



# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

Planning Board

TO: Chairperson and Members  
Planning Board

DATE: July 24, 2012

FROM: Richard G. Lorber, AICP, LEED AP  
Acting Planning Director

SUBJECT: File No. 1734 –1801 Collins Avenue – Shelborne Hotel Modification Conditional Use - NIE

The applicants, Shelborne Associates, GP, Costello Investments, Inc., and the Shelborne Ocean Beach Hotel Condominium Association, Inc., are requesting a Modification to an existing Conditional Use Permit, pursuant to Section 118-195 of the City Code, in order to include an additional entertainment venue located in the basement of the hotel, with a separate entrance, and permit daytime weekend and holiday public events featuring entertainment on the pool deck, and to modify conditions relative to the request.

### ZONING / SITE DATA

**Zoning:** RM-3, Residential multifamily high intensity zoning district.

#### **Legal**

**Description:** See Exhibit A attached.

**Land Uses:** There are hotel/condominium & hotel uses to the north and south – the Continental and the Raleigh, respectively. There is a condominium building with ground floor commercial uses to the west across Collins Avenue; and the Atlantic Ocean is to the east.

### BACKGROUND

The Shelborne Hotel was granted a Conditional Use permit for a Neighborhood Impact Establishment in September 2005 to operate as a hotel with accessory restaurant and bar uses. It obtained a Modified Conditional Use Permit in September 2010 in order to renovate and improve accessory uses, including the nightclub space with dancing; the Brasserie restaurant with entertainment; the Lounge Bar with entertainment; a Café and Outdoor Café restaurant without dancing and entertainment; the Lobby Bar and Restaurant without dancing and entertainment; and a Pool Bar and Outdoor Cafe without dancing and entertainment. In November 2010, it obtained another modification to include a portion of the former "Shine" nightclub space as a new nightclub facility with a proposed area of 3,100 square feet (see attached MCUP).

Subsequently, the applicant held events at the pool area, open to the public, advertised on the internet and on signage on public property, in violation of Condition 11 of the MCUP:

*The pool deck area, including the mezzanine terrace and pool deck venues, shall not be open to the public, except during City-approved Special Events or private functions. The applicant shall comply with all restrictions imposed by the Special Event Permit.*

The City issued notices of violation for non-compliance. On May 7<sup>th</sup> a cure letter was sent to the applicant requesting that the applicant appear before the Planning Board at the May 22, 2012. The applicant requested a continuance to the July meeting in order to prepare and submit an application for a modification to the existing MCUP.

Since May 5, 2012, the last time staff researched City records, there have been numerous complaints, most of which were deemed invalid by the Code Compliance Officers who responded (see the attached). There were 15 complaints for loud music. In most instances, officers determined that the music was not unreasonably loud. In a few cases, they found it to be loud and talked to the manager, who turned the volume down. There is also an invalid complaint for holding a pool party without a permit. In addition, there is an open recurring violation for entertainment level music at the pool deck area. The applicant is scheduled to go before the Special Master in September to appeal various open offenses including, violation of the conditional use for holding events open to the public in the pool deck area; failure to comply with a special event permit and violation of the noise ordinance; and overcrowded conditions in excess of the permissible occupancy load.

#### **NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES**

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for an outdoor entertainment establishment, open air entertainment establishment or a neighborhood impact establishment, the Planning Board shall apply the following supplemental review guidelines 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 existing and proposed uses include: the Café, aka Vespers, an interior space, with no entertainment, serving 3 meals a day; the Outdoor Café, also part of Vespers, serving 3 meals outdoors; the Brasserie, aka Vespers, the fine dining restaurant with entertainment; the Lounge next to the lobby area with entertainment; the Lobby Bar/Restaurant, with no entertainment; the Event Space (and Alternative Nightclub Space), with entertainment, in the area used as a ballroom; the basement nightclub would continue to be used as nightclub with entertainment; the Taqueria, at the rear of the courtyard area would function as pool side cafe with ambient music only; the pool deck on the eastern end of the property. A more detailed description of the operations is included in the analysis.

- (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** – The Shelborne Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements. As there is no on-site parking, it provides valet services for its guests and patrons 24 hours a day at the front entrance of the hotel. Other parking is available at meters, surface lots and parking garages nearby. The applicant anticipates that many patrons would be guests of the Shelborne and other local hotels and would walk or take a cab to the venues.

- (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.**

**Consistent** – Additional security equipment has been installed with the renovation. There are three access points including the main lobby entrance, the entrance to the Café and Brasserie along 18<sup>th</sup> Street, and the beach access. Security staff would be placed at these points to ensure groups of patrons gain entry in an orderly fashion and to monitor the circulation of patrons and occupancy levels in the queuing areas. With the exception of permitted public events discussed in the analysis, the pool deck is not open to the general public, and only hotel guests can cross between the Taqueria and the pool deck. The beach access would be secured after the Taqueria's operating hours.

- (4) **A security plan for the establishment and any parking facility.**

**Consistent** – The hotel has upgraded its security systems including over 30 new security cameras with DRV recording and provides its own security personnel to monitor the property 24 hours a day and enforce patron age restrictions.

- (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** – The applicant seeks a modification to a CUP for an existing NIE. No new floor area would be added, and although the intensity of the pool deck use is being increased, as it is proposed to be open to the public, the hours would be limited to daytime hours on Fridays, weekends, holidays, and during City-approved special events. Further, the applicant has volunteered to limit the occupant content to a maximum of 371 persons. Thus it was determined that a traffic impact study would not be needed.

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

**Consistent** – The applicant presently contracts with a waste collection company and will continue to maintain a contract. There is an existing air-conditioned trash room in the basement level along the north property line facing the alley on the western end of the building. This trash room is a hold space for trash that comes from the main hotel trash room and chute located north of the eastern elevator bank. The hotel trash room and chute are also air conditioned. All trash rooms have door gaskets and seeps, as well as, negative pressure to prevent the passage of odor. Since there is no alley, sanitation and delivery operations take place in front of the property on Collins Avenue.

- (7) **A noise attenuation plan which addresses how noise will be controlled to meet the requirements of the noise ordinance.**

**Consistent** – The applicant hired The Audio Bug Inc. to conduct a sound study of the proposed changes. The City hired Edward Dugger + Associates PA, paid by the applicant, to conduct the peer review. The sound report concludes that the requested changes would not adversely affect the neighbors near the pool deck or violate the City’s Ordinance, as long as the time restrictions and the recommended sound levels are adhered to. Although the intensity of the pool deck use is being increased, as it is proposed to be open to the public, the hours would be limited to daytime hours on Fridays, weekends, holidays, and during City-approved special events. Further, the applicant has agreed to limit the occupant content to a maximum of 371 persons during these events.

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

**Partially Consistent** – There are other hotels, condo/hotels and ground floor and commercial uses on the north and south; and a condominium building with commercial uses on the ground floor on the west across Collins Avenue.

**(9) Cumulative effect of proposed establishment and adjacent pre-existing uses.**

**Partially Consistent** – As the table below shows, there have been several Conditional Use Permits for Outdoor Entertainment and Neighborhood Impact Establishments approved nearby on Collins Avenue over the last few years. With the exception of Club Mynt/Rok Bar and Baoli, they are located within hotels.

File #	Address	Applicant	Type	Date apprvd
1722	1501 Collins Avenue	Bancroft Management	Cond Use - NIE – Restaurant/bar	8-23-05
1798	1501 Collins Avenue	Chakra 5	Cond Use - NIE - Chakra 5	11-26-06
1647	1775 Collins Avenue	AB Green Raleigh, LLC	Cond Use - NIE – pool deck	4-20-04
2032	1545 Collins Avenue	Royal Palm Hotel	Cond Use – NIE – Various venues	9-20-11
2051	1701 Collins Avenue	SLS Hotel	Cond Use – NIE – Various venues	2-28-12
1481	1921 Collins Avenue	Mint Entertainment	Cond Use - NIE - Club Mynt /Rok Bar	2-22-05
1988	1908 Collins Avenue	Baoli	Cond Use – NIE – Baoli	5-22-12
1840	2301 Collins Avenue	Sandy Lane, LLC	Cond Use – NIE – rest/lounge/rooftop	9-25-07
1922	2201 Collins Avenue	W Hotel	Cond Use – NIE – Various venues	3-24-09

**COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:**

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

**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. RM-3 zoning provides for uses such as, neighborhood impact establishments, subject to Conditional Use approval, as accessory use.

**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 applicant seeks a modification to a CUP for an existing NIE. No new floor area would be added, and although the intensity of the pool deck use is being increased, as it is proposed to be open to the public, the hours would be limited to daytime hours on Fridays, weekends, holidays, and during City-approved special events. Further, the applicant has agreed to limit the occupant content to a maximum of 371 persons during these events. Therefore, the levels of service should not be impacted as a result of this proposal and a traffic impact study would not be necessary.

**3. Structures and uses associated with the request are consistent with this Ordinance.**

**Consistent** – The application is consistent with the requirements of the City Code.

**4. Public health, safety, morals and general welfare will not be adversely affected.**

**Partially Consistent** - The proposed project would not adversely affect the general welfare of nearby residents unless excessive noise, traffic or trash in the streets becomes an issue. With proper safeguards and conditions, the project may be able to meet this objective. The facility would have to comply with all applicable laws and regulations for licensure.

**5. Adequate off-street parking facilities will be provided.**

**Partially Consistent** - The Shelborne Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements. As there is no on-site parking, it provides valet services for its guests and patrons 24 hours a day at the front entrance of the hotel and along 18<sup>th</sup> Street at the entrance to the Café and Brasserie. Other parking is available at meters, surface lots and parking garages nearby. The applicant anticipates that many patrons would be guests of the Shelborne and other local hotels and would walk or take a cab to the venues.

**6. Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.**

**Partially Consistent** - The proposed opening of the pool deck to the public at certain times should not adversely affect the surrounding property, persons and neighborhood values unless the noise levels become an issue. All venues would have to be in compliance with all State, County and City Codes.

**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** – As the following table shows, there have been several Conditional Use Permits for Outdoor Entertainment and Neighborhood Impact Establishments approved nearby on Collins Avenue over the last few years. With the exception of Club Mynt/Rok Bar and Baoli, they are located within hotels.

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### **STAFF ANALYSIS**

The applicant is once more seeking to modify the CUP to allow daytime weekend and holiday events with entertainment, open to the general public, on the pool deck. The applicant is also requesting some technical modifications to add the existing nightclub in the basement to the aggregate of the Neighborhood Impact Establishment; and to slightly revise the occupant content for the lobby bar/restaurant from 61 to 79 persons.

In addition, the applicant is seeking to change the name of the operators (lessees) as follows:

- The basement nightclub would be operated under a lease by 1801 Collins Club #1, LLC, whose principals own the Opium Group. It would remain a small venue.
- The Lounge, and potentially portions of the Event Space would be operated by the former basement nightclub operator, Little Star Productions, LLC, who operated it for a long time.

To that end, the applicant is proposing to modify conditions 9, 11, 12, and 24. These proposed changes are reflected by underlining in the recommended conditions enumerated at the end of this report.

### **Venue Operations**

Following are the existing and proposed food and beverage uses:

- The Café, aka Vespers, is an interior space, with no entertainment, used as the hotel's 3-meal-a-day restaurant. Hours of operation are 6:00 AM for breakfast until 2:00 AM for dinner. The menu consists of a traditional American style menu and room service comparable to other restaurants in hotels of the same quality and style.
- The Outdoor Café is located directly adjacent to the Café as its outdoor dining component providing breakfast, lunch and dinner with a pool view. It also opens at 6:00 AM until 11:00 PM. The hours of operation may be extended during City-approved Special Events or private functions as determined by the event/function, but no later than 2:00 AM. It provides the same menu as the Café with only ambient background music.

- The Brasserie, aka Vespers, is a fine dining restaurant with entertainment located indoors with no direct connection to the outdoors. It is open from 5:00 PM to 5:00 AM. The menu is comparable to other fine dining restaurants in hotels of the same quality and style.
- The Lounge, next to the lobby area, is intended for patrons to sit and relax while they enjoy entertainment. It is open from 5:00 PM to 5:00 AM.
- The Lobby Bar/Restaurant, located at the southwest corner of the lobby area, is intended as an alternative to the other restaurant venues at the rear of the property and has no entertainment, only ambient music. It is open from 6:00 AM, for breakfast, to 5:00 AM.
- The Event Space (and Alternative Nightclub Space), is located in the area used as the ballroom. Before the renovation this space was used only as a nightclub with dancing and entertainment. This space is used for weddings, corporate meetings, and such. Additionally, it serves as an alternative nightclub space, with dancing and entertainment, open to the public. The hours of operation are as needed for planned events. When used as a nightclub, it is open from approximately 10:00 PM to 5:00 AM. All queuing takes place in the lobby area.
- The basement nightclub has a separate entrance from Collins Avenue. It would continue to be used as a nightclub with entertainment, as it has been for a long time, open from 8:00 PM to 5:00 AM daily.
- The Taqueria, at the rear of the courtyard area on the eastern end of the property, functions as a pool side cafe with ambient music only. Its menu is comparable to other poolside cafes in hotels of the same quality and style. It would operate from 11:00 AM to 11:00 PM.
- The pool deck is at the eastern end of the site just west of the Taqueria. There is no outdoor entertainment for any of the outdoor accessory use restaurants and bars, except during weekend pool events open to the public, city-approved special events, and private events, as previously mentioned. The usual hours of operation would be from 6:00 AM to 11:00 PM, except during City-approved Special Events or private functions, when it would remain open until 2:00 AM. Access from the Brasserie, Café, or Outdoor Café would be allowed from 11:00 AM to 7:00 PM daily, except for Fridays, weekends, holidays, and during City's special event periods. During these days the pool would be open to the public from 10:30 AM until 7:00 PM from December 1 to April 30 and until 9:00 PM the remainder of the year. Food for these events would be provided by the Taqueria and would be served by wait staff. The public would have access to the bar within the Outdoor Café, as well as a temporary bar located on the southern end of the pool deck. The hotel would be the sole operator of the events. There would be a full staff of approximately 30 including hosts, servers, and security personnel to meet the service and security needs of patrons and guests.

### **Parking and Traffic**

The Shelborne Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements. As there is no on-site parking, it provides valet services for

its guests and patrons 24 hours a day at the front entrance of the hotel and along 18<sup>th</sup> Street at the entrance to the Café and Brasserie. Valet cars are stored in nearby parking facilities. Other parking is available at meters, surface lots and parking garages nearby. The applicant anticipates that many patrons would be guests of the Shelborne and other local hotels and would walk or take a cab to the venues.

This application is for a modification to a Conditional Use Permit for an existing Neighborhood Impact Establishment. The proposed opening of the pool deck to the public for events constitutes an increase in the intensity of that use. Notwithstanding, it was determined that a traffic impact study would not be necessary for the following reasons:

- The proposed use is limited to weekends, holidays, City-approved special events, 10:30 to 7:00 PM in high season and to 8:00 PM the remainder of the year, as well as, private functions that would be incidental and customarily associated with hotels.
- The applicant has agreed to cap the occupant content to 371 persons.

### **Security and Crowd Control**

When the hotel was renovated, it upgraded its security systems, including the installation of over 30 new security cameras with DRV recording. Its own security personnel monitor the property 24 hours a day and enforce patron age restrictions. The intent is to provide approximately 5 security personnel per shift during typical hotel operations.

The pool deck is generally not open to the public - only hotel guests and residents can access a security gate between the Taqueria and the pool deck. The beach access would be secured after the Taqueria's operating hours. Access to the mezzanine terrace is through a newly renovated stairway. The applicant asserts that the mezzanine terrace would be merely an extension of the pool deck providing lounge chairs and would only be accessible to hotel guests and residents. The hotel and security staff would ensure that it remains off limits to members of the general public.

During the proposed events at the pool deck or more active periods, the hotel would add additional security staff, as well as additional hotel managers, to meet the needs of that particular event. Security staff would be placed at access points - the main lobby entrance, the entrance to the Café and Brasserie along 18<sup>th</sup> Street, and the beach access - to ensure groups of patrons gain entry in an orderly fashion and to monitor the circulation of patrons and occupancy levels in the queuing areas. Queuing for the events would take place within the hotel lobby, not on the public right of way.

### **Sound**

During the pool deck events proposed to be open to the public, entertainment would be allowed, however, the applicant proffers that only the hotel's audio system would be used; no portable speakers would be permitted. The hotel manager or designee would have sole control over sound levels.

The applicant hired The Audio Bug Inc. to conduct a revised sound study of the proposed changes. The City hired Edward Dugger + Associates PA, paid by the applicant, to conduct the peer review. The report asserts that although higher noise levels would be expected from

greater density per square area, it appears that the number of patrons would be spread over a larger area including the new sun deck to the west of the pool deck, which did not exist before 2010. The report recommends that the sound system be carefully monitored and controlled by its integrated digital processor and that it only be allowed to be changed when the DJ connects his signal sources to the existing sound system. No additional speakers should be permitted in order to maintain the balance of sound distribution. Any higher music levels should be adjusted under the supervision of a qualified acoustical consultant. The time periods during which these events take place should be programmed into the digital processor so that system levels are automatic.

The report concludes that the requested changes would not adversely affect the neighbors near the pool deck or violate the City's Ordinance, as long as the time restrictions and the recommended sound levels are adhered to.

The peer reviewer, Edward Dugger, had two additional comments: 1) reiterating the importance of using only the house sound system and that no other speakers be brought in and; 2) recommending that a wireless speaker volume control system be used. The Audio Bug is in the process of responding, as of this writing.

### **Conclusion**

Although the intensity of the pool deck use is being increased, as it is proposed to be open to the public for events, the use is restricted to daytime hours on Fridays, weekends, holidays, and during City-approved special events. Also, the applicant agrees to limit the occupant content to a maximum of 371 persons during these events. The numerous complaints for loud music and violations, despite the great majority of them having been found invalid, are cause for concern. However, the applicant is now before the Board to legitimize the use of the pool area for events open to the public on a limited basis.

Staff has received emails from hotel unit owners expressing serious concern about their ability to use the pool and pool deck area during public events, as they claim they have had difficulty during past events. Also, they state they have been negatively impacted by the noise and crowds that these events generate (see the attached). The applicant is aware and asserts that hotel unit owners and their tenants and/or guests would be provided with free "VIP" passes to use these areas. Although staff understands these concerns, they are not within the Board's purview. Rather, they are an internal condominium matter to be resolved by the Shelborne parties.

### **STAFF RECOMMENDATION**

In view of the foregoing analysis, staff recommends approval of this application subject to the following conditions, which address the inconsistencies with the aforementioned Review Guidelines. Modifications are as indicated below by underlining (new language) and ~~strikethrough~~ (deleted language).

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The applicant shall come back to the Board within 90 days of the date of approval of the Modified Certificate of Use/Business Tax Receipt, and provide a progress report. 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).

2. This Modified Conditional Use Permit is issued to Shelborne Associates, Costello Investments, Inc., Shelborne Ocean Beach Hotel corp. and Beach Group III, LLC, collectively, as operator of a this Neighborhood Impact Establishment. Any change of operator or ownership 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.
3. The conditions of approval for this Modified Conditional Use Permit are binding on the applicant, the property's 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 Modified Conditional Use Permit.
5. The Final Order for File No. 7074 issued by the Historic Preservation Board on May 11, 2010 is hereby adopted and incorporated into this order by reference.
6. The Final Order for File No. 3470 issued by the Board of Adjustment on August 6, 2010 is hereby adopted and incorporated into this order by reference.
7. The applicant shall provide staff documents verifying the service of the a valet operator holding the contract and the locations where vehicles will be stored. These documents shall be submitted to staff prior to the approval of a Building Permit or Modified Certificate of Use/Business Tax Receipt, whichever occurs first.
8. The hours of operation shall be as proposed by the applicant:
  - a. The Brasserie restaurant, aka Vespers, from 5:00 PM until 5:00 AM
  - b. The Lounge from 5:00 PM until 5:00 AM
  - c. The Lobby Bar/Restaurant from 6:00 AM until 5:00 AM
  - d. The Event Space (Alternative Nightclub Space) from 10:00 PM until 5:00 AM, when operating as a nightclub
  - e. The Café, aka Vespers, from 6:00 AM until 2:00 AM
  - f. The Outdoor Café from 6:00 AM until ~~2:00 AM~~ 11:00 PM. The hours may be extended until 5:00 AM for breakfast
  - g. The Taqueria from 11:00 AM until 11:00 PM
  - h. The Basement Nightclub from 8:00 PM to 5:00 AM

- i. The pool deck area and mezzanine terrace from 6:00 AM until 11:00 PM, except during City-approved Special Events or private functions when the hours may be determined by the event/function, but no later than 2:00 AM
9. ~~The pool deck and mezzanine areas, including the mezzanine terrace and pool deck venues, shall not be open to the public, except during City-approved Special Events or private functions. The applicant shall comply with all restrictions imposed by the Special Event Permit.~~ shall be generally limited to the use of hotel guests and/or the guests of private functions, with the following exceptions:
- a. Patrons of the Brasserie, Café, and Outdoor Café shall be allowed access to the pool deck and mezzanine from 11:00 AM to 7:00 PM, with music played at ambient background level only, except for weekends and holidays.
  - b. The pool deck shall be open for public events on Fridays, weekends, holidays, and during City's special event periods. It shall be open to the public during these days from 10:30 AM to 7:00 PM from December 1 to April 30 and from 10:30 AM to 8:00 PM the remainder of the year.
  - c. During these events entertainment shall be permitted.
  - d. All music shall be played through the hotel's audio system and no portable speakers or third party speakers shall be allowed.
  - e. Only the hotel manager or his/her designee shall have sole control over sound levels.
  - f. Food for the weekend/holiday events shall be served by the wait staff of the Taqueria and the public shall have access to the bar within the Outdoor Café, as well as a temporary bar located on the southern end of the pool deck area.
  - g. Queuing for the events shall occur within the hotel lobby. No queuing shall be permitted on the public right of way.
  - h. The hotel shall be the sole operator of the events.
  - i. The maximum occupant content of the pool deck area during these events shall be limited to 371 persons, or as determined by the Fire Marshall, whichever is lower.
  - j. Security personnel shall use counters to ensure maximum allowed occupant content is not exceeded.
  - k. The general public shall be permitted on the pool deck during City-approved special events.
  - l. The occupant content for City-approved special events on the pool deck shall be as determined by the Fire Marshall.

10. The lobby lounge bar/restaurant shall be restricted to an occupant content of no more than ~~64~~ 79 persons as proposed by the applicant, and the music shall be played as background only, at a level that does not interfere with normal conversation. The occupant load for the Event Space/Nightclub Space and all other venues serving alcohol, including the pool deck and mezzanine terrace shall be as determined by the Fire Marshall, except that the occupant content for the public events on the pool deck shall be limited as provided in this Order. The 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 a Certificate of Occupancy or Modified Certificate of Use/Business Tax Receipt for the pool deck venue.
11. The occupant content of the Basement Nightclub shall be limited to a maximum of 150 persons.
12. Security measures shall be taken to ensure that members of the public do not access the mezzanine terrace and pool deck areas, ~~except during City approved Special Events or private functions~~ as allowed under the terms of this Modified Conditional Use Permit. A detailed security plan for that purpose shall be submitted to staff for review and approval before a Modified Certificate of Use/Business Tax Receipt is issued.
13. Hotel security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all the alcoholic beverage venues.
14. As per The Audio Bug's report recommendations, ~~a full review of the sound insulating materials and systems installed in the venues with entertainment shall be conducted and a field test of these barriers once installed shall be conducted by a staff approved acoustical professional to ensure that the specified Sound Transmission Class (STC) ratings are met and that any low frequency sound transmission issues and any other sound emanating issues are addressed.~~ the sound system shall be carefully monitored and controlled by its integrated digital processor and shall only be allowed to be changed when the DJ connects his signal sources to the existing sound system. No additional speakers shall be permitted in order to maintain the balance of sound distribution. Any higher music levels shall be adjusted under the supervision of a qualified acoustical consultant. The time periods during which these events take place shall be programmed into the digital processor so that system levels are automatic. No later than 3 months after implementation, these recommendations shall be verified by a qualified acoustical consultant and a written report shall be submitted to staff for review and approval.
15. 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.
16. When the sound system is completely installed, but before the Modified Business Tax Receipt has been issued, it shall be tested under the supervision of a staff approved acoustic professional 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. A final report issued by the acoustic professional shall be submitted to staff.

17. During the proposed events at the pool deck or more active periods, the hotel shall add additional security staff, as well as additional hotel managers, to meet the needs of that particular event. Security staff shall be placed at access points - the main lobby entrance, the entrance to the Café and Brasserie along 18<sup>th</sup> Street, and the beach access.
18. 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, the applicant shall notify the neighboring homeowners, condominiums or neighborhood associations in writing in accordance with applicable City special events approval requirements. The following shall apply to City approved special events:
  - a. Occupant load to be determined by the Fire Marshal/Building Official for Special Events
  - b. Entertainment, including live music, concerts and the like may be permitted according to the restrictions imposed by the Special Event Permit approval
  - c. More than 1 adjudicated noise violation in the preceding 12-month period, at the time of application for a special event permit shall preclude the City from issuing said permit
18. The applicant may hold hotel events and functions incidental and customarily associated with a hotel such as, but not limited to, weddings, receptions, and private cocktail parties for hotel guests or clients, not open to the public. The following shall apply to those events and functions in the outdoor areas.
  - a. Only the hotel sound system shall be used.
  - b. Hours of operation to be determined by the event/function, but not later than 2:00 a.m.
  - c. 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.
19. 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, that may be issued during either **City-approved special events or private events/functions** or at any other time, 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. In the event there is an admission charge, queuing shall only be inside in the hotel lobby and a plan shall be presented to staff for review and approval. Any queuing in the public right-of-way shall be strictly prohibited.
21. There shall be at least 10 additional security personnel on duty on weekends and during Special Events, private events/functions and pool events open to the public.

22. All "wet T-shirt," "thong" or "bikini" events shall be prohibited.
23. All performances shall be limited to the interior of the establishments except for entertainment associated with public pool deck events or City-approved Special Events; only speakers playing ambient music, subject to the Audio Bug recommendations in the sound study submitted with this application, shall be permitted outdoors; except as permitted during a public pool deck event or City-approved Special Event, all outdoor music shall be ambient background music.
24. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
25. A final certificate of completion or certificate of occupancy, whichever may apply including an occupant load certificate for the entire combined space, shall be obtained before an application is made for a Modified Certificate of Use/Business Tax Receipt.
26. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about noise. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.
27. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), as determined by the Transportation Concurrency section.
28. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalks, 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.
30. 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 Modified Certificate of Use/Business Tax Receipt to operate this entertainment establishment.
31. 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.
32. ~~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 building permit, certificate of use or occupational license, whichever occurs first.~~ Within a reasonable time after applicant's receipt of this Conditional Use Permit as signed and issued by the Planning Director, the applicant shall record it in the Public Records of Miami-Dade County at applicant's expense and then return the recorded instrument to the Planning Department. No building permit, certificate of use, certificate of occupancy, certificate of

completion or business tax receipt shall be issued until this requirement has been satisfied.

33. 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 114-8 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.
34. 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.

ZONING SITE MAP



City of Miami Beach Planning Board  
File No. 1734  
1801 Collins Ave

 The applicants, Shelborne Associates, GP, Costello Investments, Inc., and the Shelborne Ocean Beach Hotel Condominium Association, Inc., are requesting a Modification to an existing Conditional Use Permit, pursuant to Section 118-195 of the City Code, in order to permit daytime weekend and holiday public events featuring entertainment on the pool deck, and to modify conditions relative to the request.

**MIAMI BEACH**  
PLANNING DEPARTMENT

1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139 P 305.673.7550 [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

