

MIAMIBEACH

PLANNING DEPARTMENT Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: January 26, 2015

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB File No. 2268-1052 Ocean Drive-The Congress Hotel Rooftop**

The applicant, Congress Hotel on Ocean Drive, LLC, is requesting Conditional Use approval for an Outdoor Entertainment Establishment at the rooftop pool area, pursuant to Section 142, Article V.

RECOMMENDATION:

Denial without prejudice.

BACKGROUND/HISTORY

July 8, 2003

A Certificate of Appropriateness (HPB File No. 1253), for the partial demolition, alteration and modification of three (3) existing buildings at 1036, 1042, and 1052 Ocean Drive and the construction of a new four (4) story building at 1042 Ocean Drive was approved with operational conditions imposed on the rooftop pool area.

June 23, 2015

A separate applicant, Ocean Drive Restaurant LB, LLC, came before the Board for the addition of an Outdoor Entertainment Establishment to the existing restaurant, La Baguette, on the ground floor of the same property (File No. 2231) and was continued to the September meeting at the request of the applicant. This application was subsequently withdrawn by the applicant on August 11, 2015.

July 28, 2015

This application came before the Board and was continued to the September 30, 2015 meeting (which was moved to October 9, 2015).

October 9, 2015

The applicant came before the Board and requested a continuation to the November 24, 2015 meeting.

October 13, 2015

An application requesting a modification to the conditions of the final order for the Certificate of Appropriateness issued on July 8, 2003 was continued by the Historic Preservation Board (HPB File No. 1253) to December 8th, 2015.

November 24, 2015

The applicant came before the Planning Board and requested a continuation to the January 26, 2016 meeting.

December 8, 2015

The HPB modification application (HPB File No. 1253) was continued to the February 9, 2016.

ZONING / SITE DATA

Legal Description: Lots 1, 2, 3, 4, 5, Block 15, "Ocean Beach Addition No. 2" according to the plat thereof, as recorded in Plat Book 2 at Page 56 of the Public Records of Miami Dade County, Florida.

Zoning: MXE, Mixed Use Entertainment district.

Future Land Use Designation: MXE, Mixed Use Entertainment district.

Surrounding Uses:

North:	Hotel and restaurant uses
West:	Hotel, commercial parking garage, retail and residential uses
South:	Hotel, restaurant, and bar uses
East:	Lummus Park

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

THE PROJECT

The subject site, which is identified on the Miami-Dade County Property Appraiser's website as "1052 Ocean Drive", currently contains five (5) separate buildings known collectively as "The Strand on Ocean Drive Condo". The five buildings have street addresses ranging from 1024-1060 Ocean Drive, consist of retail and restaurant uses on the ground level and condominium hotel units above the first floor in four (4) of the five (5) buildings.

According to the city's Business Tax Receipt (BTR) records, all five buildings, in combination, contain approximately 86 hotel rooms and 328 restaurant seats. The applicant submitted plans entitled "The Congress Hotel", with the address 1052 Ocean Dr., as prepared by Bellinson Gomez Architects, dated June 12, 2015. As shown on the plans, the applicant proposes 36 seats and five (5) gazebos located on the rooftop pool area. From the photographs submitted, the gazebos appear to also contain seating, but the exact number of seats was not represented in the application or the plans.

The Letter of Intent (LOI) indicates that the applicant proposes the hours of 11:00 AM to 12:00 AM (midnight), seven days per week. They do not indicate the hours of the proposed outdoor entertainment (DJ), but for the purposes of this report, staff has assumed that the applicant is applying to have entertainment for all the hours of operation.

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 would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

Consistent–The proposed use is not anticipated to degrade the Levels of Service (LOS) for the surrounding area below the thresholds that have been established.

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

Consistent–Outdoor Entertainment Establishments are permitted as conditional uses in the MXE zoning district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Business Tax Receipt.

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

Partially Consistent–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. The facility would have to comply with all applicable laws and regulations prior to the issuance of a Business Tax Receipt.

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

Consistent– The project does not have any off-street parking requirements, but operationally the applicant proposes to valet cars from a valet ramp in front of the hotel with storage at an off-site parking garage located on 10th and Collins. See the LOI for a detailed description.

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

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

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

Not Consistent–There are multiple Outdoor Entertainment Establishments and Neighborhood Impact Establishments (NIE's) in the area; a list of Outdoor Entertainment Establishments and NIE's approved by the Board in the area is provided in the analysis. The addition of more entertainment associated with this proposal, particularly when combined with the manner in which other, similar establishments are operating within the same building, will have a negative impact on the surrounding area.

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.**

The LOI submitted with the application details the proposed operation of the venue. Also, see analysis in this report.

- (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.**

The project does not have any off-street parking requirements, but operationally the applicant proposes to valet cars from a valet ramp in front of the hotel with storage at an off-site parking garage located on 10th and Collins. See the LOI for a detailed description of the valet plan.

- (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.**

The LOI indicates that 1-4 security specialist will be employed to monitor queuing, occupancy, and noise levels at street level. Because the entrance to the hotel is setback from the front property line and the entrance to the roof top bar is accomplished by entering the lobby of the hotel and riding an elevator to the top floor, all the queuing can be contained on the property. See the LOI for more details.

- (4) A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.**

A detailed security plan was provided in the LOI. Security personnel, security cameras, safety awareness and training are all proposed to be implemented. Details on how the applicant proposes to strictly enforce the patron age restrictions are outlined in the LOI.

- (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**

A traffic report was not required because staff anticipates that many of its patrons will be staying at the hotel or hotels nearby and/or will arrive on foot.

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

The applicant proposes that trash pick-up will be part of the hotel operation. The LOI indicates that there is a trash chute from the rooftop to the trash compactor area and that trash will be picked up a minimum of four (4) days per week. There is an area at the rear of the property facing the alley where trash is stored inside and an off-street loading space. See the submitted photographs and plan for the exact location.

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

The applicant provided a sound study prepared by The Audio Bug, Inc., and a peer review from Arpeggio Acoustic Consulting, LLC. The LOI outlines measures suggested by Audio Bug and confirmed by Arpeggio to comply with the noise ordinance. The measures include multiple dispersed loudspeakers, volume controls, and management control of the audio equipment (password protected). See the attached report and the response.

(8) Proximity of proposed establishment to residential uses.

The proposed venue is surrounded by other hotels and commercial uses. There is one residential unit located on 11th Street to the northwest of the property. Due to the proximity to a residential use, staff is recommending conditions to mitigate any potential negative impacts from the operations of this proposed project on surrounding properties.

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

There are multiple Outdoor Entertainment Establishments and NIE's within blocks of this property, including but not limited to the "Casa Casarina" (aka The Versace Mansion) to the north and "The Clevelander" to the south. There is a list of Outdoor Entertainment Establishments and NIE's approved by the Board in this area provided in the analysis. Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

STAFF ANALYSIS

Operation

The subject rooftop pool area has a building certificate of use (BCU1300138) for a 12 seat pool deck bar serving alcohol until 12:00 AM with 108 maximum occupants as determined by the Fire Department (BMS1203593). The 12 seats are reflected on the business tax receipt (RL-10003976) for the Congress Hotel on Ocean Drive, LLC which also includes 22 hotel rooms listed on the BTR.

As part of the Certificate of Appropriateness (COA) approval from July 8, 2003 (HPB File No. 1253) for this property, certain operational conditions were set forth for the rooftop pool area. Although the conditions refer to 1042 Ocean Drive, the condition does apply to the rooftop pool area covered

in this request. While the address of this property is referred to as 1052 Ocean Drive in this application, at the time of the HPB hearing for the roof-top area (HPB File No. 1253), the COA approval was for 1042 Ocean Drive:

- d. *There shall be no outdoor entertainment establishment at the rooftop pool area ("Rooftop Pool") at the building to be located at 1042 Ocean Drive. In addition, the owner shall not seek any special events permits for outdoor entertainment at the rooftop pool.*
- e. *Any outdoor speakers installed at the Rooftop Pool, or portable speakers used at the Rooftop Pool, will only be permitted to emit ambient background music that will not interfere with normal conversation.*
- f. *The outdoor bar and Rooftop Pool shall only be utilized by residents, room paying hotel guests, and invitees of the residents and invitees of the room paying hotel guests.*

The Applicant will be making a separate application to the HPB to modify these conditions so that they comport with any approvals from this Board. This HPB application is expected to be heard in February 9, 2016.

After reviewing the submitted photographs documenting the applicant's current outdoor operation, staff has concerns about whether the outdoor bar built on the rooftop pool area has been fully permitted in its current configuration. The building permit that authorized the bar (B1201938) describes its scope of work as "Portable bar at existing roof level pool deck. Change of Use from pool deck to pool deck bar. No mechanical, electrical or plumbing work proposed." It appears from the photographs that the bar is not "portable" nor does it resemble the bar shown on the building permit.

Additionally, many of the structures on the rooftop pool area shown in the photographs are not shown on the building permit and need to have a building permit and certificate of appropriateness: the cabana structures, the canvas canopy over the bar, the speakers and any other bolted down fixtures. Also, the banner shown in the photographs will need to be removed.

Staff would recommend that these issues, relating to the physical modifications to the roof, be fully resolved by obtaining all required COA and building permits, prior to the issuance of a CUP.

Sound

A sound study to evaluate the potential impacts of noise generated by the proposed venue on adjacent neighbors was commissioned by the applicant and prepared by The Audio Bug Inc. (included in the application). Audio Bug concluded that "Based on measurements and observations during the nighttime site visit, it is my professional opinion that the introduction of music at entertainment levels on the rooftop will have no additional noise impact on neighboring properties. Music from the venue should not be audible at any point of observation outside the property, including the in the alley west of the venue. I can safely state that this change in use will have no adverse impact nor will it present any violation of the City of Miami Beach's Noise Ordinance."

The peer review of the sound study conducted by Arpeggio Acoustic Consulting, LLC concluded that "The sound study prepared by The Audio Bug provides valuable information but it does not provide sufficient quantifiable data..." Additionally, the peer reviewer has found that certain details are lacking in the Audio Bug report, which are needed to assess the veracity of the claims. To summarize, Arpeggio has concluded that although the venue *may* not violate the noise ordinance, they cannot support the claim that it *definitely* will not violate the noise ordinance or be audible outside the property. Arpeggio does, however, support the measures suggested by Audio Bug to comply with the code, such as using multiple dispersed loudspeakers, volume controls, and management control of the audio equipment.

In order to address the issues raised by the peer reviewer, staff would recommend that the applicant's sound consultant re-study the proposed sound and audio systems proposed, and provide a more tangible and quantifiable plan that will prevent the spillage of sound.

Also, the following are the Board approved Outdoor Entertainment Establishments and NIE's on Ocean Drive near the subject site:

Address	Establishment	CUP-type	File
0740 Ocean Drive	SoBe Sea Café	Neighborhood impact establishment	1723
0834 Ocean Drive	Fox Café	Outdoor/open air establishment	1694
0900 Ocean Drive	Mango's Tropical Cafe	Neighborhood impact establishment	1387
0960 Ocean Drive	Sobe USA, LLC	Outdoor entertainment establishment	1467
1020 Ocean Drive	Clevelander	Neighborhood impact establishment	1456
1116 Ocean Drive	Casa Casuarina	Outdoor entertainment establishment	1745
1144 Ocean Drive	Hotel Victor	Neighborhood impact establishment	1786
1200 Ocean Drive	The Palace Food Bar	Outdoor/open air establishment	1901
1236 Ocean Drive	Reta Ocean Drive, LLC	Outdoor entertainment establishment	1361
1300 Ocean Drive	Café Cardozo	Outdoor entertainment establishment	1653

Sanitation and Deliveries

Waste and recycling collection and deliveries would take place from the rear of the building facing the alley with an off street loading area. The applicant proposes that trash pick-up will be part of the hotel operation. The LOI indicates that there is a trash chute from the rooftop to the trash compactor area and that trash will be picked up a minimum of four (4) days per week. There is an area at the rear of the property facing the alley where trash is stored inside and an off-street loading space. See the submitted photographs and plan for the exact location.

Parking

The project does not have any off-street parking requirements, but operationally the applicant proposes to valet cars from a valet ramp in front of the hotel with storage at an off-site parking garage located on 10th and Collins. See the LOI for the description of the valet plan.

Code Compliance

Planning Staff has been made aware of code violations at the subject site. In conjunction with the building permit and certificate of appropriate transgressions identified herein, staff believes that the collective impact of all violations on the larger property are substantial and need to be addressed immediately.

The open violations specifically related to the rooftop are as follows:

1. **CE15000456** 10/12/2014 (Written) Loud music.
2. **CE15015699** 11/22/2015 (Open) Failing to renew Business Tax Receipt and certificate of use.

SUMMARY

Given the shortcomings associated with the submitted sound study, the unauthorized physical improvements and modifications on the roof deck, and the collective impact of the violations associated with the larger property as a whole, staff believes that the application is not ready to move forward at this time. As such, it is recommended the Board deny the application without prejudice allowing for a new application in the future.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be **denied without prejudice**. In the event that the Board should move to approve the application, staff would recommend any approval be subject to the following conditions, which address the inconsistencies with the aforementioned Review Criteria:

1. Prior to the issuance of a Business Tax Receipt (BTR) for the uses approved herein, the applicant shall remove or have authorized by the Historic Preservation Board, all of the improvements, modifications, fixture, and structures that have not obtained a Certificates of Appropriateness (COA) and a building permit. All the work on site shall proceed in accordance with the COA and the Florida Building Code and shall be completed, with all required final inspections, prior to the issuance of a Business Tax Receipt for the entertainment uses approved herein.
2. Prior to the issuance of a Business Tax Receipt (BTR) for the uses approved herein, the applicant shall:
 - a. Remedy ALL outstanding code and building violations that have been issued to the subject property. All required final inspections pertaining to such violations shall substantiate compliance prior to the issuance of a Business Tax Receipt for the Entertainment uses approved herein.
 - b. Obtain approval from the Historic Preservation Board for modifications to HPB File No. 1253, as it pertains to all applicable operational conditions affecting the roof-top area.

- c. Obtain the required Certificate of Appropriateness for physical modifications and improvements at the roof.
3. 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 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).
4. This Conditional Use Permit is issued to the Congress Hotel on Ocean Drive, LLC as owner and operator of the Rooftop Pool bar for an Outdoor Entertainment Establishment. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
5. 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.
6. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
7. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
8. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, lessees, permittees, concessionaires, renters, guests, users, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
 - a. As proposed by the applicant, the project authorized by this Conditional Use Permit includes the operation of the proposed Rooftop Pool Bar and Outdoor Entertainment Establishments with the criteria listed below:
 - i. The Rooftop Pool bar area shall not exceed a total occupant content of 108 persons, or any lesser such occupant load as determined by the Fire Marshal. The applicant shall modify all portions of the roof-top that may be necessary to not exceed an occupant content of 108 persons.
 - ii. The outdoor entertainment may start at 11:00 AM and shall not operate past

12:00 AM (midnight), seven days per week.

- iii. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. 60 day after opening, the sound systems in the facility shall be tested by a qualified acoustic professional, and a report shall be submitted to the Planning Department for review.
- b. Delivery trucks shall only be permitted to park in the off-street loading area at the rear of the building and shall not block the alley in any way.
- c. Delivery trucks shall not be allowed to idle in the loading area.
- d. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- e. Trash collections may occur daily between 8:00 AM and 8:00 PM.
- a. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
- f. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
- g. 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.
- h. Garbage dumpster covers shall be closed at all times except when in active use.
- i. Bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
- j. No patrons shall be allowed to queue on public rights-of-way.
- k. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and

hosed down at the end of each business day

- I. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - m. Special Events may occur on the premises, subject to City ordinances, rules or regulations existing at the time, and may exceed the hours of operation and occupancy loads specified herein, if permitted by the Fire Marshal, subject to the review and approval of staff.
9. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.
 10. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this entertainment establishment.
 11. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation should there be violations of this order, or valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
 12. 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.
 13. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
 14. The 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. A building permit, business tax receipt (BTR), certificate of occupancy (CO), or certificate of completion (CC) shall not be issued until this requirement has been satisfied.

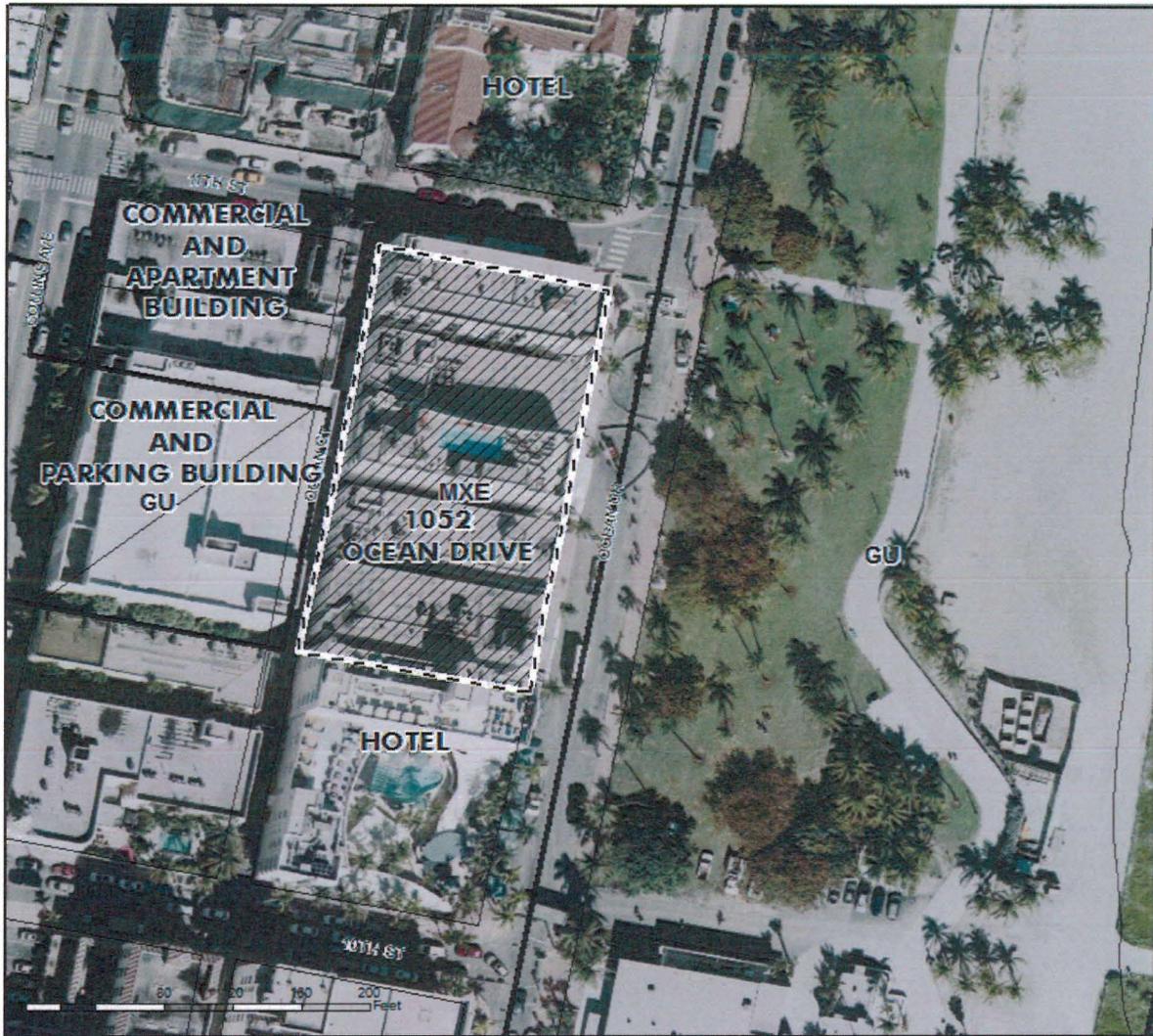
15. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

16. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

TRM/MB/TUI

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ZONING SITE MAP



City of Miami Beach Planning Board
File No. 2268
1052 Ocean Drive



The applicant, Congress Hotel on Ocean Drive, LLC, is requesting Conditional Use approval for an Outdoor Entertainment Establishment, pursuant to Section 142, Article V.

MIAMI BEACH
PLANNING DEPARTMENT

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