



CFN 2010R0079473  
 DR Bk 27172 Pgs 3579 - 35861 (8pgs)  
 RECORDED 02/04/2010 14:16:38  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA

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

**PROPERTY:** 2201 Collins Avenue  
 The W Condo/Hotel

**FILE NO.** 1922

**IN RE:** The Application by 2201 Collins Fee, LLC, requesting Conditional Use approval for a Neighborhood Impact Establishment at the W Condo/Hotel consisting of 2 restaurants, a bar/lounge, a night club, and a pool deck venue.

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

**MEETING DATE:** May 26, 2009

**MODIFIED CONDITIONAL USE PERMIT**

The applicant, 2201 Collins Fee, LLC filed an application with the Planning Director for Conditional Use approval to operate a Neighborhood Impact Establishment consisting of 2 restaurants, a bar/lounge, a night club, and a pool deck venue. 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:

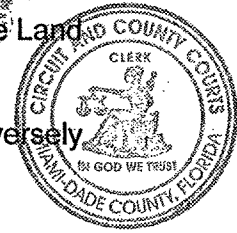
That the property in question is located in the RM-3, Residential High Intensity Zoning District;

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 when the following conditions are in compliance;

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 when the conditions below are compliant;



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 the modification to the Conditional Use Permit as requested and set forth above be **GRANTED**, subject to the following conditions to which the applicant has agreed: (Underline depicts new language)

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall provide a progress report to the Board in approximately 90 days after the Business Tax Receipt has been issued. 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). The staff report to be issued in connection with the applicant's progress report shall include a tabulation and copies of all noise and other complaints.
2. This Conditional Use Permit is issued to 2201 Collins Fee, LLC as owner of the property where the venues constituting a Neighborhood Impact Establishment are located. Subsequent owners 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 the applicant, the property owners, and all successors in interest and assigns.
4. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Conditional Use Permit.
5. The hours of operations shall be as proposed by the applicant, subject to applicable restrictions under the City Code, including the provisions of Code Section 142-244(4) concerning accessory outdoor bar counters:
  - a. Mr. Chow Restaurant: 5:00 p.m. to 2:00 a.m. seven days a week and may open for lunch at 10:00 a.m. in the future without any further Board action.
  - b. The three-meal Restaurant: 6:00 a.m. until 2:00 a.m. seven days per week; however, this restaurant may provide 24-hour room service to hotel guests.
  - c. Bar/Lounge: 10:00 a.m. until 3:00 a.m. seven days a week.
  - d. Nightclub: 9:00 p.m. until 5:00 a.m.

e. Pool Deck Venue: 10:00 a.m. until 2:00 a.m. seven days per week, except during City-approved Special Event Permits, when the hours shall be governed by such permits.

6. The floor plan for the pool deck venue shall be modified by the applicant, in order to limit the Fire Marshal-determined occupancy load to no more than 525 patrons. This modified floor plan shall be submitted to the Planning Department staff for review and approval prior to any Certificate of Occupancy for the pool deck venue. Fire Department staff shall make a final inspection of the pool deck venue premises to validate the patron occupant load, prior to the approval of any Certificate of Occupancy or Certificate of Use for the pool deck venue.

7. The applicant shall not have the right to use the rooftop tennis and basketball courts for live music, entertainment or special events.

8. The applicant may apply for City approved special events pursuant to Section 12-5 of the City Code, including having live music, and entertainment as defined in the City Code, and adhere to the conditions stated herein with regard to these special event permits. In these cases, in addition to all applicable notice requirements under Code provisions governing special event applications, the applicant shall notify the neighboring homeowners associations, condominiums associations and neighborhood associations in the area in writing. The application shall include a list of the names and addresses of each association to which such written notice was sent. The applicant shall use reasonable diligent and appropriate measures to ascertain each such association and its current address.

Such written notice shall:

- a. be sent to each such association which has any part of any of its respective boundary lines located within 375 feet of any boundary line of the applicant's entire property;
- b. include the same notice as is required by the Special Event process;
- c. include a request that each such association furnish informative and timely notice of the application to its respective member; and
- d. be sent at the same time as required by the Code.

9. The pool deck venue shall have the following restrictions:

- a. Day-to-day operation of the pool deck venue, open to the public:
  - (1) Maximum occupant load not to exceed 525 persons
  - (2) Hours of operation: 10:00 a.m. to 2:00 a.m.
  - (3) Only the hotel sound system shall be used. No extraneous sound systems may be brought in by DJs, promoters, performers, etc.

- (4) Hotel security personnel must monitor the capacity at all access points to ensure that maximum occupant load is not exceeded.
- b. Hotel events and functions that are incidental and customarily associated with a hotel, such as but not limited to weddings, receptions, private cocktail parties for hotel guests or clients, when located in the outdoor pool venue:
- (1) Only the hotel sound system shall be used except, when needed for a small event or a medium to large event, a portable sound system may be used, subject to compliance with all of the following conditions:
- (a) For purposes of this condition, a "small event" is an event with between 1 and 120 guests, and a "medium to large event" is an event with between 121 and 525 guests.
- (b) The portable sound system shall be used only as approved by the Planning Department.
- (c) The portable sound system shall only be installed within the Customary Use staging area of the pool venue as shown in dark green on Drawing No. 3, dated February 24, 2009, by Nichols Brosch Wurst Wolfe & Associates, Inc. submitted for the Planning Board meeting of May 26, 2009.
- (d) The portable sound system shall be as described in the "Small Group" and "Medium to Large Group" specifications as shown in the document prepared by Pro Sound & Video, located in Miami, Florida, which provides for the Small Group system to use equipment furnished by dbx Professional Products, located in Sandy, Utah, and the Medium to Large Group system to use equipment furnished by Meyer Sound Laboratories Inc., located in Berkeley, California, all as submitted for the Planning Board meeting of May 26, 2009.
- (e) The Audio Bug, Inc.'s letter dated April 18, 2009 shall be amended to verify and state that both the "Small Group" and the "Medium to Large Group" systems, as identified in subparagraph d above, are designed to fully comply with local noise ordinances.
- (f) The requirements of Condition No. 12 of the Conditional Use Permit granted by the Planning Board on April 1, 2009 (generally concerning the installation, testing, and operation of the previously-approved outdoor sound systems) shall also

apply in all respects to the two portable sound systems identified in sub-paragraph (d) above."

- (2) Access to the pool deck shall be closed to the general public. Guests of the event/function shall access the venue only through the hotel lobby, and access shall be monitored by hotel security.
- (3) Hours of operation to be determined by the event/function, but not to extend later than 2:00 a.m.
- (4) Live music may be permitted.

c. City-approved special events:

- (1) Occupant load to be determined by the Fire Marshal/Building Official.
- (2) Entertainment, including live music, concerts and the like may be permitted according to the restrictions imposed by the Special Event Permit approval.

10. 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, inclusive of violations which occur during either City-approved special events or private events/functions 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.
11. The installation plan for the sound system, including the location of all the speakers and sound system controls shall be submitted to staff for review and approval prior to obtaining a building permit.
12. The sound system for all outdoor areas shall be installed and operated in compliance with the requirements and recommendations of The Audio Bug, Inc. included in the W South Beach Hotel Sound Study dated March 13, 2009. When the sound system is completely installed, but before the Business Tax Receipt has been issued and before operations begin, it shall be tested under the supervision of Mr. Donald J. Washburn, president of The Audio Bug, Inc., or if not available, another sound engineer acceptable to staff, to ensure that all aspects of the system's performance comply with the requirements and recommendations of the Sound Study. Operations shall not begin until staff has received and approved in writing a final report issued by Mr. Washburn or if not available, another sound engineer acceptable to staff, which states that as tested, the system complies with the requirements and recommendations of the Sound Study.
13. Hotel security personnel and other hotel staff shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.

14. Prior to the issuance of a Certificate of Occupancy, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt.
15. Final calculation of the parking requirement for the project and payment of the fee in lieu of providing all the required parking shall be made prior to the issuance of the Certificate of Occupancy or Business Tax Receipt.
16. The applicant shall only be permitted to request to bag on-street parking meters or parking meters in the Collins Park surface lot during City-approved special events.
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 without the requirement of a modification hearing as provided for in Section 118-194(c) and modify the hours of operation, other noise conditions, or the occupant load should there be issuance of written warnings and/or notices of violation (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual late night noise.
19. As determined by the City of Miami Beach Public Works Transportation Division and applicable Miami-Dade County agency, any signal timing improvement identified in the Traffic Impact Study submitted with this application shall be completed within six months of the approval date of this Conditional Use Permit.
20. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida at the expense of the applicant.
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 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 Conditional Use permit.

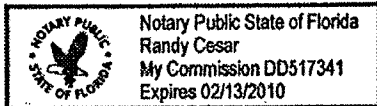
Dated this 24 day of June, 2009.

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA


BY:   
Jorge G. Gomez, Planning Director  
For Chairman

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 24 day of June, 2009, by Jorge G. Gomez, Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[NOTARIAL STAMP OR SEAL]

  
Notary:  
Print Name: Randy Cesar  
Notary Public, State of Florida  
My Commission Expires: 2-13-2010  
Commission Number:

Approved As To Form:  
Legal Department 

F:\PLAN\PLB\2009\5-26-09\1922 - 2201 Collins Avenue - modified CUP 052609.doc

EXHIBIT "A"

LEGAL DESCRIPTION:

A Tract of land situated in the City of Miami Beach, Florida, bounded as follows: bounded on the North by the South line of Atlantic Avenue (now generally known as 23rd Street); bounded on the West by the East line of Collins Avenue; bounded on the South by the North line of Ocean Avenue (now generally known as 22nd Street) and bounded on the East by the Low Water Line of the Atlantic Ocean, as the same is shown, marked and designated on the AMENDED PLAT OR MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, which map is recorded in Plat Book 5, at Page 7 and 8 of the Public Records of Miami-Dade County, Florida. (said East line now bounded by the Erosion Control Line of the Atlantic Ocean, recorded in Plat Book 105, at Page 62, of the Public Records of Miami-Dade County, Florida.)

ABOVE DESCRIBED LAND (TRACT) BEING COMMONLY KNOWN AS THE CASINO BLOCK.

ALSO

PARCEL "B", OFFICIAL RECORDS BOOK 5886, AT PAGE 688, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

A Tract of land situated in the City of Miami Beach, Florida, beginning (P.O.B.) at the Southeast corner of Atlantic Avenue (now generally known as 23rd Street,) now vacated and Collins Avenue; thence extending Northerly along the East line of Collins Avenue produced across Atlantic Avenue (now generally known as 23rd Street), now vacated, 50.00 feet; thence Easterly on a line North of, and parallel with, the South boundary line of Atlantic Avenue (now generally known as 23rd Street), now vacated, to the Atlantic Ocean; thence Southerly meandering the Atlantic Ocean, to a point where same intersects the South boundary line of Atlantic Avenue (now generally known as 23rd Street), now vacated, produced Easterly (now bounded on the East by the Erosion Control Line of the Atlantic Ocean, recorded in Plat Book 105, at Page 62, of the Public Records of Miami-Dade County, Florida); thence Westerly along said South Boundary line of Atlantic Avenue (now generally known as 23rd Street), now vacated; produced Easterly and continuing the said South boundary line to the Point of Beginning (P.O.B.)

THE EXTERIOR LINES OF ALL THE ABOVE DESCRIBED PROPERTY IS DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Begin (P.O.B.) at the Northeasterly corner of 22nd Street (formerly known as Ocean Avenue) and Collins Avenue, as said Street and Avenue are shown on the AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY'S SUBDIVISION, recorded in Plat Book 5, at Pages 7 and 8, of the Public Records of Miami-Dade County, Florida; and run South 70°02'49.4" East along the Northerly right-of-way line of 22nd Street, a distance of 564.715 feet to a point on the Erosion Control Line of the Atlantic Ocean, recorded in Plat Book 105, at Page 62, of the Public Records of Miami-Dade County, Florida; thence North 18°28'10.4" East along the said Erosion Control Line, a distance of 240.081 feet to a point; thence continue along the Erosion Control line North 19°20'59.4" East a distance of 60.003 feet; thence run North 70°02'49.4" West along the Northerly property line, a distance of 557.868 feet to a point on the Easterly right-of-way line of Collins Avenue; thence South 19°57'10.6" West along the Easterly right-of-way line of Collins Avenue, a distance of 300.00 feet to the Point of Beginning (P.O.B.)

STATE OF FLORIDA, COUNTY OF DADE

I HEREBY CERTIFY that this is a true copy of the

original as in this office on Feb 4 day of 10

WITNESS my hand and Official Seal A.D. 20

HARVEY RUMY, CLERK, of Circuit and County Courts

By SA 9481 D.C.

