



# MIAMIBEACH

## PLANNING DEPARTMENT Staff Report & Recommendation

Planning Board

TO: Chairperson and Members  
Planning Board

DATE: September 23, 2008

FROM: Jorge G. Gomez, AICP  
Planning Director

SUBJECT: File No. 1897 – 304-312 Ocean Drive

The applicant, 304-312 Ocean Drive, LLC, is requesting Conditional Use approval to exceed number of seats permitted in an accessory use restaurant in a 27-unit hotel located in the R-PS3 zoning district. The accessory use restaurant is permitted to have 27 seats and an occupant load of 40. The applicant is requesting approval to increase the number of restaurant seats and occupant load to 54.

### ZONING / SITE DATA

**Zoning:** RPS-3, Residential Performance Standard, Medium High Density Zoning District

#### **Legal**

**Description:** Lots 7 and 8, Block 4, Ocean Beach subdivision, according to the Plat thereof, as recorded in Plat Book 2 at page 38 of the Public Records of Dade County Florida.

**Land Uses:** The subject site is in the northwest corner of Ocean Drive and 3<sup>rd</sup> Street. There are residential buildings surrounding this property.

### BACKGROUND

At the March 12, 2008 meeting, the City Commission adopted an ordinance that restricts the number of seats and occupant load of accessory restaurants and bars in the RPS districts. More specifically, the amendment reads as follows:

In the R-PS1, 2, 3 and 4 districts, the number of seats for accessory restaurants or bars that serve alcohol shall be limited to a maximum of one (1) seat per hotel or apartment unit for the entire site. The patron occupant load, as determined by the Planning Director or designee, for all accessory restaurants and bars that serve alcohol on the entire site shall not exceed 150% of the number of hotel and/or apartment units. An applicant may apply for additional seats or patron occupant load in excess of the numbers as determined in this subsection (d) through the Conditional Use procedures in Chapter 118, Article IV, and subject to

the review criteria listed in Section 142-1362 (a). Such conditional use approvals granting increases for seats or patron occupant load shall not exceed twice the number of hotel or apartment units. Only main permitted uses in operation may maintain accessory restaurants or bars.

### **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.**

**Partially Consistent** – The applicant is seeking approval for an accessory hotel restaurant and bar with 50 seats and an occupant load that would not exceed 54 persons. The proposed restaurant is a full service restaurant that proposes to operate from 6:00 a.m. to midnight. No other details have been provided.

- (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.**

**Consistent** – Required parking for an accessory restaurant is usually one space per 4 seats. As it relates to this application, the hotel consists of 27 units, pursuant to Section 130-32 (26) c. of the City Code the restaurant required parking is 1 space per 4 seats, which at 50 seats would result in 13 spaces, and minus 1 seat for every 2 units, would result in no parking requirements.

Although five parking spaces are proposed to be located on site, these will be for the exclusive use of hotel guests. Parking for the restaurant will be provided by a valet operator; however the location for the storage of valeted vehicles is not provided. Additionally, the applicant provided a valet analysis conducted by Kimley-Horn & Associates, Inc. This analysis estimates that the valet operation will serve a total of 27 vehicles during peak hour. The valet service will operate along the curb on Ocean Drive in front of the development, which can accommodate four vehicles.

The applicant is considering the services of two valet companies: Double Park, which uses different facilities in the area to store vehicles, including underutilized spaces in the garage at 404 Washington Avenue; and Beach Front Parking, which operates a surface lot north of 4<sup>th</sup> Street.

- (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 will be controlled.**

**Consistent** – It appears that because of the size of the restaurant, crowd control may not be necessary. Notwithstanding, people waiting to be seated can wait at the bar or in the restaurant vestibule by the main entrance.

**(4) A security plan for the establishment and any parking facility.**

**Partially Consistent** – The restaurant is located within the hotel structure with street access with no parking facilities on the property. Security does not appear to be a problem. No other details have been provided.

**(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.**

**Partially Consistent** – Kimley-Horn and Associates completed the traffic impact analysis (TIS) which concludes that the restaurant is expected to generate 30 gross new p.m. peak hour trip (traditionally 4:00 to 6:00 p.m.) and 17 net new vehicular trips; and 41 gross new trips during the Saturday late night peak hour (9:00 to 11:00 p.m.), and 27 net new vehicular trips. The TIS chose the ITE Land Use Codes for “quality restaurant” and “hotel” as the best representation of the proposed use.

The report concludes that the project is not expected to degrade traffic below acceptable standards in the vicinity of the site

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

**Consistent** – The trash room is proposed to be air conditioned with garbage pickups to take place after 8:00 a.m. The frequency is not specified.

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

**Consistent** – No entertainment as defined or live music is being proposed. The Audio Bug, Inc. prepared a report and recommendations for acoustical treatments and solutions for compliance with noise issues. The report recommends acoustical treatment on interior surfaces of the restaurant and weather-proof acoustical treatment and landscaping within the courtyard area, which would help deaden the sounds.

**(8) Proximity of proposed establishment to residential uses.**

**Not Consistent** - The property is surrounded by residential uses on all four cardinal directions.

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

**Consistent** – There are other restaurants in the RPS-4 and RPS-3 zoning districts across the street from subject site, but none are neighborhood impact establishments or outdoor entertainment establishments. The proposed increased occupancy load should not have an adverse effect on the neighborhood.

**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 use is consistent with the Comprehensive Plan; no neighborhood plan exists for this area.

- 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**

**Partially Consistent** – Kimley-Horn and Associates completed the traffic impact analysis (TIS) which concludes that the restaurant is expected to generate 30 gross new p.m. peak hour trip (traditionally 4:00 to 6:00 p.m.) and 17 net new vehicular trips; and 41 gross new trips during the Saturday late night peak hour (9:00 to 11:00 p.m.), and 27 net new vehicular trips. The TIS chose the ITE Land Use Codes for “quality restaurant” and “hotel” as the best representation of the proposed use.

The report concludes that the project is not expected to degrade traffic below acceptable standards in the vicinity of the site

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

**Partially consistent** - The use associated with the request is partially consistent in that Conditional Use approval is necessary to exceed an occupant load the number of seats, from 27 to 50, and increase the occupant load from 40 to 54.

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

**Consistent** - The proposed project should not adversely affect the general welfare of nearby residents because the restaurant will not have any entertainment. Music to be played indoors is proposed as ambient-level only, which will not interfere with normal conversation. Notwithstanding, conditions that safeguard the general welfare of the neighborhood and diminish any adverse impacts will be recommended.

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

**Partially Consistent** – Required parking for an accessory restaurant is usually one space per 4 seats. As it relates to this application, the hotel consists of 27 units, pursuant to Section 130-32 (26) c. of the City Code the restaurant required parking is 1 space per 4 seats, which at 50 seats would result in 13 spaces, and minus 1 seat for every 2 units, would result in no parking requirements.

The applicant is considering the services of two valet companies: Double Park, which uses different facilities in the area to store vehicles, including underutilized spaces in the garage at 404 Washington Avenue; and Beach Front Parking, which operates a surface

lot north of 4<sup>th</sup> Street. In addition, there are several surface parking lots in the general area.

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

**Consistent** - This project should not adversely affect the surrounding property, persons and neighborhood values. Conditions to safeguard the neighborhood and diminish any adverse impacts are included in staff's recommendation for approval. As proposed, the restaurant's operating hours are from 6:00 a.m. to midnight.

**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 other restaurants in the RPS-4 and RPS-3 zoning districts, which could be deemed a concentration of uses. The proposed project should not have an adverse effect on the neighborhood with proper conditions for the operations.

**STAFF ANALYSIS**

The applicant, 304-312 Ocean Drive LLC, is requesting approval to increase the number of seats and patron occupancy load for accessory restaurants or bars pursuant to an amendment to Section 142-693 (d) of the City Code, which was adopted by the City Commission on March 12, 2008. The new regulations restrict the maximum number of seats to one (1) seat per hotel or apartment unit for the entire site, and the patron occupant load for all accessory restaurants and bars on the entire site not to exceed 150% of the number of hotel and/or apartment units unless Conditional Use Approval is granted by the Planning Board.

The proposed hotel will have 27 hotel units, which would allow the accessory restaurant to have 27 seats and a maximum occupant load of 40. The original request made by the applicant was to increase the number of seats to 54 with a similar occupant load. The dilemma of the number of seats and occupant load being the same could not be reconciled with the intent of the adopted regulation which limits any approvals that may be granted by the Planning Board not to exceed twice the number of units.

The occupant load is a function of the space and the furniture that is placed on that space. It is reasonable to think that if there is a maximum occupant load of 54 persons, the number of seats cannot be the same because any space that remains available may be occupied by a person. A number of people waiting to be seated are part of that occupant load, which would then be exceeded by that number, and as a result, the restaurant would not be in compliance with the regulations in the City Code.

After the application was submitted, the applicant's attorneys met with staff where this problem with the number of seats and occupant load being the same was discussed. As a result, the applicant submitted a revised floor plan that reduced the number of seats to 50. The revised floor plan has been included in the Board's package.

Required parking for an accessory restaurant is usually one space per 4 seats. As it relates to this application, the hotel consists of 27 units, pursuant to Section 130-32 (26) c. of the City Code the restaurant required parking is 1 space per 4 seats, which at 50 seats would result in 13 spaces, and minus 1 seat for every 2 units, would result in no parking requirements.

The applicant is considering the services of two valet companies: Double Park, which uses different facilities in the area to store vehicles, including underutilized spaces in the garage at 404 Washington Avenue; and Beach Front Parking, which operates a surface lot north of 4<sup>th</sup> Street. In addition, there are several surface parking lots in the general area.

The applicant has proffered that the hours of operation of the restaurant will be from 6:00 a.m. to midnight, and does not apply to room service. It should be noted that to Section 6-3 (3) a. of the City Code reads as follows:

Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments (midnight to 5:00 a.m.), but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.

With regards to noise, the applicant contracted The Audio Bug, Inc. to prepare a report and recommendations for acoustical treatments and solutions for compliance with noise issues. The report recommends acoustical treatment on interior surfaces of the restaurant and weather-proof acoustical treatment and landscaping within the courtyard area, which would help deaden the sounds. No entertainment as defined or live music is being proposed.

This project has been reviewed and approved by the Historic Preservation Board, which placed a number of restrictions on its conditions of approval for the new construction and the restaurant, including not allowing a sidewalk café, or the use of the courtyard. Some of the restrictions in the conditions were proffered voluntarily by the applicant. It is suggested that the final order rendered by the Historic Preservation Board be adopted by reference and be made part of the conditions of approval by the Planning Board.

Staff is generally in favor of the proposed restaurant since the concerns relative to the potential for negative impacts on the surrounding neighborhood have been addressed through limitations on outdoor seating, hours of operation, and access to the restaurant.

### **STAFF RECOMMENDATIONS**

In view of the foregoing analysis, staff recommends that the application be approved subject to the following conditions which address the inconsistencies with the aforementioned Review Guidelines:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. 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 304-312 Ocean Drive, LLC as operator of the restaurant. Subsequent owners and operators shall be required 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, and all successors in interest and assigns.
  4. Hours of operation of the restaurant shall be as proffered by the applicant - from 6:00 a.m. to midnight. This shall not apply to room service.
  5. Prior to the issuance of a building permit, 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.
  6. Prior to the issuance of a Certificate of Occupancy or Occupational License (n/k/a Business Tax Receipt), whichever comes first, the applicant shall pay a fee in lieu of providing the required parking as may be deemed necessary after a full determination of parking requirements.
  7. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
  8. The occupant load for this restaurant shall be restricted to a maximum of 54 persons pursuant to the limitations imposed by Section 142-693 (d).
  9. Queuing of persons on the public right-of-way or the courtyard shall be prohibited. Persons waiting to be seated shall do so inside.
  10. Once the applicant enters into a contract with the valet operator, a vehicle storage plan shall be submitted to staff for review and approval.
  11. Entertainment as defined in the City Code shall be prohibited. Only ambient or background music that does not interfere with normal conversation shall be permitted.
  12. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about loud, excessive, unnecessary, or unusual late night noise.
  13. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, 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.
  14. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a building permit for the parking facility.

15. The Final Order for File No. 5749 issued by the Historic Preservation Board is hereby adopted and incorporated into this order by reference.
16. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida at the expense of the applicant.
17. 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.
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 114-7 of the 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 permit.

JGG/ML

c: Gary Held, First Assistant City Attorney

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