

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. 2286 – 4525 Collins Avenue- Nobu Progress Report**

BACKGROUND

October 27, 2015 The applicants, Nobu Associates (South Beach), LP., and Eden Roc, LLLP., obtained approval for a Conditional Use Permit (see attached) for a Neighborhood Impact Establishment (NIE) with an occupant content in excess of 300 persons, pursuant to Section 142, Article V.

PROGRESS REPORT

The venue approved in the CUP was subsequently approved under BCU1600046 on October 30, 2015. The applicant is before the Board pursuant to Condition #1 of the CUP as follows:

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 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).

As of the writing of this report, staff did not find any open violations specific to the subject restaurant.

STAFF RECOMMENDATION

Staff recommends that further Progress Reports are not required unless violations are issued.

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

PROPERTY: 4525 Collins Avenue

FILE NO. 2286

IN RE: The request for Conditional Use approval for a Neighborhood Impact Establishment consisting of a restaurant with an occupant content of more than 300 persons, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the Land Development Regulations of the City Code.

LEGAL DESCRIPTION: See 'Exhibit A' attached

MEETING DATE: October 27, 2015

CONDITIONAL USE PERMIT

The applicants, Nobu Associates (South Beach), LP., and Eden Roc, LLLP., filed an application with the Planning Director for a Conditional Use Permit for a Neighborhood Impact Establishment consisting of a restaurant with an occupant content of more than 300 persons, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the Land Development Regulations of the City Code. Notice of the proposed 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 Multifamily, High Intensity Zoning District;

That the intended Use is consistent with the Comprehensive Plan for the area in which the property is located;

That the majority of surrounding uses are hotel, residential and municipal parking uses;

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 Ordinance;

That the public health, safety, morals, and general welfare will not be adversely affected when the conditions of approval are in compliance;

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, that the Conditional Use Permit be GRANTED, as provided below:

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 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 Nobu Associates (South Beach), LP., and Eden Rock, LLLP., for a Neighborhood Impact Establishment consisting of a restaurant located on the lobby level at the center of the property with an outdoor dining area and bar. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.
3. 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. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
4. The applicant shall obtain a building permit to limit ingress or egress to the outdoor dining area to the main entrance of the establishment through the lobby, subject to staff review and approval.
5. 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.
6. 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 creation and operation of the proposed 272 seat restaurant with an outdoor dining area and bar with the criteria listed below:
 - i. The restaurant with an outdoor dining area and bar shall have a maximum occupant content of approximately 437 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The restaurant with an outdoor dining area and bar may operate until 5:00 AM.
 - iii. The outdoor areas associated with this venue shall not have music, whether live or recorded, whether amplified or non-amplified, which is played at a volume

that is louder than ambient background music (defined as a sound level that does not interfere with normal conversation).

- iv. 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 driveway at the front of the building or designated load areas within the hotel complex. Delivery trucks shall not be allowed to idle in the driveway or designated load areas.
- c. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- d. Trash collections may occur daily between 8:00 AM and 5:00 PM.
- e. 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. Restaurant 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. Patrons shall not be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
- 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.
- l. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

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- 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.
7. 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.
 8. The number of valet attendants shall be sufficient to ensure that no vehicle queuing in the right of way shall be permitted at any time.
 9. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Certificate of Completion (CC) or Certificate of Occupancy (CO).
 10. The applicant shall submit a Transportation Demand Management (TDM) Plan for employees of the restaurant. This plan shall encourage the utilization of alternative modes of transportation to commute to and from work. The restaurant shall designate a staff person to coordinate the development and implementation of the TDM Plan with the city. The TDM Plan should include a reporting system to be able to track the effectiveness of the Plan and make adjustments for improvements as necessary.
 11. The applicant shall provide to the City an evaluation of the valet parking operation of the site after six (six) months of the opening date. The evaluation shall include a valet parking analysis. Depending on the outcome of the review, the City may impose some specific mitigation measures as necessary.
 12. 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.
 13. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
 14. 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. 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.
 15. 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.
 16. 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

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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.

- 17. 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.
- 18. 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.
- 19. 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 21st day of DECEMBER, 2015.

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 21st day of December, 2015, 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)

Steven Greene
Notary:
Print Name
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department

Jeffrey [Signature] 12/16/15

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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

Lots 4, 5 and 6, and the Northerly one half (1/2) of Lot 3, of Indian Beach Corporation's Subdivision, according to the plat thereof, recorded in Plat Book 8, Page 61, of the Public Records of Miami-Dade County, Florida.

PARCEL II:

TOGETHER WITH a certain parcel of filled-in land described as follows:

Bounded on the Northerly side by the Northerly line of said Lot 6, produced Westerly, Bounded on the Southerly side by the Northerly line of the Southerly one half (1/2) of said Lot 3, produced Westerly, Bounded on the Easterly side by a line parallel to and 125 feet Westerly of the Easterly line of Collins Avenue. Bounded on the Westerly side by a line parallel to and 6 feet Westerly of the above-described Easterly boundary.

PARCEL 111:

TOGETHER WITH that strip of land lying between the Easterly boundary of the above-described Parcel 1 and the Erosion Control Line established October 4, 1976, and recorded December 3, 1976 in Official Records Book 9517, Page 2028, of the Public Records of Miami-Dade County, Florida.

The aforesaid Parcels 1, II and III being also described by survey as follows: PARCEL I and PARCEL 111:

Lots 4, 5 and 6, and the Northerly 1/2 of Lot 3, of Indian Beach Corporation's Subdivision, according to the plat thereof, recorded in Plat Book 8, Page 61, of the Public Records of Miami-Dade County, Florida, TOGETHER WITH that strip of land lying between the Easterly boundary of the above described Parcel I and the Erosion Control Line established October 4, 1976, and recorded December 3, 1976 in Official Records Book 9517, Page 2028, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northerly end of the curved intersection of the Northerly right of way line of relocated 44th Street with the Easterly right of way line of Collins Avenue; thence North 09°39'57" East along said Easterly right of way line of Collins Avenue a distance of 132.85 feet to the former Northerly corner of the curved intersection of said Easterly right of way line of Collins Avenue with the Northerly right of way line of a 60 foot road right of way as shown on said Plat of Indian Beach Corporation's Subdivision, said 60 foot road right away now being vacated; thence continue North 09°39'57" East along said Easterly right of way line of Collins Avenue a distance of 625.52 feet to a rebar marking the Southwest corner of Lot 1 of said Indian Beach Corporation's Subdivision; thence North 09°21'35" East along said right of way line of Collins Avenue a distance of 250.13 feet to a nail in concrete marking the Southwest corner of said North 1/2 of Lot 3, said point being the Southwest corner and Point of Beginning of the following described parcel; thence continue North 09°21'35" East a distance of 350.47 feet to an Iron pipe marking the Northwest corner of

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said Lot 6; thence South $82^{\circ}33'04''$ East along the North line of said Lot 6 a distance of 595.96 feet to an iron pipe marking the intersection of the Easterly extension of the North line of said Lot 6 with said Erosion Control Line; thence South $02^{\circ}30'50''$ West along said Erosion Control Line a distance of 351.88 feet to a rebar marking the intersection of said Erosion Control line with the South line of said North 1/2 of Lot 3; thence North $82^{\circ}31'25''$ West along the South line of said North 1/2 a distance of 637.92 feet to the Point of Beginning.

That certain parcel of filled in land described as follows:

Bounded on the Northerly side by the Northerly line of said Lot 6, produced Westerly. Bounded on the Southerly side by the Northerly line of the Southerly 1/2 of said Lot 3, produced Westerly. Bounded on the Easterly side by a line parallel to and 125 feet Westerly of the Easterly line of Collins Avenue. Bounded on the Westerly side by a line parallel to and 6 feet Westerly of the above described Easterly boundary, Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northerly end of the curved intersection of the Northerly right of way line of relocated 44th Street with the Easterly right of way line of Collins Avenue; thence North $09^{\circ}39'57''$ East along said Easterly right of way line of Collins Avenue a distance of 132.85 feet to the former Northerly corner of the curved intersection of said Easterly right of way line of Collins Avenue with the Northerly right of way line of a 60 foot road right of way as shown on said Plat of Indian Beach Corporation's Subdivision, said 60 foot road right of way now being vacated; thence continue North $09^{\circ}39'57''$ East along said Easterly right of way line of Collins Avenue a distance of 625.52 feet to a rebar marking the Southwest corner of Lot 1 of said Indian Beach Corporation's Subdivision; thence North $09^{\circ}21'35''$ East along said right of way line of Collins Avenue a distance of 250.13 feet to a nail in concrete marking the Southwest corner of said North 1/2 of Lot 3; thence North $82^{\circ}31'25''$ West, crossing said Collins Avenue, a distance of 425.07 feet to the intersection of the Westerly extension of the South line of said North 1/2 of Lot 3 with the Westerly right of way of Collins Avenue, said point marking the Southeast corner and Point of Beginning of the following described parcel; thence continue North $82^{\circ}31'25''$ West a distance of 6.00 feet to Indian Creek; thence North $09^{\circ}21'35''$ East along Indian Creek a distance of 350.41 feet to the intersection of Indian Creek with the Westerly extension of the North line of said Lot 6; thence South $82^{\circ}33'04''$ East along said Westerly extension a distance of 6.00 feet to the intersection of said Westerly extension with said Westerly right of way line of Collins Avenue; thence South $09^{\circ}21'35''$ West along said right of way line a distance of 350.41 feet to the Point of Beginning.

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