

6 PB0616-0033, 915-955 Washington Avenue - Moxy



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

February 7, 2023

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Washington Ave. Associates, LLC,
915-955 Washington Avenue
Miami Beach, FL 33139

Re: PB 0616-0033 – 915-955 Washington Avenue – Moxy South Beach – Cure Letter

Dear Sir/Madam:

A Conditional Use Permit (CUP) to operate the subject venue was issued to Washington Avenue Associates, LLC, on November 15, 2016 (see attached). It has come to the Planning Department's attention that written warnings and violations have been issued by the Code Compliance Department regarding the operation of the venue.

These violations include, but are not limited to, noise violations that are still pending as of the date of this letter, as more specifically summarized hereto:

- 09/04/2022 – **NC2022-24461** Written Warning Issued

Notes indicate: 8:23 PM Arrive 10:13 PM Depart 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 or continued any unreasonably loud, excessive, unnecessary, or unusual noise. YOU SHALL IMMEDIATELY CEASE THE VIOLATION. LOUD MUSIC COMING FROM WASHINGTON AVE P Godsill 756 BWC used.

- 08/08/2021 – **NC2021-2185** Noise Complaint – Fine Paid

Notes indicate: Ref: Unreasonably loud and excessive music coming from a live DJ on the rooftop. 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 or continued any unreasonably loud, excessive, unnecessary or unusual noise. YOU SHALL IMMEDIATELY CEASE THE VIOLATION. You shall be subject to additional penalties if the violation continues. Repeat violations of Section 46-152 will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license and /or certificate of use, or accessory use, and/or injunctive and/or other legal proceedings as provided by law. Arrival Time: 7:43 PM Departure Time: 9:15 PM 1st Offense; \$250.00 Fine. BWC used. J. Goehring (745) A. Lacayo (754)

- 02/09/2021 – **NC2021-18487** - Noise Complaint – Closed

Notes indicate: *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. Arrival: 3:47 PM Departure: 4:55 PM REF: Loud music. Written warning issued. BWC used. D. Giraldo/752.*

In addition to the items listed above, there were five other noise complaints made between March 5, 2022 and December 18, 2022.

The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted violations and warnings:

1. This Conditional Use Permit is issued to Washington Ave. Associates, LLC, to construct a seven (7) story mixed use hotel project, with restaurant and retail space on the ground floor, and food and beverage areas located on the second floor deck, poolside and the roof. Any proposed change to the uses approved in this Conditional Use shall require the review and approval of the Planning Board.
2. 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 business tax receipt (BTR) for the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

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).

4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
8. The Applicant agrees to the following operational conditions for all permitted and accessory uses 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 the proposed restaurants, outdoor café and two (2) outdoor areas located on the roof deck of the first floor (2nd level) with the criteria listed below:
 - i. The food and beverage areas covered in the CUP shall have a maximum occupant content of approximately 1350 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The hours of the venues and the hours of the entertainment for each venue shall be as follows:

VENUE	HOURS	HOURS OF ENTERTAINMENT
Indoor Restaurant	7 AM-5 AM	until 5 AM
Outdoor Café	7 AM-2 AM	until 11 PM
Hotel Bar & Lounge	7 AM-2 AM	n/a
2nd Level Bar	11 AM-2 AM	11 AM-11 PM
2nd Level Outdoor Bar	11 AM-2 AM	11 AM-11 PM
Pool Deck (guests only)	7 AM-11 PM	11-AM-11 PM
Rooftop (guests only)	7 AM-2 AM	n/a

- iii. 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 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.
 - iv. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR. 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.

15. 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.

These violations and noise complaints exhibit repeated and intermittent noncompliance with the conditions of this CUP and underscore a concern about further repeated or intermittent noncompliance with the conditions of the CUP.

Therefore, considering the inconsistencies with the aforementioned conditions of approval contained in the CUP, the repeated and intermittent noncompliance with the conditions of this CUP, and the pending code violations, **you are requested to appear at the February 28, 2023 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 the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues noted herein, and initiate modification/revocation proceedings, this matter may be placed on the April 25, 2023 agenda meeting of the Board as a modification/revocation hearing. If a future public hearing is set, the board may consider the issue of noncompliance and the possible modification or revocation of the approval. 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. Rogelio Madan at (305) 673-7000 ext. 26131 or via email at rogeliomadan@miamibeachfl.gov.

Sincerely,



Thomas R. Mooney, AICP
Planning Director

TRM\RAM\AG

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 29, 2024

FROM: Thomas R. Mooney, AICP
Planning Director

^{DS}


for TRM

SUBJECT: **PB 0616-0033. 915-955 Washington Avenue – Moxy Hotel.** Progress Report
due to code violations.

BACKGROUND

November 15, 2016 The Planning Board approved the Conditional Use Permit for the construction of a new seven (7) story hotel development exceeding 50,000 square feet including a parking garage, commercial uses, and a Neighborhood Impact Establishment with outdoor entertainment (File No. PB0616-0033).

February 7, 2023 A cure letter was sent to the operator requesting that the applicant appear before the Planning Board for a progress report.

February 28, 2023 The Planning Board discussed and continued this progress report to April 25, 2023 to further assess the operation of the establishment, as well as monitor compliance with the conditions of the CUP.

April 23, 2023 The Planning Board concluded the progress report with no further action

October 11, 2024 Due to complaints and a violation that was issued to the property, a cure letter was sent to the operator requesting their appearance at the October 29, 2024 Planning Board meeting.

STAFF ANALYSIS

A Conditional Use Permit (CUP) to operate the subject venue was issued to Washington Avenue Associates, LLC, on November 15, 2016 (see attached). It has come to the Planning Department's attention that a violation has been issued by the Code Compliance Department regarding the operation of the venue:

- **3/20/2024 – CUP2024-00070:** CUP Condition Violation. Appealed to Special Magistrate

Notes indicate: *I received a complaint for loud music at 915 Washington Ave (The Moxy Hotel). Upon arrival, I assessed the music and it was playing at a level that was neither loud or excessive. Even though the music was neither loud or excessive, I heard what sounded like a DJ. I then went in the hotel to advise them of the noise complaint, and when I met with the GM Terry, I asked him if there was a DJ on the roof. Terry then replied and said and there are DJs on the roof for a private event.*

I let Terry know that having a DJ on the roof violates the terms of this conditional use permit and he needs to remove the DJs as soon as possible. I also let him know he will be receiving a notice for violating the terms of his conditions use permit. I went back up to the roof at 4:40 PM and they had removed the DJ from the area and was in the process of moving the private event to a permit area of the property.

Additionally, the following noise complaints have been received for the property between January 22, 2024 and September 22, 2024:

- **1/22/2024 – NC2024-27607:** Noise complaint regarding loud music after 11pm.
- **3/20/2024 – NC2024-27949:** Noise complaint regarding loud music in the afternoon.
Note: CUP2024-00070 was issued regarding unauthorized DJ
- **7/21/2024 – NC2024-28570:** Noise complaint regarding loud music after 11pm.
- **8/18/2024 – NC2024-28689:** Noise complaint regarding loud music after 9pm.
- **9/22/2024 – NC2024-28787:** Noise complaint regarding loud music after 10pm.

The following conditions of approval contained in the Conditional Use Permit are applicable to the above noted violations and warnings:

1. This Conditional Use Permit is issued to Washington Ave. Associates, LLC, to construct a seven (7) story mixed use hotel project, with restaurant and retail space on the ground floor, and food and beverage areas located on the second floor deck, poolside and the roof. Any proposed change to the uses approved in this Conditional Use shall require the review and approval of the Planning Board.
2. 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 business tax receipt (BTR) for the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

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).

4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.

- 6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.

- 8. The Applicant agrees to the following operational conditions for all permitted and accessory uses 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 the proposed restaurants, outdoor café and two (2) outdoor areas located on the roof deck of the first floor (2nd level) with the criteria listed below:
 - i. The food and beverage areas covered in the CUP shall have a maximum occupant content of approximately 1350 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The hours of the venues and the hours of the entertainment for each venue shall be as follows:

VENUE	HOURS	HOURS OF ENTERTAINMENT
Indoor Restaurant	7 AM-5 AM	until 5 AM
Outdoor Café	7 AM-2 AM	until 11 PM
Hotel Bar & Lounge	7 AM-2 AM	n/a
2nd Level Bar	11 AM-2 AM	11 AM-11 PM
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Pool Deck (guests only)	7 AM-11 PM	11-AM-11 PM
Rooftop (guests only)	7 AM-2 AM	n/a

- iii. 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 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.

- iv. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR. 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.
- 15. 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.

At the time of the progress report, in accordance with the provisions of Section 2.5.2.5 of the Land Development Regulations of the City Code (LDR's), the Planning Board may consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings.

Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues noted herein, and initiate modification/revocation proceedings, this matter may be placed on the January 7, 2025 agenda of the Board as a modification/revocation hearing. If a future public hearing is set, the board may consider the issue of noncompliance and the possible modification or revocation of the approval. Based on substantial competent evidence, the board may consider revoking the approval, modifying the conditions thereof, or imposing additional or supplemental conditions.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss and continue the progress report to the November 26, 2024, meeting.

MIAMI BEACH

PLANNING DEPARTMENT

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139

Tel: (305) 673-7550

October 11, 2024

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Washington Ave. Associates, LLC,
915-955 Washington Avenue
Miami Beach, FL 33139

Re: PB 0616-0033 – 915-955 Washington Avenue – Moxy South Beach – Cure Letter

Dear Sir/Madam:

A Conditional Use Permit (CUP) to operate the subject venue was issued to Washington Avenue Associates, LLC, on November 15, 2016 (see attached). It has come to the Planning Department's attention that a violation has been issued by the Code Compliance Department regarding the operation of the venue:

- **3/20/2024 – CUP24-00070:** CUP Condition Violation. Appealed to Special Magistrate

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I let Terry know that having a DJ on the roof violates the terms of this conditional use permit and he needs to remove the DJs as soon as possible. I also let him know he will be receiving a notice for violating the terms of his conditions use permit. I went back up to the roof at 4:40 PM and they had removed the DJ from the area and was in the process of moving the private event to a permit area of the property.

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2. 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 business tax receipt (BTR) for the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

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).

4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
8. The Applicant agrees to the following operational conditions for all permitted and accessory uses 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 the proposed restaurants, outdoor café and two (2) outdoor areas located on the roof deck of the first floor (2nd level) with the criteria listed below:
 - i. The food and beverage areas covered in the CUP shall have a maximum occupant content of approximately 1350 persons or any lesser such occupant content as determined by the Fire Marshal.

- ii. The hours of the venues and the hours of the entertainment for each venue shall be as follows:

VENUE	HOURS	HOURS OF ENTERTAINMENT
Indoor Restaurant	7 AM-5 AM	until 5 AM
Outdoor Café	7 AM-2 AM	until 11 PM
Hotel Bar & Lounge	7 AM-2 AM	n/a
2nd Level Bar	11 AM-2 AM	11 AM-11 PM
2nd Level Outdoor Bar	11 AM-2 AM	11 AM-11 PM
Pool Deck (guests only)	7 AM-11 PM	11-AM-11 PM
Rooftop (guests only)	7 AM-2 AM	n/a

- iii. 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 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.
- iv. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR. 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.
15. 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.

In accordance with Condition Nos. 2 and 15 of the CUP, **you are requested to appear at the October 29, 2024 Planning Board hearing** for a verbal progress report.

PB 0616-0033 – 915-955 Washington Avenue – Moxy South Beach – Cure Letter
October 11, 2024


Page 4 of 4

Please be advised that at the time of the progress report, in accordance with the provisions of Section 2.5.2.5 of the Land Development Regulations of the City Code (LDR's), the Planning Board may consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings.

Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues noted herein, and initiate modification/revocation proceedings, this matter may be placed on the January 7, 2025 agenda of the Board as a modification/revocation hearing. If a future public hearing is set, the board may consider the issue of noncompliance and the possible modification or revocation of the approval. 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 Michael Belush at (305) 673-7000 ext. 26258 or via email at MichaelBelush@MiamiBeachFL.gov.

Sincerely,

DocuSigned by:

for TRM
DEC3ECF2EB68404...
Thomas R. Mooney, AICP
Planning Director

TRMMB

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

PROPERTY: 915-955 Washington Avenue

FILE NO. PB 0616-0033

IN RE: The application for Conditional Use approval for the construction of a new seven (7) story hotel development exceeding 50,000 square feet including a parking garage, commercial uses, and a Neighborhood Impact Establishment with outdoor entertainment, pursuant to Section 118, Article IV, Section 142, Article II, and Section 142, Article V of the City Code.

LEGAL DESCRIPTION: Lots 10 to 15 inclusive, Block 31, of Ocean Beach 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: November 15, 2016

CONDITIONAL USE PERMIT

The applicant, Washington Ave. Associates, LLC, requested a Conditional Use approval for the construction of a new seven (7) story hotel development exceeding 50,000 square feet including a Neighborhood Impact Establishment with outdoor entertainment, pursuant to Section 118, Article IV, Section 142, Article II, and Section 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:

The property in question is located in the CD-2 – Commercial, Medium Intensity Zoning District.

The use is consistent with the Comprehensive Plan for the area in which the property is located;

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;

The structures and uses associated with the request are consistent with the Land Development Regulations;

The public health, safety, morals, and general welfare will not be adversely affected;

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

MB

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. This Conditional Use Permit is issued to Washington Ave. Associates, LLC, to construct a seven (7) story mixed use hotel project, with restaurant and retail space on the ground floor, and food and beverage areas located on the second floor deck, poolside and the roof. Any proposed change to the uses approved in this Conditional Use shall require the review and approval of the Planning Board.

2. 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 business tax receipt (BTR) for the proposed outdoor entertainment venue.

When BTR's are issued for at least 75% of the building area, but no later than one (1) year from the issuance of the BTR for the proposed hotel use, the applicant shall appear before the Planning Board for a progress report specific to traffic, including providing a full revised traffic study outlining the actual transportation operations on-site and in the surrounding initial study area, and including valet operations and loading/servicing of the building.

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).

3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property applicants, operators, and all successors in interest and assigns. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest or equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board, in advance, to affirm their understanding of the conditions listed herein.
4. The Planning Board shall retain the right to call the owner or operator back before them and make modifications to this Conditional Use Permit 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.
5. 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.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
7. All existing overhead utilities abutting the subject site shall be placed underground at the sole expense of the applicant.

MB

8. The Applicant agrees to the following operational conditions for all permitted and accessory uses 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 the proposed restaurants, outdoor café and two (2) outdoor areas located on the roof deck of the first floor (2nd level) with the criteria listed below:

- i. The food and beverage areas covered in the CUP shall have a maximum occupant content of approximately 1350 persons or any lesser such occupant content as determined by the Fire Marshal.
- ii. The hours of the venues and the hours of the entertainment for each venue shall be as follows:

VENUE	HOURS	HOURS OF ENTERTAINMENT
Indoor Restaurant	7 AM-5 AM	until 5 AM
Outdoor Café	7 AM-2 AM	until 11 PM
Hotel Bar & Lounge	7 AM-2 AM	n/a
2nd Level Bar	11 AM-2 AM	11 AM-11 PM
2nd Level Outdoor Bar	11 AM-2 AM	11 AM-11 PM
Pool Deck (guests only)	7 AM-11 PM	11 AM-11 PM
Rooftop (guests only)	7 AM-2 AM	n/a

- iii. 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 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.
- iv. A final report issued by such acoustical consultant shall be submitted to staff prior to the issuance of a BTR. 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

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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 shall occur only between 6:00 AM and 5:00 PM and waste collection shall occur only between 8:00 AM and 5:00 PM.
- 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. Valet or loading activities shall not block Collins Court (the alley) at any time.
- k. Restaurant personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
- l. Patrons shall not be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
- m. 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.

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- n. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - o. Special Events are limited to six (6), one day events per year on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
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9. Prior to the issuance of any building permit for the project, the applicant shall incorporate the following requirements into the building permit drawings:
- a. There shall be double door vestibules at the street level entrances of all the venues that propose entertainment.
 - b. There shall not be an interior stairwell installed that allows direct customer access between the hotel restaurant and the second floor amenity deck.
 - c. Subject to Historic Preservation Board (HPB) approval, the applicant shall provide a glass parapet wall on the northwest portion of the roof deck for the portion of the project that contains the pool and pool deck.
10. Prior to the issuance of any building permit for the project, the applicant shall address the following concurrency, traffic and parking requirements:
- a. ~~A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval. The MOT shall address any traffic flow disruption due to construction activity on the site.~~
 - b. 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 as determined by the Concurrency Management Division.
 - c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid.
 - d. A bicycle parking plan shall be submitted for staff review and approval.
 - e. The applicant shall submit a more robust Traffic Demand Methodology (TDM) plan to be reviewed and approved by the Transportation Department.
11. The applicant shall satisfy outstanding liens and past due city bills, if any, to the satisfaction of the City prior to the issuance of a building permit.
12. The applicant shall obtain a full building permit within 18 months from the date of approval of this Conditional Use Permit, 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.



13. 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.
14. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
15. 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.
16. 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.

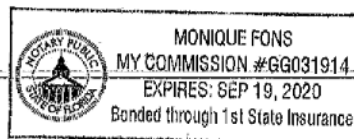
Dated this 19th day of JANUARY, 2017.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

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

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 19th day of January, 2017, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



{NOTARIAL SEAL}

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

Approved As To Form:
Legal Department

Filed with the Clerk of the Planning Board on

11/18/17
1/19/2017 (MB)

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