply with the requirements of this CUP.

No third party sound system shall be allowed; only the house sound system shall be utilized.

- i. Entertainment of any kind shall be prohibited in the outdoor porch along Ocean Drive and the sidewalk café area at all times.
- j. A maximum of one (1) television may be permitted in the courtyard subject to a Certificate of Appropriateness and historic preservation board approval, if required. The volume level of the televisions in the courtyard shall comply with the audio volume limitations stated in this order.
- k. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.
- l. Delivery trucks shall not be allowed to idle in the loading zone.
- m. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- n. Deliveries and waste collections may occur daily between 7:00 AM and 10:00 AM.

-
- o. Loading and deliveries from the alley shall at no time block the passage of any other vehicles along the alley.
 - p. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
 - q. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
 - r. An air conditioned trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that no more than one pick up of garbage per day will be necessary.
 - s. Garbage dumpster covers shall be closed at all times except when in active use.
 - t. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
 - u. Dedicated security personnel shall be present to assist with crowd control, pedestrian circulation and security to ensure that the public sidewalk is clear and that no queuing on the sidewalk is permitted. Security staff shall be present from 6pm to closing Monday – Thursday, and from Noon to closing Friday, Saturday, Sundays and holidays.
 - v. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day.
 - w. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - x. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
 - y. The host/hostess stand, podium and menu board shall be prohibited in the public right of way, and shall be placed on private property, except as may be permitted under the sidewalk café permit to be reviewed and approved by the Public Works department.
8. 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, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share

cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.

9. A Traffic Demand Management (TDM) plan shall be submitted, reviewed and approved by the Transportation Department within 90 days, prior to the issuance of a BTR for the addition of entertainment and include the following:
 - a. The applicant shall identify locations, acceptable to the Transportation Department, for bicycle racks to be installed in the public right-of-way and within the proposed development. The applicant shall furnish and install the bicycle racks in accordance with the standards outlined in the City of Miami Beach Public Works Manual.
 - b. The applicant shall coordinate with the South Florida Commuter Services in participating in the transit subsidy program.
 - c. The applicant shall provide an analysis proposing for a drop-off and pick-up area shared with the valet drop-off and pick-up spaces.
 - d. The Developer shall conduct an updated valet utilization study incorporating the rideshare demand 60 days after opening of the proposed development with entertainment. The updated analysis shall include weekday peak hour and weekend peak hour analysis. Prior to commencement of the post-opening valet/ride-share analysis, the Developers' Traffic Engineer shall coordinate with the Transportation Department.
10. 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 with entertainment.
11. 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.
12. The Planning Board shall retain the right to call the owner or operator back before the Board and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
13. 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.
14. 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.

15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
16. 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.
17. The applicant agrees and shall be required to provide access to areas subject to this CUP (not including private residences) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the terms and conditions of this CUP.
18. 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.
19. The applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.

Dated this _____ day of _____, 2019.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, AICP
Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, 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.

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

{NOTARIAL SEAL}

Approved As To Form:
Legal Department ()

Filed with the Clerk of the Planning Board on _____ ()