

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. 2278. 237 20th Street – Sweet Liberty**

The applicant, Sweet Liberty Brothers, LLC, is requesting Conditional Use approval for an entertainment establishment including frontage on Liberty Avenue, pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) 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. [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amendment to the existing CUP (File no. 1493) with a new File No. 1609 which was approved by the Board (File No. 1609 superseded the previous order).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.”*
- August 31, 2015* The applicant opened a restaurant located on the northeast corner of Liberty Avenue and 20st Street, with 64 seats operating until 5:00 AM. The current occupant content is for 163 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, Sweet Liberty Brothers, LLC, submitted plans entitled "Sweet Liberty Restaurant", as prepared by Fortis Lamas Architecture, dated August 06, 2015. The plans illustrate the current layout of a new restaurant that recently opened. The layout reflects a 62 seat restaurant. The restaurant is proposing entertainment in the form of live musical performances as represented in the attached Sound Study. In anticipation of any potential noise spillage, an entry vestibule with sound absorbing panels has already been installed to mitigate any such spillage.

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 physical address of Sweet Liberty is 237-B 20th 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 property obtained a Modified Conditional Use Permit (MCUP) by the Planning Board under File 1609 in February, 2012, at which time a Traffic Impact Study (TIS) was conducted for the various restaurant and alcoholic beverage establishment uses within the entire site up to a maximum of 592 restaurant seats. The addition of this venue would bring the entire property to 500 restaurant seats, which is below the number proposed in the MCUP. 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 Establishments are 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 which is on the same block approximately 50 feet east of the restaurant entrance (see the site plan on p. A0.20 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 will recommend conditions to try 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. The following are some of the Outdoor Entertainment and 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 MCUP File No. 1609 allowed for the creation of additional restaurant spaces on the property, as long as the number of seats does not exceed 592 seats (the original number allocated to two spaces that were subsequently reduced in size). The addition of the 62 restaurant seats at 237 20th Street brings the property to a total of 500 seats which does not exceeded the intensity (number of seats) previously approved, 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 16 parking spaces required by City Code Sec. 130-32. The 16 parking spaces will be accommodated in the attached valet only garage that has 407 parking spaces in total.

Security

The applicant proposes to have an outside security specialist train all personnel on crowd control, fire safety, and emergency procedures.

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 the “...the attention to noise mitigation already employed by the Applicant it is our opinion that, with the slight modifications outlined above, the Sweet Liberty project at 237 20th street will not present any detrimental impacts to the surrounding area.” The modification referred to in the conclusions is below:.

“Digital signal processing may be used by the live entertainment and management to limit the sound output and maintain appropriate sound levels. Specifically compressors and level limiters will be added to the signal to minimize loud peaks. Overall levels will be monitored and maintained by operating personnel with limits set to maintain compliance with acceptable sound levels.”

The Peer Reviewer, Jesse Ehnert with Arpeggio Acoustic Consulting, LLC, concluded “...it is our opinion that more information related to low-frequency sound generation within the venue and transmitting out of the venue needs to be supplied. This information can then be viewed in the context of existing background sound levels at the site during typical times of operation. This is a salient issue, especially given that the Miami Beach noise code states the following in Section 46-152(b).

“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 supports the addition of entertainment at this location, due to the applicant's physical modifications to the property (the double door vestibule already installed) and the surrounding properties containing mainly hotel uses.

STAFF RECOMMENDATIONS

In view of the foregoing analysis, staff recommends that this application to operate Sweet Liberty 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 Sweet Liberty Brothers, LLC, as operator of this Conditional Use Permit consisting of a restaurant, alcoholic beverage establishment, and entertainment establishment, with approximately 62 seats. The establishment shall always be licensed as a restaurant, and shall not become a stand-alone bar or stand-alone entertainment establishment.
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 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 of 12:00 AM to 5:00 AM. At all

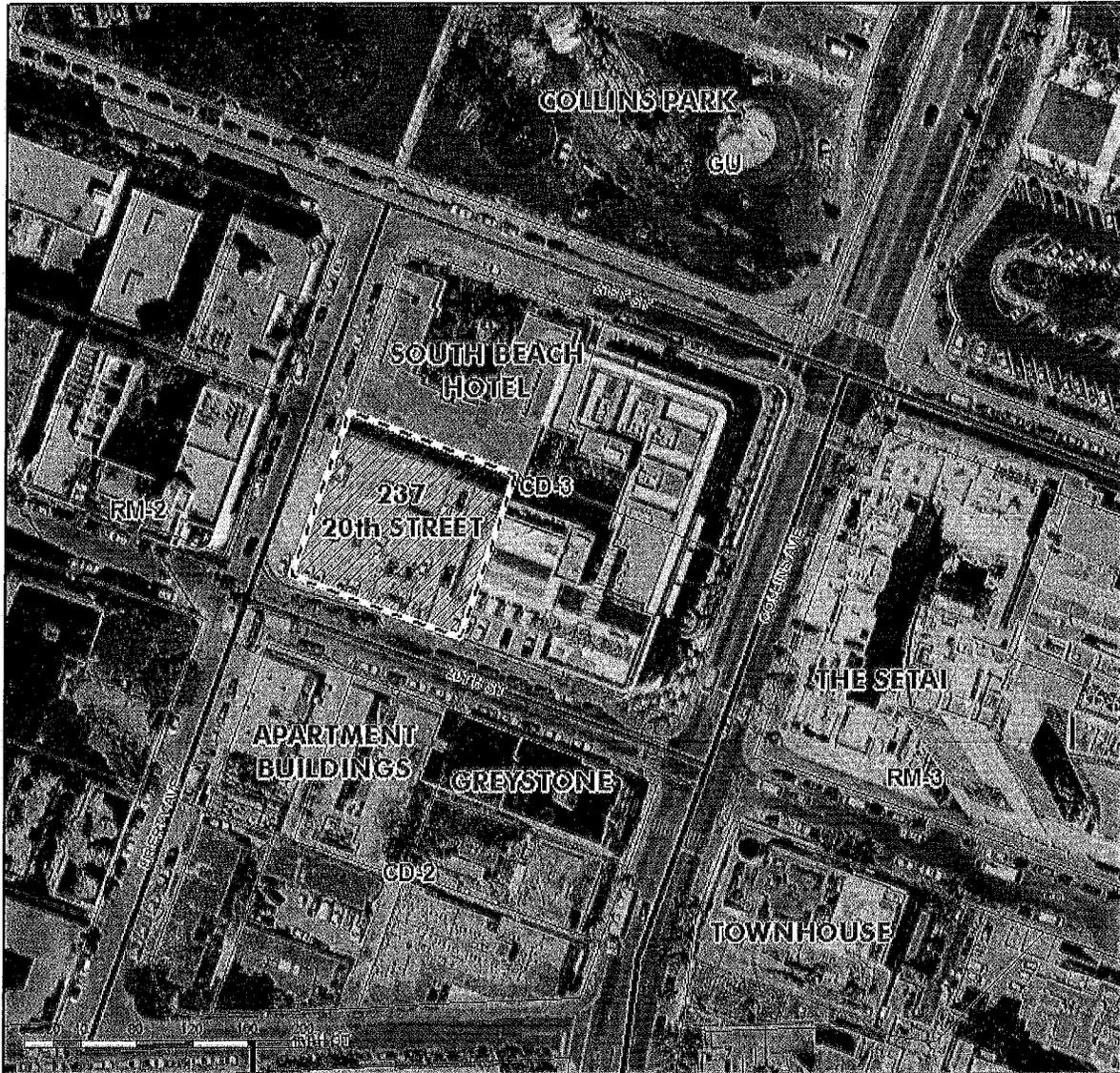
times the establishment is open, food service with a full menu and operating kitchen shall be required.

- b. The patron occupant content shall be a maximum of 163 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 for the entertainment portion is approved.
- d. Speakers shall be strictly prohibited on the exterior of the building.
- e. 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.
- f. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
- g. 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.
- h. Security staff shall monitor patron circulation and occupancy levels.
- i. Security staff shall take measures to strictly enforce patron age restrictions in the City Code around the clock.
- j. Business identification signs shall be limited to sign copy indicating the name of the establishment only, subject to historic preservation staff review and approval.
- k. Delivery trucks shall only be permitted to make deliveries from 10:00 AM to 2:00 PM.
- l. Delivery trucks shall only be permitted to make deliveries from the designated loading zone located at the center of the block on Liberty Avenue.
- 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.

ZONING AND LOCATION MAP



City of Miami Beach Planning Board
File No. 2278
237 20th Street



The applicant, Sweet Liberty Brothers, LLC, is requesting Conditional Use approval for an entertainment establishment including frontage on Liberty Avenue, pursuant to the requirements of the Master Conditional Use Permit for the property (PB File No. 1609) 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. [Note: This application will first require approval of the modifications requested as

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