

June 22, 2020

By Email to MichaelBelush@miamibeachfl.gov

Chairman and Members of the Planning Board
c/o Michael Belush, Chief of Planning & Zoning
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: Notice of Opposition to the Application for Conditional Use approval for “Pink Taco” located at 1200 Ocean Drive, Miami Beach, Florida (Planning Board File No. 20-0345)

Dear Chairman and Members of the Planning Board,

I represent the Victor Hotel at 1144 Ocean Drive, Miami Beach, Florida owned by S&M Airplane Enterprises, LLC, concerning the above referenced matter. We oppose the Application and proposed order as written.

The Request

The Applicant, the “Pink Taco,” has a dance hall inside its premises. It operates daily all day and night until 5:00 am. The Application proposes to keep its sliding glass front doors open and allow the music from inside to flow outside into the neighboring properties and to place loudspeakers outside to augment that music coming from the inside. The application proposes outside speakers to amplify music to dB sound levels much louder than that of normal conversation, causing the persons on the porch and sidewalk to raise their voices which will further disturb the neighbors. The site has a history of loud, rambunctious activity on its porch and along its sidewalks. This Application forebodes a renewal of that activity that disturbs and adversely affects the hotel guests at the neighboring properties as well as persons on the public sidewalks.

Letter of Intent

The Applicant’s March 23, 2020 Letter of Intent describes the proposed use as follows:

Description of Proposed Use. The purpose of the Application is to allow limited entertainment on the outdoor portion of the Restaurant which fronts Ocean Drive, including amplified music, consistent with the requirements of the City Code and the neighborhood context. No entertainment is proposed, and music is limited to ambient

background music for all speakers located 20 feet of the property line when located on the exterior of the premises. All other elements of the existing use at the building are to remain as currently in place and in operation.

See Applicant's March 2020, Letter of Intent at 2 (emphasis added).

As you can see, the first sentence contradicts the second sentence of the proposed use described by the applicant. It requests "limited entertainment on the outdoor portion of the Restaurant" and then contradictorily claims that "no entertainment is proposed." There is a dance hall within that will be opened up to the front porch allowing the activity and sound from inside to flow to the porch, sidewalks and adjacent properties. As proposed, the DJ and speakers may be located at the front of the interior immediately adjacent to the sliding glass doors and, when the doors are open, the DJ and dancers inside can be seen from the outside and the music can blast to the outside. The sound of the music from the inside and the speakers on the outside, in combination with the loud conversation of persons dining on the porch and on the sidewalk and other activities triggered by the music, will adversely impact the neighbors and disturb the guests at the Victor Hotel and Tides Hotel.

The applicant's acoustical report, at page 4, erroneously shows a sound level 60 to 70 dBA as "equivalent to normal conversation." However, the submitted peer review report at page 2 provides the sound levels for normal speech to be dB(A) of 55 for females and dB(A) of 58 for males, citing the Handbook of Acoustical Measurements and Noise Control. The ambient music on the front porch should not exceed that level or else the persons on the porch and the sidewalk will raise their voices to be heard and further disturb the neighborhood. Because the code can only regulate the sound systems and not the patrons of the restaurant, porch and sidewalk café, it is essential that the amplified sound, including the DJs and music, be regulated by capping the overall amplified sound level to a dB of 55 at the sidewalks.

Proposed Order

The proposed order attached to the Planning Board's June 23, 2020 Staff Report imposes conditions to performances. It imposes operational conditions:

3. a. iii. Any performances, including a DJ, shall be strictly prohibited directly on the outdoor porch and/or the sidewalk café area in the front of the building. Any such performance, including a DJ shall be located only within the interior of the building, and the exterior doors/windows may remain open, provided that that the sound levels along the abutting sidewalks do not exceed a level that would interfere with normal conversation.

See proposed order attached to the Planning Board's June 23, 2020 Staff Report, at 2, Section 3(a)(iii).

This language in Section 3(a)(iii) in the proposed order is both ambiguous and insufficient. Zoning laws are construed in favor the property owner. *Rinker Materials Corporation v. City of North Miami*, 286 So. 2d 552, 553 (Fla 1973). Problematically drafted orders open the door to mischief. By using the phrase "including a DJ" rather than "including, but not limited to, a DJ," the order opens the door to the application of the principle of "*expressio unius est exclusio alterius*" (the mention of one thing implies the exclusion of another) which would open the door to performances other than a DJ, such as waitresses and waiters wearing flashy wardrobes and prancing around the porch and sidewalk café in time with the music as they serve the food consistent with the alternative lifestyle scene, causing a spectacle as it historically has. It is this "Bird Cage" type activity that has historically created a commotion on the streets and sidewalks adjacent to this establishment. In the past, the area became so raucous that the patrons would join in with the waiters and waitresses singing bawdy songs. While fun and even entertaining and certainly a lawful activity inside, and the Victor Hotel applauds such activity inside the establishment, but allowing it outside invites noise and commotion that disturbs others peacefully enjoying their stay on Miami Beach and guests at the hotels on either side of the Applicant's property. It is this entertainment, spurred by the loud music, that needs to be subdued and avoided on the porches and sidewalks to avoid the adverse impacts on the neighbors. The order should say "All performances shall be strictly prohibited outside. DJs are only permitted on the inside and shall be located where they cannot be readily seen from the outside when the front doors are open."

Additionally, the proposed order attached to the Planning Board's June 23, 2020 Staff Report, at 3, Section 3(a)(iv) and (v) should specify that sound field test and the test performed by the qualified acoustical professional should follow the standards recommended by the peer study and that the dB sound level should not exceed 55 dB when all music is playing. Additionally, the sound control systems, both inside and outside, should be integrated so that the combined sound will be limited and locked so that combined they will not exceed 55 dB when tested at the sidewalk immediately adjacent to the property of the applicant.

Sincerely,

Kent Harrison Robbins

Kent Harrison Robbins
Attorney for S&M Airplane Enterprises, LLC, owners of the Victor Hotel.

cc: Tom Mooney, Planning Director: ThomasMooney@miamibeachfl.gov