

MIAMI BEACH
PLANNING DEPARTMENT
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: November 24, 2015

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **File No. 2277 – 2038 Collins Avenue (202-218 21st Street) –
Bagatelle**

The applicant, Bagatelle Miami, LLC, is requesting Conditional Use approval for an entertainment establishment, pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) which requires that any additional entertainment establishments be reviewed by the Planning Board, regardless of occupant load, and pursuant Section 118, Article IV and Section 142, Article V. [Note: This application will first require approval of the modifications requested as part of PB File No. 1609., also part of the 11-24-15 agenda.]

RECOMMENDATION

Approval with conditions

BACKGROUND

February 27, 2001

Just Around the Corner, LLC was granted a Conditional Use Permit (CUP), File No. 1493, for a multi-level parking garage with retail on the ground floor. This approval included a condition that states: "Nightclubs, dance halls, bars or any kind of neighborhood impact establishment shall not be permitted."

April 30, 2003

Just Around the Corner, LLC and POP Development, LLC requested a substantial amendment to the existing CUP (File no. 1493) with a new File No. 1609 which was approved by the Board (File No. 1609 superseded the previous order). The substantial amendment consisted of an extension of the valet parking garage to the east along 20th Street and introducing a residential component above ground level commercial spaces facing Collins Avenue and 21st Streets.

June 22, 2004

Just Around the Corner, LLC and POP Development, LLC applied for a Modified CUP (MCUP) File No. 1609 and were approved. The modification included the following language: Condition # 3 "Dance halls, bars or any kind of neighborhood impact establishment shall only be permitted along Collins Avenue. Any entertainment establishment that may be proposed for this property, regardless of occupant load shall be

reviewed by the Planning Board for conditional use approval as agreed by the applicant.”

July 24, 2007

A new applicant, Park Place Development, LLC requested a modification to the MCUP to among other things create two new restaurant spaces, which was approved by the Board.

February 28, 2012

Park Place Development, LLC requested a modification to the MCUP to add a lounge use on 20th Street. There was a long discussion that included the intensity of the restaurants (number of seats), traffic, parking and the location of the various venues. The MCUP retained the previous condition, but reworded and moved to condition #11 *“Any additional dance hall, bar, or entertainment establishment that may be proposed for this property, regardless of occupant load shall be reviewed by the Planning Board for conditional use approval as agreed by the applicant, and shall only be permitted, if permitted, along Collins Avenue or 20th Street.”*

August 28, 2012

Park Place Development, LLC was granted a modification to the MCUP to add a restaurant and reconfigure the previously approved restaurant spaces. In order to streamline the process, and allow for future reconfigurations without returning to the Planning Board every time there is a change of floor plan, the Board approved the following condition # 12. *“Notwithstanding Condition No. 11 above, Parc Place Development, LLC, as owner of the property, shall be enabled to allocate, divide or sub-divide the commercial spaces within the property for different uses to either retail, eating and drinking establishments, or other commercial spaces such as a spa, gym, or similar, and re-allocate parking spaces according to need without having to amend the Permit every time one of these re-allocations, divisions or sub-divisions of spaces takes place, as long as it is not one of the uses specified in the Permit that require Planning Board approval. Any re-allocation, division or subdivision of the commercial spaces shall be limited to the number of parking spaces provided within the garage and shall be submitted to Planning Department staff for review and re-certification that enough parking spaces remain available for all uses within the building.”*

March 4, 2015

The applicant opened a restaurant located on the first floor at the southwest corner of Collins Avenue and 21st Street, with a 153 seats approved on the Building Certificate of Use (BCU) and an occupant content for 155 persons approved by the Fire Department.

ZONING / SITE DATA

Legal Description:

Lots 1, 2, 3, 4, 6 and 8 of Block C of Amended map of Ocean Front property of Miami Beach Improvement Company Subdivision as recorded in PB 5, Page 7 of the Public Records of Miami-Dade County, Florida.

Zoning:

CD-3, Commercial High Intensity zoning district

Future Land Use Designation: CD-3, Commercial High Intensity zoning district

Surrounding Uses:

North	Collins Park (City Park)
East:	Hotel
South:	Hotel and multifamily
West:	Hotel and multifamily

(See Zoning/Site map at the end of the report)

THE PROJECT

The applicant, Bagatelle Miami, LLC, submitted plans entitled "Bagatelle Bistro", as prepared by Kobi Karp Architecture, dated August 05, 2015. The plans illustrate the current layout of what is identified as "Restaurant 1" in the main modified CUP File No. 1609. The submitted layout reflects a one-story 155 seat restaurant with 123 seats inside and 32 seats on the outside terrace which is on private property. The restaurant is proposing entertainment in the form of a "DJ" as represented in the Letter of Intent (LOI) and to mitigate the potential noise spillage, a retractable glass entry vestibule.

In the interest of clarity, the entire building includes 205-237 20th Street; 221 20th Street; 220 21st Street; and 2000-2038 Collins Avenue. The building permits for Bagatelle are under 2038 Collins Avenue, the Business Tax Receipt (BTR) for this space is issued under 2000 Collins Ave #2, and the physical address is 202-218 21 Street.

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.

- 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 proposed restaurant use obtained a Modified Conditional Use Permit by the Planning Board under File 1609 in February, 2012, at which time a Traffic Impact Study was conducted for the various restaurant and alcoholic beverage establishment uses within the entire site. The TIS concluded the proposed use would not exceed the established thresholds for levels of service.

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

Consistent – Entertainment is permitted in the CD-3 zoning district.

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

Partially Consistent – The submitted sound study concluded that the proposed use would not have any negative acoustical impact on the neighbors. However, the proposed establishment may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. Staff is recommending measures so that any resulting adverse impact is mitigated.

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

Consistent – Parking is available at the garage connected to the proposed restaurant. Patrons can valet at the entrance of the garage or at the entrance of the hotel which is 25 feet west of the restaurant entrance (see the valet route shown on p. A1.00 of the submission package). Additional parking is available in the surrounding area, including a municipal lot across Collins Avenue on 21 Street. Further, many patrons may walk, arrive by taxi, or hire car service.

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

Consistent – Staff is recommending conditions to mitigate any adverse impacts from noise on the surrounding neighbors.

7. The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.

Partially Consistent – There are several entertainment uses in the area. Adverse impacts are not anticipated for the addition of entertainment without an increase in occupancy. Following are some of the Neighborhood Impact Establishments approved nearby.

Address	Name	Type	File #	Approved
1901 Collins Ave	Phillips South Beach, LLC	NIE & outdoor entertainment-pool area	1629	26-Aug-03
1905 Collins Ave	Rok, LLC	NIE-Entertainment establishment	1481-B	23-Jun-09
1908 Collins Ave	Baoli Miami, LLC	NIE-Restaurant with entertainment	1988	25-Jan-11
1921 Collins Ave	Mint Entertainment	NIE-Entertainment establishment	1481-A	19-Dec-00
2301 Collins Ave	2377 Collins Resort LP	NIE & outdoor entertainment-roof pool deck & other venues	1840	25-Sep-07
2201 Collins Ave	W Hotel	NIE & outdoor entertainment-pool & other venues	1922	26-May-09

STAFF ANALYSIS

The current one-story restaurant is much smaller than the two-story, 372 seat restaurant which was originally proposed for the north-east corner of the building under the MCUP (File No. 1609). Because the uses in the building have not exceeded the intensity (number of seats) previously approved on the MCUP, the approval for the restaurant was done at an administrative level which was authorized by Condition #12 of Planning Board File No. 1609.

“Notwithstanding Condition No. 11 above, Parc Place Development, LLC, as owner of the property, shall be enabled to allocate, divide or sub-divide the commercial spaces within the property for different uses to either retail, eating and drinking establishments, or other commercial spaces such as a spa, gym, or similar, and re-allocate parking spaces according to need without having to amend the Permit every time one of these re-allocations, divisions or sub-divisions of spaces takes place, as long as it is not one of the uses specified in the Permit that require Planning Board approval. Any re-allocation, division or subdivision of the commercial spaces shall be limited to the number of parking spaces provided within the garage and shall be submitted to Planning Department staff for review and re-certification that enough parking spaces remain available for all uses within the building.”

Parking

The proposed project requires one (1) parking space for every four (4) seats which equals 39 parking spaces required by City Code Sec. 130-32. The 39 parking spaces are easily accommodated in the valet only garage that is attached to the site and has 407 parking spaces in total.

Patrons can valet at the entrance of the garage on 20th Street or at the entrance of the hotel which is 25 feet west of the restaurant entrance on 21st Street (see the valet route shown on p. A1.00 of the submission package). Additional parking is available in the surrounding area, including a municipal lot across Collins Avenue on 21 Street. Furthermore, many patrons may walk, arrive by taxi, or hired car service.

Security

The applicant proposes to have a security force of approximately 1-2 security personnel depending on the specific needs of the time. Security would help with crowd control, queuing and enforce patron age restrictions.

Sound

Even though the restaurant with entertainment does not rise to the level of a Neighborhood Impact Establishment (200 persons or greater), the request for entertainment requires its own separate CUP per Condition #11 of Planning Board File No. 1609.

Condition #11 “Any additional dance hall, bar, or entertainment establishment that may be proposed for this property, regardless of occupant load shall be reviewed by the Planning Board for conditional use approval as agreed by the applicant, and shall only be permitted, if permitted, along Collins Avenue or 20th Street.”

The Sound Study prepared by Edward Duggard & Associates PA concluded that “In summary, Kinetics noise and vibration control devices will be installed to decouple all loudspeakers from the structure. After that has been accomplished, the sound system will be tested and adjusted to prevent the sounds of music from impacting residential properties on the floors above the restaurant. Finally the vestibule installation will be coordinated with this work so that upon completion, all sound mitigation elements will be in place.”

The Peer Reviewer, Jesse Ehnert with Arpeggio Acoustic Consulting, LLC, concluded “...there is not sufficient information to determine whether the applicable portion of the Miami Beach noise code, which is excerpted below, would be violated.

“The using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such manner as to be plainly audible at a distance of 100 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.”

The applicant’s sound engineer’s Edward Duggard & Associates PA response is included in the Board packages.

Conclusion

After reviewing the request, staff does not object to the addition of entertainment at this location, but is not in agreement with the applicant’s proposal to mitigate sound spillage by installing a temporary entrance vestibule. If the applicant proposes a DJ and entertainment level volume, staff recommends that the entrance vestibule be permanently installed without retractable glass panels.

STAFF RECOMMENDATIONS

In view of the foregoing analysis, staff recommends that this application to operate Bagatelle as a restaurant and entertainment establishment be APPROVED subject to the following conditions:

1. 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). 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 Conditional Use Permit is issued to Bagatelle Miami, LLC, as operator of this Conditional Use Permit consisting of a restaurant, alcoholic beverage establishment, and entertainment establishment, with approximately 155 seats.
3. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
4. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
5. The applicant shall permit and install a permanent entrance vestibule, subject to Certificate of Appropriateness approval, prior to any certificate of completion (BCC), or a BTR approval for entertainment, whichever approval comes first.
6. The Applicant agrees to the following operational conditions for all permitted and

accessory uses and shall bind itself, 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:

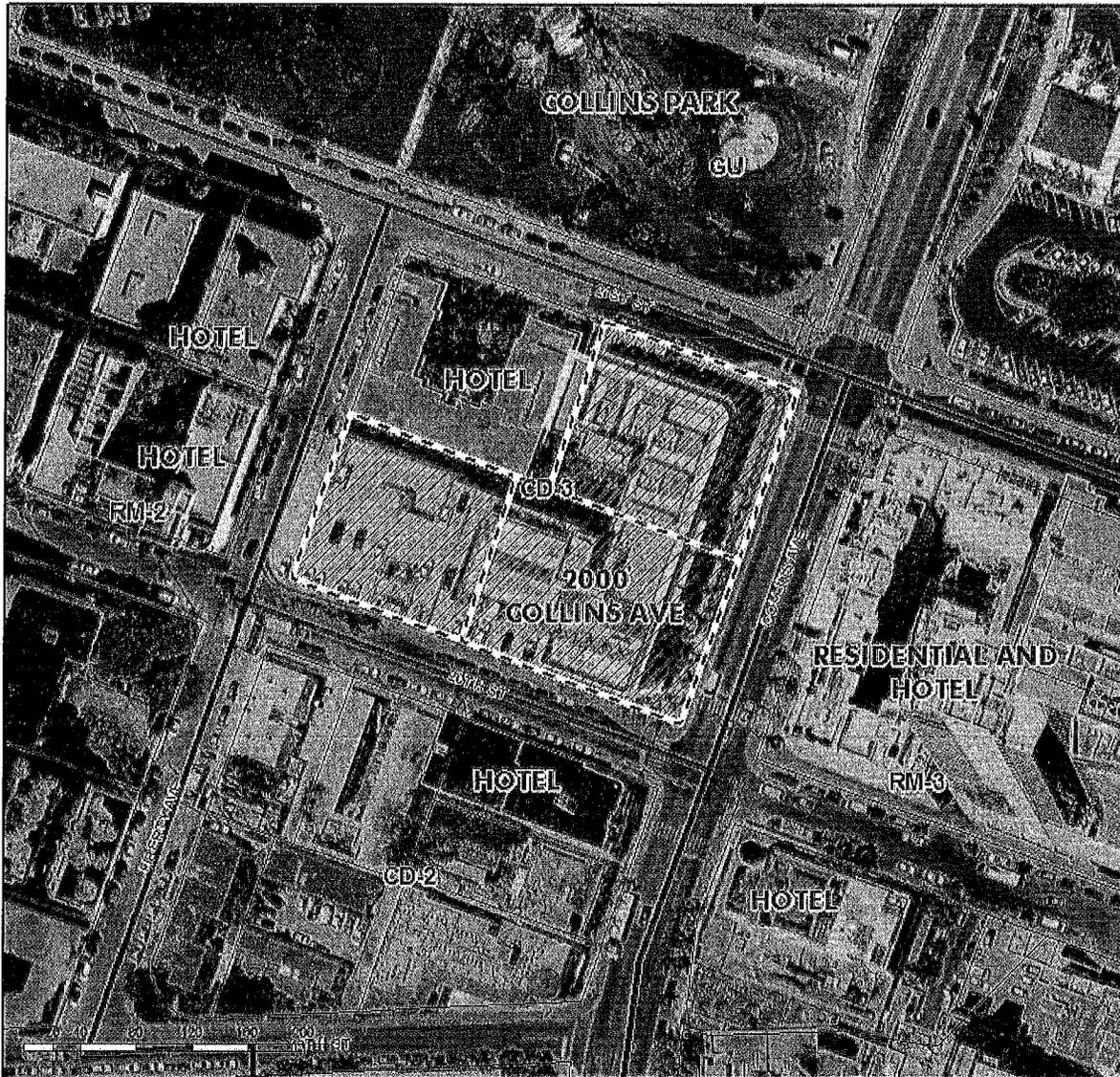
- a. The hours of operation shall be within the hours allowed in the Landlord's CUP: 10:00 AM to 3:00 AM for the interior dining area and 10:00 AM to 1:00 AM for the outdoor café.
- b. The patron occupant content shall be a maximum of 155 persons, or as determined by the Fire Marshall, whichever is lower.
- c. The sound system and sound attenuation measures shall be implemented as per recommendations of the sound study. A final sound transmission report which includes the performance of sound systems and sound attenuation devices shall be submitted to staff for review and approval prior to a Certificate of Use or Business Tax Receipt.
- d. In the outdoor seating area, only pre-recorded background music played at a volume that does not interfere with normal conversation shall be allowed. Any other form of entertainment shall be prohibited.
- e. Wall mounted speakers shall be strictly prohibited on the exterior walls.
- f. Special events pursuant to the Miami Beach City Code, associated with the proposed establishment, may not be held on the premises and the applicant agrees that it will not seek or authorize applications for such permits.
- g. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- h. Any queuing of patrons shall occur within the property or inside the restaurant only. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
- i. Security staff shall monitor patron circulation and occupancy levels.
- j. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
- k. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to historic preservation staff review and approval.
- l. Delivery trucks shall only be permitted to make deliveries from city authorized and designated commercial loading zones.

- m. Delivery trucks shall not idle in the loading zone.
 - n. Air conditioned 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.
 - o. Garbage dumpster covers shall be closed at all times except when in active use.
 - p. 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 sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.
6. 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 BTR to operate this entertainment establishment.
 7. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise.
 8. 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, 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.
 9. 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.
 10. 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 or certificate of completion shall be issued until this requirement has been satisfied.
 11. 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.

12. 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.

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ZONING AND LOCATION MAP



City of Miami Beach Planning Board
File No. 2277
2038 Collins Avenue (202-218 21st Street)



The applicant, Bagatelle Miami, LLC, is requesting Conditional Use approval for an entertainment establishment, pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1809) which requires that any additional entertainment establishment be reviewed by the Planning Board, regardless of occupant load, and pursuant Section 118, Article IV and Section 142, Article V.

MIAMI BEACH
PLANNING DEPARTMENT

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