

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: March 23, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB File No. 1456 - 1020 Ocean Drive – Cleavelander - Progress Report.**

BACKGROUND

May 23, 2000:

The Planning Board approved a Conditional Use permit for the operation of a Neighborhood Impact Establishment in excess of three hundred (300) persons.

May 8, 2007:

The Historic Preservation Board approved substantial revisions to the project including expanded demolition for which permits were issued.

November 25, 2008:

The Planning Board approved a Modified Conditional Use Permit (MCUP), to allow the addition/inclusion of the 4th floor terrace and 6th floor rooftop areas to the overall NIE venue with accessory lounge uses and a total of 59 hotel units; 49 in the existing building and 10 in the new building. That construction was completed and the added venues and units are fully operational.

December 14, 2010:

The Planning Board approved a Modified Conditional Use Permit (MCUP). Specifically, the applicant requested the approval to allow the installation of a small platform over the western portion of its existing swimming pool.

January 22, 2019:

The applicant appeared before The Planning Board to affirm their understanding of the conditions listed in the previously approved Modified Conditional Use Permit (MCUP) as required for a change of ownership. No action was required or taken by the Board.

PROGRESS REPORT

On February 23, 2021 the City of Miami Beach Planning Board requested a progress report regarding the subject CUP. Accordingly, the applicant was requested to appear at the March 23rd, 2021 Planning Board hearing for a verbal progress report.

STAFF ANALYSIS

There are a few open violations as of the writing of this progress report, and a number of warnings and citations have been issued to the property over the last year. Below is a list of warnings and violations that have been issued over the last year. Zoning violations are highlighted in blue and noise and operations violations of the City Code are highlighted in yellow.

Case Number	Main Address	Case Type	Assigned To	Case Status	Open Date	Closed Date
ZV2021-03237	1020 OCEAN DR	Zoning Violation	Jefferson,Mounia	Closed	02/18/2021	02/26/2021
CC2021-09987	1020 OCEAN DR	City Code Violation	Rodriguez,Gaspar	Notice of Violation Written Warning	01/02/2021	
NC2021-17736	1020 OCEAN DR	Noise Complaint	Rodriguez,Gaspar	Notice	01/02/2021	
NC2020-17267	1020 OCEAN DR	Noise Complaint	Goehring,Joshua	No Violation Issued	12/04/2020	12/04/2020
CC2020-09836	1020 OCEAN DR	City Code Violation	Santana,Rene	Notice of Violation – Certified Mail	11/29/2020	
CC2020-09778	1020 OCEAN DR	City Code Violation	Negron,Luis	Fine Paid	11/08/2020	01/03/2021
NC2020-16869	1020 OCEAN DR	Noise Complaint	Goehring,Joshua	No Violation Issued	10/31/2020	10/31/2020

Below are descriptions of the violations that were issued, as recorded in the City's code case management system:

- ZV2021-03237: *Description: Violation of Section 138-3 (1): Erecting, constructing, posting, painting, altering, maintaining or relocating a sign without first obtaining a permit from the Building Official.
 Reference: Signs on barricades at the property without a permit.*
- CC2021-09987: *Description: Section 26-31, 26-33 . Whenever the city manager declares that a state of emergency exists, pursuant to section 26-31 he may order and promulgate emergency measures.
 Ref: Playing music above ambient level.2nd Offense.*
- NC2021-17736: *Description: LOUD MUSIC. Section 46-152: Inspection of the above premises this date has revealed that you are in violation of Section 46-152 of the Code of the City of Miami Beach by making, continuing, or causing to be made any unreasonably loud, excessive, unnecessary or unusual noise.
 Ref: Playing music above ambient level during Declaration of Emergency Order. Written Warning .Arrival: 4:37 PM. Departure: 7:10 PM. BWC Worn by issuing officer. G. Rodriguez 711*
- CC2020-09836: *Description: Section 26-31, 26-33 . Whenever the city manager declares that a state of emergency exists, pursuant to section 26-31 he may order and promulgate emergency measures.
 Ref: Business was in operation passed the 12 AM Curfew. Abundant amount of individuals on the premises passed the curfew.
 1st Offense. CCO R. Santana/705 ACCA A. Perez/736
 BWC Used.*

Please note that if and when a modification/revocation hearing is set, only adjudicated violations can serve as evidence of Code violations.

STAFF RECOMMENDATION

Staff recommends that the Board discuss the progress report. No action is required at this time by the Board. However staff would note that as per Condition 18 of the CUP, the Planning Board shall retain the right to call the operators back before the Board and modify the hours of operation should there be issuance of written warning and/or notices of violation about loud, excessive, unnecessary, or unusual late night noise.

MIAMI BEACH

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

PLANNING DEPARTMENT
Tel: 305-673-7550 Fax: 305-673-7559

March 3, 2021

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

2K South Beach Hotel, LLC, - Clevelander
1020 Ocean Drive
Miami Beach, FL 33139

Re: PROGRESS REPORT: PB1456 – 1020 Ocean Drive

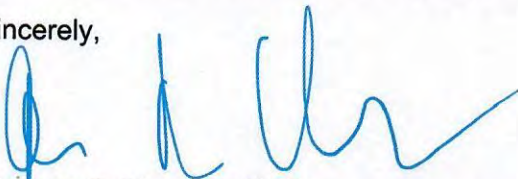
Dear Sir/Madam:

A modified Conditional Use Permit (CUP) was issued to 2K South Beach Hotel, LLC on December 14, 2010. On February 23, 2021 the City of Miami Beach Planning Board requested a progress report regarding the subject CUP. Accordingly, you are requested to appear at the March 23rd, 2021 Planning Board hearing for a verbal progress report.

Please be advised that at the time of the progress report, in accordance with the provisions of City Code Section 118-194(3), the Planning Board may consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings. Should such a public hearing be set, it would be placed on the next available meeting of the Board. Based on substantial competent evidence, the board may consider revoking the approval, modifying the conditions thereof, or imposing additional or supplemental conditions.

If you have any questions, please do not hesitate to contact Mr. Alejandro Garavito at agaravito@miamibeachfl.gov or at (305) 673-7000 ext. 26164.

Sincerely,



Thomas R. Mooney, AICP
Planning Director

TRM\AG

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

PROPERTY: 1020 Ocean Drive

FILE NO. 1456

IN RE: The Application by 2K South Beach Hotel, LLC, requesting Modification to an existing Conditional Use approval to allow the installation of a small ~~cover~~ platform over the western portion of its existing swimming pool.

LEGAL DESCRIPTION: Lots 6, 7, and 8 Block 15 of Ocean Beach Florida addition no. 2 according to the plat thereof, as recorded in plat book 2, page 56, of the public records of Miami Dade County, Florida.

MEETING DATE: December 14, 2010

MODIFIED CONDITIONAL USE PERMIT

The applicant, 2K South Beach Hotel, LLC, filed an application with the Planning Director for a Modification to an existing Conditional Use approval to allow the installation of a small cover over the western portion of its existing swimming pool.

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 recommendation, that a Conditional Use Permit as

requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. ~~The applicant shall provide a progress report to the Board within 90 days of the time a Modified Business Tax Receipt is issued.~~ The Board reserves the right to modify or cancel this Modified Conditional Use Permit at the time of the progress report in a non-substantive manner, to impose additional conditions to address possible noise and security problems, and to determine the timing and need for further progress reports. This Modified Conditional Use Permit is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Modified Conditional Use Permit is issued to 2K South Beach Hotel, LLC, as operator of this Neighborhood Impact Establishment for the rooftop lounges on the fourth floor of the new addition and the sixth floor of the historic Cleavelander Hotel allowing for the installation of the proposed pool platform measuring approximately 370 feet as shown in the amended plan submitted as a supplement on November 18, 2010. Subsequent owners and operators shall be required to appear before the Board, to affirm their understanding of the conditions listed herein.
3. The conditions of approval for this Conditional Use Permit are binding on this applicant, the property owner, operator, and all successors in interest and assigns.
4. The project shall comply with all the pertinent codes for the construction of the proposed pool platform.
5. ~~All applicable fees in lieu of providing~~ The applicant shall continue to pay the required parking impact fee in lieu of providing the required parking for the 4th floor terrace venue on an annual basis as determined by Planning Department staff. ~~which are currently due and calculated pursuant to the City Code shall be paid prior to obtaining a Business Tax Receipt.~~
6. ~~All applicable fees in lieu of providing in lieu of providing the required parking for the 4th floor terrace venue which are currently due and calculated pursuant to the City Code shall be paid prior to obtaining a Business Tax Receipt.~~
7. The hours of operation shall be as proposed by the applicant, 9:00 AM through 5:00 AM, 7 days a week for both the 4th floor terrace venue and the 6th floor rooftop venue.
8. The applicant shall be responsible for maintaining the frontage and exterior of the building and the property in excellent condition, including keeping the sidewalk, curb and gutter in front and side of the building in a clean and sanitary condition, free of all refuse, at all times. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.
9. The clear pedestrian path on the sidewalk in front of the establishment shall be no less than what is required by the City's Sidewalk Cafe Ordinance. In the event that there is queuing of patrons in this area, the operator shall be required to remove tables and chairs from the sidewalk area to allow the free flow of pedestrian traffic.
10. Special "teen night" promotions and "all-ages" events shall be prohibited.

11. The 4th floor terrace of the new addition and 6th floor rooftop of the historic Clevelander shall play ambient background music only assuring no interference with normal conversation. All sound control systems shall be accessible only to management. The sound systems shall be installed and operated as per specifications in the recommendations by The Audio Bug, Inc. Sound Impact Study Report dated October 20, 2008 and all supporting materials submitted in this application. ~~When the sound system is completely installed, but before operations begin, it shall be tested under the supervision of Mr. Donald J. Washburn, president of The Audio Bug, Inc., before the Business Tax Receipt is issued, to ensure that all aspects of the system's performance comply with the report. Operations shall not begin until staff has received and approved in writing a final written report by Mr. Washburn which states that as tested, the system complies with the aforementioned report and supporting materials.~~
12. ~~On Friday and Saturday nights and all day Saturdays and Sundays and holidays, the valet operator shall utilize Ocean Drive as pick-up and 10th Street as drop-off provided hotel guests would be able to utilize Ocean Drive for drop-off and pick-up at all times.~~
13. ~~The applicant shall coordinate with the City's Parking Department for the on-street valet drop-off/pick-up spaces and to determine appropriate signage for the proposed valet service on both Ocean Drive and 10th Street.~~
14. All conditions as incorporated in the Joint Design Review/Historic Preservation Board Consolidated Final Order for File #12105J, dated March 14, 2000 shall be hereby adopted and incorporated into this order by reference.
15. The applicant shall satisfy outstanding liens, violations and past due City bills, if any, to the satisfaction of the City prior to the ~~issuance of a Certificate of Use or Business Tax Receipt, whichever occurs first.~~ approval of a building permit for the pool platform.
16. All deliveries and trash removal shall be undertaken from the alley to the west between the Clevelander and Essex Hotel, as described by the applicant. ~~The applicant shall submit to staff documents that verify the contract with the waste removal company prior to the issuance of a Business Tax Receipt.~~
17. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
18. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be issuance of written warning and/or notices of violation about loud, excessive, unnecessary, or unusual late night noise.
19. The receipt of a written warning pursuant to section 46-158, Code of the City of Miami Beach, Florida, or a notice of 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.
20. This Modified Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a Certificate of Use or Business Tax Receipt, whichever occurs first.

- 21. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
- 22. The establishment and operation of this Modified 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 114-7 of the 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 Modified Conditional Use.
- 23. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code

Dated this 16th day of March, 2011.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]
Richard G. Lorber, Acting Planning Director, AICP,
LEED AP
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 16th day of March, 2011, by Richard G. Lorber, Acting Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[Signature]

[NOTARIAL SEAL]



TERESA MARIA
MY COMMISSION # DD 928148
EXPIRES: December 2, 2013
Bonded thru Budget Notary Services

Notary: [Signature]
Print Name: TERESA MARIA
Notary Public, State of Florida
My Commission Expires: 12-2-2013
Commission Number: DD 928148

Approved As To Form:
Legal Department (Gheld 2-24-11)

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