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April 6, 2021

**RE: BANCROFT**  
**1501 Collins Avenue**  
Draft Conditional Use Permit  
File #PB20-0416 March 23, 2021

Dear Planning Board members,

As a 16 year resident of 1390 Ocean Drive, one block from the proposed Bancroft development, we are positioned to realize our desire to leave the MXE behind and create a new, sustainable economy for our iconic Miami Beach neighborhood.

In their letter of intent, the developer enthusiastically embraces the ADCD metamorphosis.

Pre-Covid, the north end of Ocean Drive was the quiet end, considering most of the residential buildings in the ADCD are located between 14th and 15th on Ocean Drive and we have no retail stores

The character of our block and the quality of our lives has been severely compromised as the noise level, traffic and visual clutter has increased exponentially as a result of the restaurant expansions into our right-of-ways.

The applicant is asking permission to activate a very large outdoor area, on several levels, larger than any restaurant and bar space on Ocean Drive.

The largest space is on a 3<sup>rd</sup> floor roof, but close enough to the ground and adjacent to a large residential enclave, to impact a concentration of residential neighbors.

Once we had a beautiful Art Deco picture post card on the north end, and now we have a carnival midway with hawkers, grifters, drug dealers and prostitutes. This needs fixing and we must address the lingering and most problematic issues more proactively through new land use regulation. We can start with sound transmission, a major quality-of-life issue in the MXE.

Do not underestimate the scale of the new proposed use of this property, which will forever change the character of the north end of Ocean Drive.

In this example, we have an opportunity to create a new balance between commercial and residential so developers can have the new codes they need to move forward and residents do not fear change and will have leverage in maintaining the quality of their neighborhood and real estate investments.

A CUP permit is a privilege, not a right and now is the time to set the bar higher than before, since the current MXE code does not address quality-of-life issues for residents who occupy 50% of this area between 14<sup>th</sup> and 15<sup>th</sup> on Ocean Drive.

I reviewed the Draft Conditional Use Permit File #PB20-0416, dated March 23, 2021 as to what Planning is allowing and have spoken to many residents who will be directly affected by this development.

I have a long relationship with sound mitigation between residential and commercial, in my personal life and professional career as a designer.

As a 40 year resident of SoHo, living across the street and next door to several restaurants, and above 3 stores with "ambient" music, I have worked with acousticians, architects, operators and owners to solve sound transmission issues between commercial and residential properties.

As a designer, the first study we do on a new project is acoustical, so we can incorporate sound mitigation as a part of the basic program. We use acoustical plaster, absorbent surface materials and construction techniques to break up sound waves at every opportunity. This early sound design process creates very successful results.

There are many acoustical problems that will affect residents and from personal experience, the definition of "ambient" sound and measuring decibel levels does not adequately solve the problems of shared audible space, particularly the transmission of low vibration and reverb that travels through building structures and becomes amplified. Once a bad sound system is allowed to operate, it is almost impossible to prevent conflicts.

Besides patrons and employees, the cumulative amount of business services will sharply raise the overall "din" of the entire area from Collins to the beach.

Over 1,000 per seating multiplied by 3 or 4 seatings every day and night, adds up to processing quite a lot of people, vehicles, deliveries and garbage.

Ambient 'conversational' level is subjective and as the number of patrons increases, the ambient level increases exponentially. That gets multiplied by 4 outdoor venues.

The truck and traffic activity will explode in the area creating more unwanted noise.

Considering 60% of restaurants fail in the first year, and 80% in 5 years, they are asking residents to deal with potentially an extraordinary number of BTR holders with high risk businesses.

Every option should be spelled out in the CPU to avoid restaurants from devolving, like our current Ocean Drive operators, into tourist traps serving up bathtub-size drinks and hookahs.

I find this permission not specific enough to cope with the actual reality and worst case scenario, which we have now with CUPs in the MXE.

We don't want to be saying "there goes the neighborhood" again by keeping a low bar of insufficient controls for this and the next CUP applicant.

Noise ordinances do not adequately address all the problems and "ambient" noise level is a myth. Subtle vibration cannot be measured in decibels and levels of annoyance can be quite subjective.

Ideally, I am not in favor of outdoor speakers, as they will never be controllable. Noise issues take up a lot of time and resources for our Code Enforcement and instead of chasing the chronic offenders, I would rather Planning not give them the means in the first place to invade public space. I have never heard an outdoor speaker allowed in any other city in the world. They create an unwanted carnival atmosphere that attracts the street party we are trying to deter.

We can prevent the problems through better boundaries, which would include the following:

#### SOUND ENGINEERING

Within 90 Days of the permit issue date or before opening:

The developer must provide a residential acoustical impact report which includes full sound system testing in residential units within 200 feet of the property line. The report will define exactly the highest speaker level setting allowable, with cooperation of residents who wish to participate, and the speaker system will be set with volume locks.

No outdoor music during staff set-up and clean-up.

Drawings and specifications required for the effective use of plant materials, screens, baffles, pergolas, acoustical panels and speaker pads to break up sound waves before they reach a residence.

#### MECHANICAL:

All exterior equipment including fans, compressors, kitchen equipment, etc, to have sound baffling and acoustical foot pads as specified in construction documents approved by planning.

#### ODORS:

There is no indication on the presentation plans where the kitchens are located on the 3<sup>rd</sup> floor.

Kitchen vents will have no outdoor odors, locations to be reviewed.

No smoking in outdoor areas, no hookahs, no tobacco sales or cigars.

#### MENUS:

No over-sized drinks

No alcohol sales at the Coffee Bar

No chain restaurants

Owner of the BTR cannot have more than 3 BTRs in the ADCD at one time.

#### STREET:

Full time private security

No tractor trailers, only van deliveries east of Collins Ave.

Deliveries M-F 7:00 AM to 3:00 PM

No loading on 15<sup>th</sup> Street except for residential deliveries: Amazon, Fed Ex, UPS, household deliveries

No weekend deliveries

Designated residential and disabled street parking

Valet and Ride share drop off area on Collins Avenue

Clear signage

Some specific comments in RED:

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xi. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system to ambient levels (i.e. at a volume that does not interfere with normal conversation), and shall 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 prior to the issuance of the Certificate of Use.

xiii. After the hours of operation as permitted in this Order, the establishment shall remain closed and no patrons or other persons, other than those employed by the establishment, shall remain therein between the establishment's closing time and 8:00 AM.

No music before or after hours of operation

'Sound level controls' should include architectural elements (as previously mentioned) to mitigate sound wave and vibration transmission.

v. All outdoor areas of the restaurants shall be closed by 12:00 AM each night, and any allowable background music (i.e. music that is exempt from the definition of "entertainment") shall cease by 11:00 PM each night.

The outdoor areas shall not be permitted to open prior to 8:00 AM, and allowable background music shall not commence prior to 9:00 AM. Background music shall at all times comply with the provisions of Chapter 46, Article IV of the City Code, as may be amended (the "Noise Ordinance").

No music before 11:00 AM

Noise Ordinance is not enough

xv. No alcohol shall be offered for sale or consumed on the premises between the hours of 5:00 AM and 8:00 AM.

This makes no sense if restaurants cannot serve past 2:00 AM

b. Rooftop terraces shall be closed by 11:00 PM each night. Allowable background music (i.e. music that is exempt from the definition of "entertainment") shall cease by 10:00 PM each night. The terraces shall not open and allowable background music (i.e. music that is exempt from the definition of "entertainment") shall not commence prior to 9:00 AM.

No music before 11:00 AM

No smoking of any kind

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d. Scheduled commercial deliveries may only occur between 9:00 AM and 4:00 PM, each day.

M-F, 7 AM to 3:00 PM, No weekends

e. Delivery trucks shall only be permitted to load and unload within the designated loading areas or other City-designated freight loading zones.

f. Delivery trucks shall not be allowed to idle in loading zones, including the shared driveway.

g. Delivery trucks shall not block other vehicles from fully traversing through the abutting driveway at any time.

No tractor trailers east of Collins Avenue, vans only.

m. Outdoor cooking anywhere on the premises is prohibited. Kitchen and other cooking odors shall be contained within the premises. Owner agrees to install an exhaust system, if required by the applicable code, for the kitchens on the premises that will substantially reduce any grease and/or smoke that would otherwise escape to the surrounding area. This may include the installation of a fan in connection with kitchen exhaust systems within the footprint of the building in order to reduce noise levels at the exhaust outlet substantially in compliance with the plans as approved.

No kitchens indicated on the 3<sup>rd</sup> floor

Require odor "scrubbing" filters on kitchen exhausts.

n. Exterior speakers may only be permitted for fire or life safety purposes, and/or for background music played at a volume that does not interfere with normal conversation (i.e. at an ambient volume level).

'Ambient volume level' is unenforceable. Every code officer hears something different.

Sound system to be reviewed and a report issued by a qualified acoustician, including residential testing with 200 feet of property line, for Planning approval.

All speakers to have proper sound baffling and/or foot pads.

Sound mitigation construction documents and specifications to be presented to Planning for approval.

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s. The Operators shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalks, curb and gutter and around the perimeter of the property in excellent condition, keeping these areas in a clean condition, free of all refuse, at all times.

5. The Applicant shall assign personnel to manage loading operations to reduce potential conflicts with pedestrians on sidewalks and in crosswalks and ensure that blocking of the shared driveway for the passage of vehicles does not occur at any time.

This is unenforceable. They will not have a full time traffic manager. Trucks will cause major problems as they already do on 14<sup>th</sup> Street. (see photos below)

The will block driveways and cause traffic jams for residents trying to get in and out of the garages and block the lanes to and from Collins Avenue.

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8. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (the "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 of the City Code, and any other penalties or enforcement proceedings under applicable law.

The Noise Ordinance is not enough.

## Existing 14<sup>th</sup> Street looking west towards Collins Avenue

Delivery Trucks totally blocking all streets and sidewalks. No access for emergency vehicles and residential buildings' gated parking.



Typical day on 14<sup>th</sup> Street. Residents call parking enforcement 2 or 3 times a day



This project will exemplify the transition from the MXE to the ADCD and more is needed in this CUP to make this work for everyone.

Best Regards,

Jane Krupp