

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

**PROPERTY:** 2301-2399 Collins Avenue

**FILE NO.** PB 0616-0035 fka 1840

**IN RE:** The application for modifications to a previously approved Conditional Use Permit for a Neighborhood Impact Establishment pursuant to Chapter 118, Article IV of the City Code. Specifically, the applicant is requesting approval for the development of a beach club to be located seaward of the existing structure on the ground level, in addition to other modifications

**LEGAL  
DESCRIPTION:** See Exhibit "A" attached

**MEETING DATE:** September 27, 201

**MODIFIED CONDITIONAL USE PERMIT**

The applicant, SB Hotel Owner, L.P., a Delaware Limited Partnership, requested a modification to a previously issued Conditional Use Permit for a Neighborhood Impact Establishment, for a Neighborhood Impact Establishment. Specifically, the applicant is requesting approval for the development of a beach club to be located seaward of the existing structure on the ground level, in addition to other modifications., pursuant to Chapter 118, Article IV 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 RM-3 - Residential Multi Family, 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.

**IT IS THEREFORE ORDERED**, based upon the foregoing findings of fact and the staff report and analysis, which are adopted herein, including the staff recommendations, that the Conditional Use Permit be Granted subject to the following conditions to which the applicant has agreed:

1. The Planning Board shall maintain jurisdiction over this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board before the time stipulated herein. 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). This condition does not limit any other remedies available to the Board or the City with respect to this Conditional Use.
2. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division.
3. This Modified Conditional Use Permit is issued to ~~2377 Collins Resort, L.P.~~ SB Hotel Owner, L.P. Any change of control shall require review by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board, within 90 days of the change of ownership or operator, to affirm their understanding of the conditions listed herein.
4. This Conditional Use Permit includes the rooftop area (n/k/a “Rooftop Operation”) and the commercial uses within the building - two restaurants: on the southwest and northwest corners; the ~~VIP Lounge~~ lobby bar; the beach club; pools and pool decks; the ballrooms; the gym and spa; and the commercial/retail spaces are hereby approved as part of this request for Conditional Use approval.
5. ~~The relocation of the kitchen servicing the rooftop area from the ground floor to the rooftop level shall be subject to verification that the former mechanical area was previously included in the floor area calculations for the entire building, as determined by the Planning Director, and with the requirement that the floor slab of the existing mechanical room shall remain at its current height.~~ The Applicant agrees to the following operational conditions for beach club to be located seaward of the existing structure on the ground level and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:

- a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the creation and operation of beach club to be located seaward of the existing structure on the ground level with the criteria listed below:
  - i. The food and beverage areas covered in the CUP shall have a maximum occupant content of approximately 816 persons or any lesser such occupant content as determined by the Fire Marshal.
  - ii. The area shall close by 8:00 PM nightly.
  - i. The house sound system shall be installed and set in such a manner as limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application. 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. Prior to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and the City's sound study peer reviewer, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application.
  - ii. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR for the beach club area. Additionally, 60 days after the issuance of a BTR, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review demonstrating that the system's performance still complies with the design intent and recommendations of the sound system study submitted as part of this application. Additionally the sound levels will be documented at the two hotels located on the west side of Washington and once the appropriate sound level have been established, each system be locked as to prevent future mi-adjustments that might cause an impact to the neighborhood.
- b. Delivery trucks shall only be permitted to make deliveries from the designated loading spaces contained within the property.
- c. Delivery trucks shall not be allowed to idle in the loading areas.
- d. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- e. Deliveries and waste collections may occur daily, but deliveries and waste collection shall occur only after 8:00 AM.
- f. 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.

- 
- g. 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.
  - h. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
  - i. Garbage dumpster covers shall be closed at all times except when in active use.
  - j. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
  - k. 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
  - l. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, but may not exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
6. If at anytime it is determined that the property does not have sufficient required parking, the applicant shall continue to pay a fee in lieu of providing required parking as determined by staff in accordance with applicable law and any newly provided spaces.
7. Live music or recoded music played by a DJ outdoors shall be prohibited. This condition is applicable to the entirety of Applicants' property, as set forth in Item 3 of their Application dated July 17, 2007. Music played outdoors shall be background music only, played at a level that does not interfere with normal conversation. Additional conditions for sound applicable to the Rooftop Operation, as set forth in this Conditional Use Permit, are incorporated into this condition as well. Non-compliance with this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
8. Only the permanently installed, hotel management-controlled sound system shall be permitted in the Rooftop Operation, which shall be under the strict and complete control of management subject to all other terms and conditions of this Conditional Use Permit. No other sound system shall be permitted. Non-compliance with this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.

9. Entertainment, as defined in the City Code shall be prohibited in the Rooftop Operation. Non-compliance with this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
10. Any stage structure as well as smoke machines shall be prohibited in the Rooftop Operation, except that a temporary stage may be approved through the normal City of Miami Beach Special Events permitting process, except that the restriction on temporary stage structure is not applicable to the existing management-owned bridge used to bridge the pool. However, at no time during any Special Event shall the provisions of Conditions number **6, 13, 14, 16, 19 and 20** herein be contravened.
11. No temporary lighting equipment on the rooftop shall be permitted other than that associated with a City approved Film and Print Permit. However no temporary lighting equipment shall be set up during the hours of midnight and 7:00 a.m.
12. Lighting shall not shine on or into any neighboring residential units and all lights shall be appropriately shielded to minimize spillover onto neighboring residential areas. There shall be no flashing or spinning lights.
13. Fireworks shall be permitted only on the ground level east of the building.
14. Special “teen night,” “all-ages” events, “wet T-shirt,” “thong” or “bikini” contests or games shall be prohibited in all the venues proposed in this application. This shall include, but not be limited to events such as Jell-O wrestling, best-tan contests, and similar type of activities.
15. Enforcement of age restriction of 21 years and over, as provided in Section 6-5 of the City Code shall be the responsibility of the applicant. A violation of this condition shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code.
16. Street flyers and handouts shall be prohibited, including handbills from third-party promotions.
17. The Rooftop Operation shall be subject to the conditions proffered by the applicant, which are hereby enumerated:
  - a. The maximum number of guests that may be permitted shall not exceed 425 persons.
  - b. Closing time shall be 3:00 a.m. Thursday, Friday and Saturday nights, as well as for citywide special events and on national holidays, and 12:00 midnight all other nights.
  - c. The following sound conditions shall govern the Rooftop Operation:
    - (i) Compliance in all respects with the following noise studies: Cerami & Associates, Inc., dated June 9, 2006, and The Audio Bug, Inc., all as submitted by Applicant under Tab 16 of its “Hearing Notebook” filed with the Planning Board at the Board’s July 29, 2008 meeting, as amended by The Audio Bug, Inc. report dated September 17, 2008; and under second amendment by The Audio Bug, Inc. November 16, 2010; and the following ten additional sound conditions (ii – xi)

shall govern to the extent that they are not inconsistent with said studies and report:

- (ii) ~~The Audio Bug, Inc. or other sound engineer acceptable to City Staff, commencing on January 15, 2011 and quarterly thereafter shall provide to the Planning Director, Riviera Condominium Association and Roney Condominium Association a copy of a report that confirms that the sound system is in compliance with all the noise studies in 16 c. (i) in this Conditional Use Permit. The report shall also confirm that, based upon a recent inspection, the sound system has not been altered in any manner that would permit the sound system to operate at sound levels that violate the City's Noise Ordinance.~~
- (iii) ~~The applicant shall notify the Riviera Condominium Association and Roney Condominium Association when The Audio Bug, Inc., or other sound engineer acceptable to City staff, will be performing his inspections. The Condominium associations, at their discretion have the right to send board members and/ or their own sound engineers to be present and participate while Audio Bug, Inc. (or another qualified engineer acceptable to City staff) conducts inspections of the sound system.~~
- (iv) Deployment of many small, closely spaced speakers, each of which is unable to operate above the maximum sound levels specified above in 17 c (i); No speaker shall exceed 8 inches in diameter.
- (v) A distributed sound system which distributes sound uniformly within the Rooftop Operation and which operates in a manner that does not interfere with normal conversation;
- (vi) A sound system which is locked and which will not permit sound above the maximum levels specified above;
- (vii) A sound system for which only the hotel general manager will have full responsibility and to which disc jockeys and other individuals, whether employed by the hotel or not, will not have access;
- (viii) A sound system which has a centralized computer control and digital processor which will allow only limited access via password security among other security options;
- (ix) Speakers, each of which is equipped with small woofers incapable of producing appreciable levels of low frequency energy;
- (x) Speakers, each of which will be aimed in a manner which will minimize sound propagation to other properties; and
- (xi) A prohibition upon the introduction or use of any other sound-generating equipment of any kind, whether from an outside source or from within the Applicant's property.

18. Regular valet protocol, other than for unit owners of the Paradise residential Condominiums and tenants, guests or invitees shall be as follows:
- a. Cars returned via the garage exit on Collins Avenue and 23<sup>rd</sup> Street and make only right turns. However, at times of excessive demand, the valet manager may use his reasonable discretion in using the 24<sup>th</sup> Street out ramp for all customers who parked at the valet station on 24<sup>th</sup> Street in order to maintain appropriate car return times. ~~This valet station, Valet Station #4, shall be located at the westernmost corner of 24<sup>th</sup> Street and the porte cochere and no awning shall be permitted on this station.~~
  - b. All of the valet spots on Valet Station #4 will be for transient valet use only; no parking shall be permitted on this all valet station ramps.
  - c. There shall not be any drop off/pick up at valet stations ~~3 and 4~~, on 24<sup>th</sup> Street for customers of the commercial uses past the hours of 11:00 p.m. on Sunday through Thursday and 12:00 a.m. on Friday and Saturday.
  - d. Unit owners of Paradise residential Condominiums and tenants, guests or invitees shall have full access at all times to the 24<sup>th</sup> Street porte cochere for drop-off/pick up.
  - e. The Valet Station No. 2 located on Collins Avenue shall have signs posted indicating that this is the location for drop-off/pick-up area for the Rooftop bar and restaurants.
  - f. ~~Senior hotel manager and food and beverage manager shall meet on a monthly basis with the Boards of 2401 Collins Avenue (Riviera Condominium) and the Roney Palace Condominium to maintain an open dialogue to air concerns, answer questions and respond to issues that may come up.~~
19. Loading bays located on 23<sup>rd</sup> and 24<sup>th</sup> Streets shall be used only in accordance with the following conditions:
- a. 23<sup>rd</sup> Street – The applicant shall continue to use this loading bay for the disposal of garbage. The existing 34 yard compactor shall remain in use at this location. ~~The applicant shall annually submit to the Planning Director documentation that Applicant has informed its tenants where to dispose of the garbage. This shall insure that no more than approximately sixty percent (60%) of the building's total garbage disposal shall be through 23<sup>rd</sup> Street. Garbage shall be picked up no more than four (4) times per week on weekdays. Best efforts shall be used so the compactor is only picked up between 10 a.m. and 5 p.m., and shall not be picked up on weekends or federal holidays. If, in the future, the applicant can clearly demonstrate the need to increase garbage pickup to five (5) times per week, that request can be brought to the Planning Director upon notice to the Riviera and Roney for consideration and approval.~~
  - b. 24<sup>th</sup> Street – The applicant shall install the awning for the loading bay at 24<sup>th</sup> Street, as depicted on the design dated November 22, 2010, entitled “24<sup>th</sup> Street Loading Bay Plan” within 90 days of this Modified Conditional Use Permit being rendered Note: this awning has

~~been constructed and shall remain in place.~~ The applicant shall maintain a retractable gate, approved by staff, that fully encloses the loading bay fronting 24<sup>th</sup> Street, which shall remain closed at all times when the loading bay is not in use, i.e. garbage pickup or deliveries. ~~The Applicant within 30 days of the order being rendered shall apply to the Board of Adjustment for a variance to permit the height of the gates to be 8’.~~ After the awning and gate are installed, the applicant shall install a 34 yard trash compactor within the enclosed and covered bay. ~~The applicant shall annually submit to the Planning Director documentation that Applicant has informed its tenants where to dispose of the garbage. This shall insure that no more than approximately forty percent (40%) of the building’s total garbage disposal shall be through 24<sup>th</sup> Street. Garbage shall be picked up no more than two (2) times per week on weekdays.~~ Best efforts shall be used so the compactor is only picked up between 10 a.m. and 5 p.m. and shall not be picked up on weekends or federal holidays. ~~If, in the future, the applicant can clearly demonstrate the need to increase garbage pickup to three (3) times per week, that request can be brought to the Planning Director upon notice to the Riviera and Roney for consideration and approval.~~

- c. If requested by the City, including the Planning Board, the Applicant shall provide data illustrating the utilization of the loading bays for garbage as the building becomes fully operational. Repeated violation of the garbage pickup times and gate closure rules as provided above shall result in reconsideration of this issue by the Board. The Applicant shall put all tenants and other garbage producing entities on notice of these conditions, ~~with a copy of such notice submitted to the Planning Department.~~
  - d. Regarding the loading of trucks and vehicles at the loading docks on the 23<sup>rd</sup> and 24<sup>th</sup> Streets, the Applicant shall ~~propose a plan for the distribution to the Planning Director, the Roney and the Riviera for their approval within 120 days of rendition of this approval. In the event an agreement is not reached between the Roney, Riviera, Planning Director and Applicant the Planning Director shall bring the issue and proposed plan before the Planning Board for review and approval. The Applicant shall notify each of its tenants and operators that all vendors shall only be allowed to unload at the designated loading docks, with a copy of such notice submitted to the Planning Director for the file. The plan shall be incorporated by reference into and enforced as part of this Modified Conditional Use Permit.~~
- 20. 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 loud, excessive, unnecessary, or unusual noise.
  - 21. A violation of Section 46-152, Code of the City of Miami Beach, Florida (a/k/a “noise ordinance”), as amended and as these sections may in the future be renumbered, 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.
  - 22. Fireworks shall be permitted on July 4 and New Years Eve without notice to the Roney or Riviera if approved by appropriate city officials in advance and in writing. At all other times notice shall be given by the Applicant to both the Riviera and Roney 30 days in advance of the proposed fireworks in order to file any objections. However, notice is not required if written permission is granted by the Association Boards of each Condominium. Compliance with all other requirements of applicable law is required for any fireworks display.



23. The Applicant shall prepare and submit to the Planning Department staff, ~~the Riviera and the Roney~~ a traffic circulation analysis prepared by a traffic engineer within 120 days from the ~~rendition of the order~~ issuance of the Business Tax Receipt. If the traffic engineer deems it necessary he may supply a revised traffic circulation plan. ~~The Roney and Riviera may also submit a traffic circulation analysis for consideration by the Planning Director.~~ Any traffic improvements recommended by the analysis shall be implemented after approval by the Planning Director, ~~Roney, Riviera and Applicant.~~ Such agreement on such improvements shall be incorporated by reference and enforced as part of this Modified Conditional Use Permit. If an agreement is not reached between the Director, Applicant, Riviera and Roney, the Director shall bring the analysis and/or plan issue before the Planning Board to make a determination.
24. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter on Collins Avenue and 24<sup>th</sup> Street, in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times during the hours of operation.
25. Non-compliance with any of the conditions specified herein shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Section 118-194 of the City Code, including but not limited to revocation of this Permit.
26. The approval of this Conditional Use Permit shall be based upon the Operational Plan submitted as part of this application for Neighborhood Impact Establishment and other conditions and restrictions as articulated herein.
27. 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.
28. Mitigation measures to improve level of service standards and traffic conditions, especially on 24th Street shall be the sole responsibility of the applicant. The applicant shall coordinate these mitigation measures with the City's Transportation ~~Manager~~ Department, including but not limited to traffic light timing, left-hand turn signal for westbound traffic, and similar.
29. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant ~~and returned to the Planning Department.~~ No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
30. 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.

