

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: January 26, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **File No. 1898 – 1100 West Ave–The Mondrian –Progress Report**

UPDATE

A request to modify the Modified Conditional Use Permit to clarify the condition related to the maximum occupancy on the pool deck was approved on November 24, 2015. Additionally, the applicant has applied for a BTR and BCU for the pool bar and pool deck venue and has been working with staff to gain final approval.

BACKGROUND

October 28, 2008 The Board approved a Conditional Use Permit for a Neighborhood Impact Establishment for 1100 West Properties, LLC consisting of a restaurant and bar/lounge located throughout the garden, lobby and pool deck areas.

August 25, 2009 The Board approved a Modification to the Conditional Use Permit (MCUP) to extend the hours of operation of the interior portion of Sunset Lounge from 2:00 AM to 5:00 AM.

October 29, 2013 The Board approved a modification to the MCUP, modifying certain conditions pertaining to hours and entertainment for interior and exterior portions of the project.

February 25, 2014 The Board approved additional modifications to the MCUP pertaining to hours and entertainment for interior and exterior portions of the project.

November 24, 2015 The applicant appeared before the Board for a Progress Report. The Board approved a minor modification to the MCUP, and a clarification of the condition related to the maximum occupancy on the pool deck. The Board also required a Progress Report be scheduled for January 26, 2016.

STAFF ANALYSIS

Since the last Progress Report, staff research of City records found that the following open violations are showing in the City's records as of this writing (the current status is in parenthesis):

1. **CE15010844** 07/01/2015 (Special Master) "Failing to obtain a BTR/CU for the Pool Bar, Pool Deck, Cabanas and Spa." **JC15000611** 8/04/15 (Open) Special Master case for #2 scheduled for hearing on 2/4/16.
2. **CE15013480** 09/20/2015 (Open) "Failure to operate your business in accordance with your conditional use permit. Sections: 142-153, 118-194, 114-8. They had a

portable amplified speaker in the pool deck area.

The Special Master dismissed the previous noise violation that was appealed by the applicant and the violation was closed on January 7, 2016. The open violation regarding the lack of a Business Tax Receipt (BTR) and Building Certificate of Use (BCU) for various venues on the property is being addressed by the applicant and is expected to be resolved.

Since the November 24, 2015 Planning Board, there have not been any new noise violations issued by Code Compliance.

STAFF RECOMMENDATION

Staff recommends that the Board discontinue any further Progress Reports.

TRM/MAB/TUI

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

PROPERTY: 1100 West Avenue

FILE NO: 1698

IN RE: The applicant, 1100 West Properties LLC., requested modification to a previously approved Neighborhood Impact Establishment Conditional Use consisting of a restaurant and bar/lounge located throughout the garden, lobby and pool deck areas. Specifically, the applicant is requesting to clarify the condition related to the maximum occupancy on the pool deck pursuant to Chapter 118, Article IV and Chapter 142, Article V of the Land Development Regulations of the City Code.

LEGAL

DESCRIPTION: Lots 7 and 8 and north 50 feet of Lot 9, Alton Beach Realty Co., as recorded in Plat Book 6, Page 12 of the Public Records of Miami-Dade County, Florida, as described in Declaration of Condominium recorded in Official Records Book 25780, Page 0498 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: November 24, 2015

MODIFIED CONDITIONAL USE PERMIT

The applicant, 1100 West Properties, LLC, filed an application with the Planning Director for a Conditional Use Permit pursuant to Section 118-193 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request for Conditional Use 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 record for this matter:

That the property in question is located in the RM-3, Residential High Intensity zoning district;

That the intended Use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and Uses associated with the request are consistent with the City Code;

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

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values if the following conditions are met.

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IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations which were amended by the Board, that the modification to the Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed: Strikethrough denotes deleted words; underlining denotes new language:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. ~~The applicant shall provide a progress report to the Board within 90 days from the approval of this Modified Conditional Use Permit.~~ 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 1100 West Properties, LLC as owner of the property and to Morgans Hotel Group Co. and its affiliates as operator of property. Subsequent owners ~~and or~~ operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein. Any change to the ownership interests in 1100 West Properties, LLC exceeding twenty-four (24%) percent of the ownership interests in 1100 West Properties, LLC, shall be deemed to create a "subsequent owner" of the property requiring said owner to appear before the Board to affirm their understanding of the conditions listed herein.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
4. The applicant, Morgans Hotel Group Co and its affiliates, as operator of the property, now and in the future, shall abide by all the documents and statements submitted with this application for a Neighborhood Impact Establishment Conditional Use Permit.
5. With respect to the operation of the property, Morgans Hotel Group Co and its affiliates, is are in addition to the applicant, responsible for compliance with the conditions. ~~Operations shall not begin until Morgans Hotel Group Co, acting through a senior executive officer, has executed and filed with the Planning Department a notarized statement, in such form and substance as complies with this Condition and is approved by the City Attorney.~~
6. The maximum number of people that shall be permitted at any one time in each of the interior and exterior areas of each of the lounge, pool bar, and restaurant shall be as set forth on Page A-1.0, dated April 19, 2007 and signed September 25, 2008 of the site plans submitted as part of the Application.
7. The applicant, 1100 West Properties, LLC shall comply with all of the following operational conditions:
 - a. The hours of operations shall be as proposed by the applicant:
 - (i) Restaurant 7:00 a.m. until midnight, except on weekends and holidays

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they shall be 2:00 a.m. indoors and 12:00 ~~pm~~ a.m. outdoors.

- (ii) Sunset-Lounge: 11:00 a.m. until 5:00 a.m. seven days per week in the air-conditioned interior area; 11 a.m. until 2:00 a.m. seven days per week on the pool deck portion; provided that security personnel are posted at each of the access points to the outdoor terrace and pool deck at 2:00 a.m. with the responsibility of preventing access to those areas after 2:00 a.m.
 - (iii) Pool Bar counter: 9:00 a.m. until 10:00 p.m. Sunday through Thursday and until 11:00 p.m. Friday and Saturday, as well as the Sunday that is closest in time to each of the following holidays: Thanksgiving, Christmas, New Year's Eve, Labor Day, Memorial Day, July 4th and Easter, provided the applicant obtains a variance from the Board of Adjustment. Otherwise, the bar counter shall close from 8:00 PM until 9:00 AM seven days a week.
 - (iv) All exterior clean-up activities relating to the restaurant, sunset lounge and pool bar counter operations, including the depositing of trash and recycling, shall cease one (1) hour following the close of daily operations at 2:00 a.m. seven days a week and all exterior set-up activities for said venues shall not commence before 6:30 a.m. in the covered areas and 8:00 a.m. in the uncovered areas of the pool deck
- b. 1100 West Avenue shall install landscaping in the area near the north and south property lines in order to create a transition between the Property and the neighbors to the north and south, and in order to attempt to create a sound buffer and reasonable artificial light buffer. The type, size and quantity of the landscaping will be subject to City staff review and approval.
 - c. 1100 West Avenue shall install and maintain sound buffering panels along its north and south property lines in order to create additional sound buffering, subject to City review and approval.
 - d. The outdoor bar that is located close to the Mirador North property line, will shall be moved to the area near the south boundary of the Property, the exact location of which will be at 1100 West's sole discretion but no closer than south of the east/west median line as defined as Line A on Exhibit B (copy attached).
 - e. After 8:00 P.M. and before 8:00 AM, all tables and chairs that are used for meal service in the rear of the Property shall be confined to the covered areas. Lounge chairs or day beds with accessory tables are allowed around entire pool area for lounge or bar service. No service shall occur on the Pool Deck after 11:00 PM except for table service in the cabanas. North and south cabanas service will be limited to groups of 6 or less individuals and food service will end at 12:00 Midnight and drink service at 2:00 AM.
 - f. 1100 West Avenue will make the south service entrance the property's primary service access. Additionally, 1100 West Avenue will build and use a trash room only on the South side of its property; all access to the trash room for pickup and

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delivery shall be along the south side of 1100 West. In the event of an emergency or other extraordinary event or circumstance beyond the control of the applicant, such as war, strike, riot, crime or act of nature, the limitation shall not apply.

- g. Unless required by law, and no reasonable alternative could be found, no additional mechanical equipment will be located near the north or south areas of the Property.
- h. During all operating hours of the marina, the marina will be staffed by an attendant and will be under 24-hour surveillance. No loudspeakers shall be affixed to marina facilities except as may be required for fire or building code purposes, or necessary for operation of a marina. Any such amplification devices shall be utilized solely for marina operations, not for entertainment or non-operational purposes.
- i. No speakers shall be affixed to and located on the exterior of the premises, except as may be required for fire or building code purposes, and except for the ground installed speakers such as the Bose FreeSpace 360P Series II Loudspeaker (or substantial equivalent) as described in The Audio Bug, Inc.'s report dated September 19, 2008, intended to limit noise disbursement with the intent to distribute sound within a limited radius of each speaker, with sound projected downward or laterally not vertically. Additional speakers may be added to more evenly distribute sound, provided that:
- (i) Such speakers are consistent with the type of speakers described in the aforementioned report,
 - (ii) The location of such speakers are consistent with The Audio Bug, Inc.'s design plan for the pool deck dated September 10, 2013, and
 - (iii) The volume of the music shall not exceed background levels. For purposes of this provision, "background levels" shall mean levels that do not interfere with normal conversation.

With the exception of the covered areas in the exterior of the Property (including the cabanas), no audio amplified equipment shall be operated on the Pool Deck later than 10:00 p.m. Sundays through Thursdays and 11:00 p.m. Fridays and Saturdays. Audio amplified equipment may also be played until 11:00 p.m. on the Sunday that is closest in time to each of the following holidays: Thanksgiving, Christmas, New Year's Eve, Labor Day, Memorial Day, July 4th and Easter. With respect to said covered areas, no audio amplified equipment shall be operated beyond 2:00 a.m. No speakers shall be located on the property boundaries and all speakers shall be placed in such a way that they direct sound inward away from the neighboring properties.

- j. In the exterior common areas, the use of percussion instruments shall not be permitted on the premises, outdoors on the premises, or on open air portions of the premises, or within any rooms or facilities operating on the premises with doors or windows that open directly onto the exterior except as explicitly permitted under a Special Event permit.

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- k. Portable audio or amplified equipment, (inclusive of loudspeakers, radio receivers, television sets, musical instruments, or other machines or devices for the producing or reproducing of sound) shall not be permitted on the pool deck or rooftop. But television sets will be allowed if their sound systems use the sound system described in paragraph ~~4-h~~ 7(i).
- l. No outdoor live music shall be permitted at any time, except as may be permitted in a valid Special Event permit issued by the City with prior notice to the adjoining properties upon application for such a permit and prior to its issuance. No such permit shall include the use of percussion instruments, as described in subsection ~~h~~ 7(i), unless it is explicitly approved by the Special Event Permit. Any such Special Event Permit shall be for a private noncommercial party or charitable event and shall be limited to no more than one day in any given month and during national holidays.
- m. Rooftop use shall be solely for unit owners, their lessees, invitees and guests, and hotel guests.
- n. Entertainment, as defined in Section 142-1361 of the Code of the City of Miami Beach, Florida, shall be prohibited on exterior portions of the property, except as may be permitted in a Special Event permit issued by the City.
- o. Commercial fireworks shall not be permitted on the property, except as may be permitted during events held pursuant to a Special Event Permit issued by the City.
- p. Temporary lighting equipment used in connection with events or productions on the Pool Deck shall be placed in such a way to minimize spillover onto neighboring properties. In no event shall such lighting be turned on between midnight and 7:00 a.m. seven days a week, except as may be permitted in a Special Event permit issued by the City.
- q. 1100 West shall install signage on the property instructing vehicular traffic to refrain from noise from honking truck, car horns, and car alarms, subject to the review and approval of staff.
- r. In addition to the limitations specified herein, to the extent permitted by law, the 1100 West and successors and assigns shall prohibit on the premises noise that is prohibited under the City of Miami Beach noise ordinance, Chapter 46, Article IV, as it may be amended from time to time.
8. The installation plan for the updated 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.
9. When the sound system is completely installed, but before operations begin, it shall be tested under the supervision of Mr. Donald J. Washburn, president of The Audio Bug, Inc., but before the Business Tax Receipt has been issued, to ensure that all aspects of the system's performance comply with The Audio Bug, Inc.'s report dated September 19, 2008 as well as The Audio Bug, Inc.'s design plan for the pool deck dated September

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- 10, 2013. Operations shall not begin until staff has received and approved in writing a final written report by Mr. Washburn which states that as tested, the system complies with all the aforementioned reports and supporting materials.
10. Only the sound system operated and controlled by hotel management shall be permitted. Any extraneous or independent sound system that may be brought by DJs, promoters, performers or any other individuals shall be strictly prohibited.
 11. Hotel security personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of the lounge.
 12. Prior to the issuance of a Certificate of Occupancy or Certificate of Completion, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined. A final concurrency determination shall be conducted prior to the issuance of a Certificate of Occupancy or Certificate of Completion. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving the Business Tax Receipt.
 13. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 14. The westbound approach of the 11th Street and West Avenue intersection shall be re-striped by adding a thru-arrow to the existing painted left-turn arrow in order to show the allowed through-movement into the project.
 15. The landscaping that may be proposed for the edge along the sidewalk shall not exceed a maximum height of two feet in order to provide adequate sight distance at the north (exit) driveway. Any revision to the landscaping plan shall be submitted to staff for review and approval.
 16. A "DO NOT ENTER" sign facing the street, shall be installed at the north driveway. In addition, removable bollards shall be installed so that a right-turn only movement is permitted. Bollards may be removed during special events to allow the flow of traffic with security personnel or off-duty officers directing traffic.
 17. The applicant shall coordinate with the Public Works Department any proposed street improvements, including but not limited to the re-striping of the 11th Street and West Avenue intersection.
 18. Food and beverage service to boat patrons shall be permitted, except that no food and beverage sales shall be provided to vessels docked at the south marina. No other services shall be provided to vessels docked on the property. The applicant shall satisfy the required parking for a commercial marina by either providing the required spaces, or paying a fee in lieu of providing the required parking.
 19. Access to the open rooftop area on the top floor, located between two groups of units, facing east, shall be limited to unit owners, their lessees, their respective social invitees and their guests, and hotel guests. In the open rooftop area, none of the following shall be permitted at any time: (a) any musical instrument or any sound-producing device, instrument, system, or component of any kind, or (b) any social or commercial event or

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function of any-kind, or (c) flashing or spinning lights.

20. ~~The occupancy load~~ maximum number of persons ~~of on~~ the Pool Deck shall not exceed 299 persons, except during special events. For purposes hereof, the term "Pool Deck" shall mean as designated on Exhibit "A," attached hereto and incorporated herein, as the "Pool Deck." Without limitation, the Pool Deck shall exclude any covered areas in the exterior of the Property. Any ~~physical expansion of the area covered under this MCUP approved site and/or floor plan~~ shall require the review and approval of the Planning Board.
21. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation or the occupant load should there be complaints about loud, excessive, unnecessary, or unusual late night noise.
22. 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.
23. ~~The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant, and returned to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.~~
24. 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.
25. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-7 of the Code and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use permit.
26. 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 6th day of JANUARY, 2016.

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PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, Planning and Zoning Manager
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 6th day of January, 2016, 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}

[Signature]
Notary:
Print Name
Notary Public, State of Florida
My Commission Expires: 07-28-2017
Commission Number:

Approved As To Form:
Legal Department ()

Approved As To Form: Legal Department [Signature] 1/4/16

Filed with the Clerk of the Planning Board on 1/12/16 [Signature]

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