

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Planning Board

TO: Chairperson and Members  
Planning Board

DATE: November 17, 2020

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB20-0390, a.k.a. PB17-0171. 1052 Ocean Drive – Palace Bar & Restaurant.**

An application has been filed requesting modifications to a previously issued conditional use permit for a Neighborhood Impact Establishment 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 of the City Code. Specifically, the applicant is requesting to expand the operations to both the roof-top pool deck and neighboring building to the north.

#### **RECOMMENDATION**

Approval with conditions

#### **BACKGROUND (1052 Ocean Drive) – a.k.a 1036, 1042, Ocean Drive**

*November 13, 2001: A Certificate of Appropriateness to partially demolish, alter and modify three (3) existing buildings and to construct a new four (4) story building at 1042 Ocean Drive was approved by the HPB. (HPB File No. 1253).*

It should be noted that the building permit for the construction of the 4-story building was approved under the address 1052 Ocean Drive (B0303286). There are no permit records for 1042 Ocean Drive.

*July 8, 2003:* Modifications to the original Certificate of Appropriateness were approved by the Historic Preservation Board including the construction of a rooftop pool at 1042 Ocean drive, and including operational conditions imposed on the rooftop pool area.

February 27, 2018 The Planning Board approved a conditional use permit for a Neighborhood Impact Establishment and Outdoor Entertainment.

#### **ZONING / SITE DATA**

Legal Description:

Lot 2 and 3, Block 15, "Ocean Beach Addition No.2", according to the plat thereof, as recorded in Plat Book 2 at 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 uses  
   West:              Commercial and parking building  
   South:             Hotel and Commercial uses  
   East:              Lummus Park  
   (See Zoning/Site map at the end of the report)

### **THE PROJECT**

The applicant has submitted plans entitled “The Palace Bar & Restaurant” as prepared MCG Architecture + Planning, dated September 21, 2020. The applicant is seeking a modification to the previously approved conditional use permit in order to expand the existing operation, both to the roof-top pool deck of the same building and to the neighboring ground floor of the building to the north, including the area in between the buildings.

The expansion on the rooftop is proposed to have a seat count of 49 outdoor seats, and an occupant content of 112 persons. The expansion on the ground floor to the building to the north is proposed to have 121 seats, an interior seat count of 40, outdoor seat count of 81 (on private property), an occupant content of 129 persons, and a sidewalk café with 76 seats.

The existing operation includes approval for 173 seats; an interior seat count of 101, and outdoor seat count of 72 (private property), with an occupant load of 199 persons. A sidewalk café with 30 seats is also part of the food and beverage service.

As proposed, the entertainment component for the rooftop will consist of outdoor entertainments including a DJ and drag shows. The proposed ground floor expansion to the north building will consist of outdoor and indoor entertainment, similar to the operation previously approved at the current location, with both a DJ and live entertainment.

The previously approved entertainment component consists of both a DJ and live entertainment that takes place both indoors and outdoors on private property. The total seats with the proposed expansion will increase to 343 (on private property) with an occupancy load of approximately 440 persons.

### **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.

- 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 would 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.**

**Partially Consistent** – There is no parking on-site. Parking for patrons of the venue will be by self-parking, or patrons can also use valet ramps nearby. When the 4-story building was permitted in 2003 a one-time parking impact fee would have been required for the new construction. The space where the venue is currently located also has a Parking Impact Fee account (PIF#422). Based upon Building Permit records for the build out of a restaurant(B0600549), a one-time parking impact fee was paid for 144 interior seats (36 spaces), and a yearly fee for 60 outdoor seats (15 spaces) is ongoing. The increase in seats for the rooftop will require an additional parking impact fee.

Any payment due on the existing parking impact fee account will be required to be paid prior to the issuance of any associated permits or a BTR for the use of the rooftop.

**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. While there are other conditional uses and large venues in the area, adverse impacts are not expected from the geographic concentration of such uses, if the impacts are properly controlled.

**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. Also, see analysis in this report.

- (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. Parking for the patrons of the venue will be by self-parking and valet parking is currently available for the building with the valet station located 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.**

**Partially Consistent** – The operational plan indicates that there will be staff located on the sidewalk when the performances are taking place, however it is not clear how the restaurant is going to control large groups of people waiting to get entry without queuing or blocking the sidewalk, see analysis in this report. Staff is recommending that any queuing take place on private property.

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

**Consistent** – The operational plan and the Palace Individual Security plan mention security procedures. However, it is not clear how the security is going to be controlled when the general public is going or leaving the rooftop and how are they going to prevent the general public accessing the private floors for the condo hotel below since they will be sharing the same elevators and staircase. Patron age restrictions will be enforced by applicant's staff. See analysis in this report.

- (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 transportation demand management (TDM) plan was required and performed by by Traf Tech Engineering, Inc. See Transportation Department memo for additional information.

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

**Consistent-** The operations plan contains a "Deliveries and Sanitation Plan" section that explains that the refuse collection takes place from the existing enclosed spaces located on the west end of the buildings and it will take place daily from 7:00 a.m. to 12:00 p.m.

- (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 analysis.

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

**Consistent-** The proposed venue is surrounded by other hotels and commercial uses, and 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.**

**Partially Consistent-** There are multiple NIE's and Outdoor Entertainment Establishments within blocks of this property. There is a list of NIE's, and Outdoor Entertainment Establishments approved by the Board in this area provided in the analysis. 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**

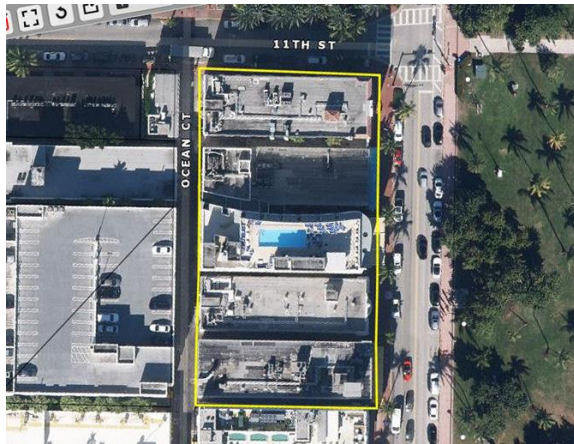
#### **Property address clarification – HPB certificate of appropriateness:**

Per the property appraiser and plat book, this property is composed of 5 buildings and 5 lots. 1026, 1036, 1042, 1052 and 1060 Ocean Drive are the corresponding addresses (lots 1 to 5 on the Plat Book). When the 4-story building was initially approved by the Historic Preservation Board (HPB) in 2001, with modifications approved in 2003 to include the rooftop pool, this new building was referred to as 1042 Ocean Drive. However, it was permitted under the address of 1052 Ocean Drive, which also includes the existing 2-story building immediately to the north (the former La Baguette operation). This clarification is important as the certificate of appropriateness for the new building lists numerous conditions for the rooftop pool at 1042 Ocean Drive with specific outdoor entertainment restrictions for the swimming and roof top area where the Palace is proposing to expand.

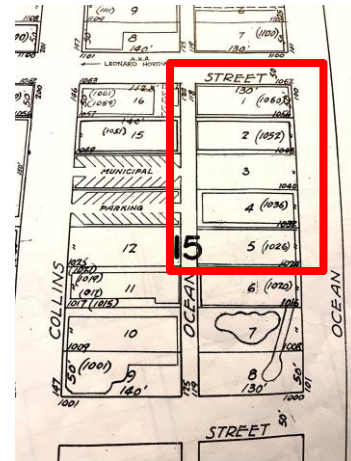
Below are the conditions placed on the rooftop pool by the HPB, all of which are currently active and enforceable. In order to modify or delete these conditions, the applicant will need to file a separate application to the HPB prior to the issuance of a BTR for an operation that is contrary to these conditions:

*July 8, 2003 - HPB File No. 1253 Conditions 1(d), (e) and (f):*

- d. There shall be no outdoor entertainment establishment at the rooftop pool area ("Rooftop Pool") at the building to be located at 1042 Ocean Drive. In addition, the owner shall not seek any special events permits for outdoor entertainment at the rooftop pool.*
- e. Any outdoor speakers installed at the Rooftop Pool, or portable speakers used at the Rooftop Pool, will only be permitted to emit ambient background music that will not interfere with normal conversation.*
- f. The outdoor bar and Rooftop Pool shall only be utilized by residents, room paying hotel guests, and invitees of the residents and invitees of the room paying hotel guests.*



Property appraiser



Plat Book

### Project Description and Operations

The applicant, Palace Bar LLC., is currently the tenant of the space located on the ground floor (formerly occupied by the restaurant Amarillo). The Palace obtained a conditional use approval on February 27, 2018 for a bar and restaurant with indoor and outdoor entertainment, with an interior restaurant seat count of 101, outdoor seat count of 72 (on private property) occupant load of 199 persons, and a sidewalk café with 30 seats.

The expansion on the rooftop is proposed to have 49 outdoor seats and an occupant content of 112. The expansion on the ground floor to the neighboring building to the north is proposed to have 121 seats; 40 interior and 81 exterior (on private property), with an occupant content of 129 persons, and a sidewalk café with 76 seats. (The sidewalk café is subject to Public Works approval and is only shown on plans as a reference).

As proposed, the total occupancy will be increased from 199 to 440 persons and the entire venue will be classified as a Neighborhood Impact Establishment. As previously approved, the requested hours of operation are as follows:

#### Indoor areas:

Monday through Sunday: 8:00 a.m. to 5:00 a.m.

Indoor entertainment including DJ and live shows as specified in the application:

Monday through Sunday: 11:00 a.m. to 3:00 a.m.

Outdoor areas on private property:

Monday through Sunday: 8:00 a.m. to 2:00 a.m.

Rooftop area:

Monday through Sunday: 8:00 a.m. to 12:00 a.m.

All Outdoor areas outdoor entertainment and performance operations on private property:

Monday through Friday: 11:00 a.m. to 2:00 p.m.

6:00 p.m. to 11:30 p.m.

Saturday and Sunday: 11:00 a.m. to 11:30 p.m.

National holidays that do not fall on Saturday or Sunday and other events including White Party, Winter Party and Gay Pride: 11:00 a.m. to 11:30 p.m.

### Valet Parking and Access

Patrons arriving as passengers in automobiles or for valet drop off will use the valet station located

on Ocean Drive. Access to the property for pedestrians is from Ocean Drive through a main entrance located on the ground floor.

### **Deliveries and Sanitation**

The refuse collection takes place from the existing enclosed spaces located on the west end of the buildings and it will occur daily from 7:00 a.m. to 10:00 a.m. The operation plan indicates that the restaurant will utilize the existing loading dock for delivery and receiving, located on Ocean Court, from 7:00 a.m. to 10:00 a.m. In addition, there is a loading zone that has been authorized by the Parking Department on 11<sup>th</sup> Street.

### **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 entertainment component will consist of a DJ, entertainment and live outdoor entertainment with outdoor speakers. As required by the City Code, no speakers will be located within 20 feet of the property line along Ocean Drive.

The sound study conclusion mentions that the entertainment operations presented at the Palace will comply with the requirements of the City Code. Sound output can be controlled by the management, and outdoor and indoor sound are controlled independently.

For the expansion to the rooftop, the sound study suggests that outdoor entertainment may be provided on the Palace Rooftop with little sound level impact to immediately adjacent properties and no impact to the nearest residential properties. It also states that the Pelican Garage rooftop would be an acceptable point of evaluation for Miami Beach code enforcement officials to determine whether or not sound generated at the Palace is “plainly audible” at a distance of 100 ft.

For the expansion on the ground floor level to the adjacent neighboring building to the north the study states that no sound level impact would be anticipated on this property during entertainment on Palace’s Rooftop—so long as the generated sound levels are similar to those measured by ED+A both at the Palace and on top of Pelican Garage. In addition, outdoor entertainment sound levels generated by Palace’s audio system on the ground floor will remain as is, no changes have been proposed that would increase sound levels at the venue, nor in public areas including Code Enforcement’s designated observation location on Ocean Drive’s east sidewalk.

Arpeggio concludes “that the sound study presents useful data and draws some reasonable conclusions regarding impact. However, the report is silent on potential impact on guestrooms at the Congress Hotel as well as at the Miami Beach International Hostel, both of which are closer to the Palace rooftop than Council Towers. If noise at these properties is deemed a concern, such should be addressed in the study. Additionally, we recommend that the potential for lower ambient sound levels at higher terraces at Council Towers, and the resulting potential for audibility of music from the Palace rooftop, be addressed more fully. In any event, we strongly agree with the report’s suggestion to perform additional sound measurements after the sound system is installed to establish acceptable levels on the rooftop to adhere to the Miami Beach Code of Ordinances. If possible, it would also be advisable to confirm that set levels result in no impacts on the nearest residential balconies (and hotel and hostel spaces, as well, if they are deemed a concern).”

The following are the approved NIE’s and Outdoor Entertainment Establishments on Ocean Drive:



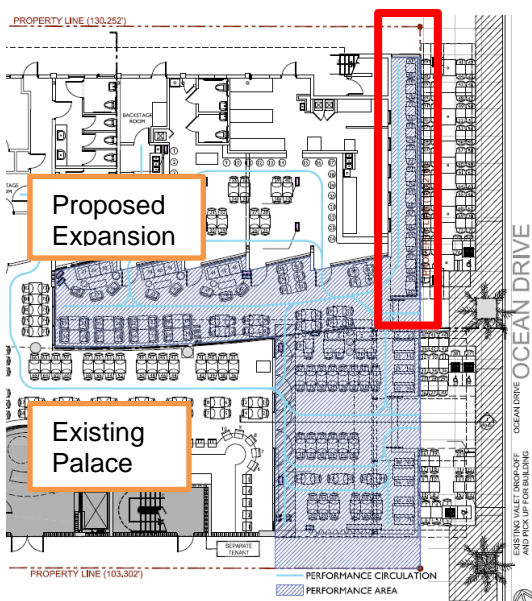
| Address          | Bussiness     | CUP     | PB File No. | Date approved |
|------------------|---------------|---------|-------------|---------------|
| 900 Ocean Drive  | Mango's       | NIE     | 1387        | 03/29/2005    |
| 928 Ocean Drive  | Voodoo Lounge | NIE     | PB18-0252   | 04/30/2019    |
| 940 Ocean Drive  | Havana 57     | NIE+OEE | PB19-0285   | 09/29/2019    |
| 960 Ocean Drive  | Ocean Ten     | NIE     | 1467        | 09/24/2002    |
| 1020 Ocean Drive | Cleverlander  | NIE     | 1456        | 12/14/2010    |
| 1060 Ocean Drive | I lov305      | NIE     | PB17-0158   | 01/23/2018    |
| 1236 Ocean Drive | il Giardino   | OEE     | 1361        | 12/19/2017    |
| 1300 Ocean Drive | Café Cardozo  | OEE     | 1653        | 03/23/2004    |

Staff has come concerns with the potential impact from the outdoor entertainment proposed at the roof top to the neighboring hotels and residential buildings, including the residents and hotel guests within the same property. In addition, the previously approved certificate of appropriateness includes very specific conditions on outdoor entertainment for the roof top that must be amended. For these reasons, staff is proposing to limit the hours of operation, access to the general public and limitations on the sound level for the music and entertainment for this area.

To minimize the impact on Ocean Drive with the additional outdoor entertainment and the potential impact on pedestrian flow on the sidewalk, staff is recommending limiting the area for the outdoor entertainment that is proposed on the ground floor to the neighboring building on the north side, see tables bellow and images below.

| LOCATION  | APPROVED HOURS OF OPERATION | APPROVED ENTERTAINMENT HOURS OF OPERATION  | STAFF RECOMMENDATION |
|---|-----------------------------|--|----------------------|
| <b>AREA 1</b><br>4 Story bldg with rooftop pool<br>(Existing Palace)<br>Indoor area )                       | Daily<br>8:00 am to 5:00 am | DJ and live shows as noted.<br>Daily: 11:00 am to 3:00 am  | No changes           |
| <b>AREA 1A</b><br>4 story bldg with rooftop pool.<br>(Existing Palace)<br>Outdoor areas on private property | Daily<br>8:00 am to 2:00 am | DJ and live shows as noted.<br>M - F: 11:00 am to 2:00 pm<br>6:00 pm to 11:30 pm<br>S - S: 11:30 am to 11:30 pm<br><br>Exeptions: National holidays that do not fall on Saturday or Sunday and other events including White Party, Winter Party and Gay Pride:<br>11:00 am to 11:30 pm | No changes           |

| LOCATION   | PROPOSED HOURS OF OPERATION  | PROPOSED ENTERTAINMENT & HOURS OF OPERATION  | STAFF RECOMMENDATION   |
|--|------------------------------|--|--|
| <b>AREA 2</b><br>Proposed expansion on the ground floor indoor area                      | Daily<br>8:00 am to 5:00 am  | DJ and live shows as noted.<br>Daily: 11:00 am to 3:00 am  | No changes   |
| <b>AREA 3</b><br>Proposed expansion on the ground floor outdoor areas (private property) | Daily<br>8:00 am to 2:00 am  | DJ and live shows as noted.<br>M - F: 11:00 am to 2:00 pm<br>6:00 pm to 11:30 pm<br>S - S: 11:30 am to 11:30 pm<br><br>Exeptions: National holidays that do not fall on Saturday or Sunday and other events including White Party, Winter Party and Gay Pride:<br>11:00 am to 11:30 pm | Entertainment shall only be permitted in the terrace that is located between the two buildings. Entertainment, including but not limited to all performances shall be prohibited in the small terrace that faces Ocean Drive at 1052 Ocean Drive (previous La Baguette restaurant)   |
| <b>Proposed expansion on the rooftop</b>   | Daily<br>8:00 am to 12:00 am | Same as above  | Hours of operation for the general public, music and entertainment is limited to:<br>M to S: 8:00 am to 9:00 pm Only<br>Hotel guests and condo residents shall use the rooftop after 9:00 pm. Sound level for entertainment and background music shall be limited to be played at a volume that does not interfere with normal conversation. |



Per applicant's performance plan (Page A 1.02). the hatched area is where the outdoor entertainment/performance is proposed.

To prevent any potential impact on pedestrian safety and flow on the sidewalk, staff recommends that the small terrace with tables facing Ocean Drive be prohibited from outdoor entertainment and performance uses.

## Code Compliance

There are no active Code Compliance Cases related to noise.

## Other Issues



The railing facing Ocean Drive where La Baguette was located (left image) was removed without a certificate of appropriateness and will be required to be re-installed, or an after the fact certificate of appropriateness application to the Historic Preservation Board will be required. The canopy/shade fabric shown (right image) between the two buildings also requires a Certificate of Appropriateness.

## Summary

This Conditional Use Permit application is for outdoor entertainment only on private property. All other outdoor entertainment and security/crowd control operations on the sidewalk and the street (e.g. barricades blocking off-street parking) is not under the purview of the Planning Board.

As indicated above, staff is concerned with the potential issues related to sound from the interior and exterior of the venue as noted in the review prepared by Arpeggio Consulting, Inc. However, there are measures that can be further taken to mitigate sound and other negative impacts, including the following:

- For the rooftop, limiting the hours of operation (M-S: 8:00 a.m. to 9:00 p.m.), access to the general public and the sound level for the music and entertainment for this area.
- For the ground floor expansion and operations, limiting the area for the outdoor entertainment that is proposed to only occur on the terrace between the two buildings.

All these measurements should prevent any negative impact to the surrounding neighborhood, residents and guests of this building. Additionally they will enhance and improve pedestrian safety on Ocean Drive.

## **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the application for a modification to the existing Conditional Use Permit be approved, subject to the conditions enumerated in the attached draft order, which address the inconsistencies noted in the aforementioned Conditional Use review criteria.



### ZONING/SITE PLAN

