

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: December 20, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0554 - 1717 - 1731 Collins Avenue - Surfcomber Hotel
Entertainment**

An application has been filed requesting a conditional use permit for a Neighborhood Impact Establishment and the introduction of outdoor entertainment to the existing outdoor restaurant use located on the rear yard, pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions.

ZONING/SITE DATA

Legal Description: See exhibit A at the end of the report.

Future Lands Use: High Density Multi Family Residential (RM-3)

Zoning: RM-3 Residential Multifamily, High Intensity

Historic District: Ocean Drive/Collins Historic District
Miami Beach Architectural District

Lot Area: Approximately 88,522 Square Feet (per survey submitted)

Surrounding: South: Hotel (SLS hotel)
East: Atlantic Ocean
West: Hotels
North: Hotel (Marseilles Hotel)

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

THE PROJECT

The applicant, Chisholm Properties So Beach Inc, is requesting a Conditional Use Permit for a Neighborhood Impact Establishment and Outdoor Entertainment Establishment. The hotel has an existing interior food and beverage venue "The Social Club" facing Collins Avenue, as well as an outdoor food and beverage venue located in the rear yard east of the swimming pool area "High Tide Beach Bar and Grill". The proposed conditional use permit (CUP) would allow entertainment at ambient background levels, only for the existing food and beverage venue located in the rear yard.

Per Section 142-1361 of the Land Development Regulations (LDRs), an alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall, with an occupant content of 200 or more persons constitutes a Neighborhood Impact Establishment (NIE). For reference, alcoholic beverage establishments without entertainment can have an occupant content of 300 or more persons before constituting an NIE.

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 permissible uses in the High Density Multi Family Residential (RM-3) future land use category, as designated on the Future Land Use Map within the 2040 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 – This is an existing establishment, and as such, the proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

- 3. Structures and uses associated with the request are consistent with these Land Development Regulations.**

Consistent – Outdoor Entertainment and Neighborhood Impact Establishments are permitted as conditional uses in this 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 Building Permit.

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

Partially Consistent – The proposed entertainment use may adversely affect the general welfare of nearby residents if noise, traffic, and other issues are not controlled. The establishment would have to comply with all applicable laws and regulations for licensure.

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

Partially Consistent – The Surfcomber Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements for the existing structure. As there is no on-site parking, it provides valet services for its guests and patrons. Other parking is available at meters, surface lots and parking garages nearby. The Applicant further anticipates that many patrons will arrive by foot via the beach walk. A traffic statement was submitted and reviewed by Transportation Department where no significant impact on traffic was stated, therefore a traffic study was not required. Staff has incorporated conditions to minimize transportation impacts.

- 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.**

Consistent – There are other entertainment establishments within hotels within the vicinity, however entertainment uses are appropriate for this area, which consists primarily of several large hotels. Therefore, no negative impact through the concentration of uses is expected.

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 operational plan was submitted with the application and details hours for deliveries and trash pickup, hours of operation, hours of entertainment, number of employees, crowd control and security procedures, and other procedures.

- 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 Surfcomber Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements for the existing structure. As there is no on-site parking, it provides valet services for its guests and patrons. Other parking is available at meters, surface lots and parking garages nearby. The Applicant further anticipates that many patrons will arrive by foot via the beach walk. A traffic statement was submitted and reviewed by Transportation Department where no significant impact on traffic was stated, therefore a full traffic study was not required. Staff has incorporated conditions to minimize transportation impacts.

- 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 applicant's operations plan provides procedures for indoor/outdoor crowd control. Staff has included conditions into the draft order to further ensure that crowds are managed appropriately.

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

The applicant has indicated that a security system is in place, and that during events security is stationed at the rope and stanchion sets that separate the pool area from the High Tide restaurant, security staff will enforce patron age restrictions. Staff has incorporated conditions into the draft order in order to further ensure the security of the establishment.

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 statement was submitted by the applicant and reviewed by Transportation Department where no significant impact on traffic was stated, therefore a traffic study was not required.

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

The applicant's operations plan indicates that the establishment will continue to use the existing sanitation facilities. Staff has incorporated conditions into the draft order in order to further sanitation for the establishment.

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 Criterion Acoustics indicating how the sound system would function and be operated. The analysis was peer reviewed by the City's sound consultant, Arpeggio. See attached sound study and peer review. Staff has incorporated conditions into the draft order to ensure that sound does not impact surrounding properties.

8. Proximity of proposed establishment to residential uses.

The site is buffered by other hotel buildings and the nearest residential building is located to the north at the North West corner of Collins and 18th street (1800 Collins Avenue). With appropriate measures, the entertainment should not impact the residential buildings in the vicinity. Staff has incorporated conditions to ensure that the nearby residential uses are not impacted by the proposed entertainment use.

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

A number of restaurants and entertainment establishments exist along the Collins Avenue corridor. As such, there will be no cumulative effect on adjacent pre-existing uses.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development Regulations establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

(1) A recycling or salvage plan for partial or total demolition shall be provided.

Not Applicable, as this is an existing building and establishment.

(2) Windows that are proposed to be replaced shall be hurricane proof impact windows.

Not Applicable, as this is an existing building and establishment.

- (3) Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.**

Not Applicable, as this is an existing building and establishment.

- (4) Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.**

Not Applicable, as this is an existing building and establishment.

- (5) Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.**

Not Applicable, as this is an existing building and establishment.

- (6) The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.**

Not Applicable, as this is an existing building and establishment.

- (7) Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.**

Not Applicable, as this is an existing building and establishment.

- (8) Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.**

Not Applicable, as this is an existing building and establishment.

- (9) When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.**

Not Applicable, as this is an existing building and establishment.

- (10) Where feasible and appropriate, water retention systems shall be provided.**

Not Applicable, as this is an existing building and establishment.

ANALYSIS

The proposal pertains to the existing Surfcomber Hotel located at 1717 – 1731 Collins Avenue and the request is for a CUP for an NIE and Outdoor Entertainment. The request would allow the existing outdoor food and beverage venue “High Tide Beach Bar and Grill”, located at the rear of the property, to have entertainment at ambient background levels. Per the plans submitted the total occupancy load proposed for the rear area is 957 persons, with 170 seats.

Operation

The entertainment proposed consists of a DJ playing music at ambient background levels. The DJ station is located at the rear of the property between the pool deck and the venue. While the venue will be open from 10 a.m. to 8 p.m. daily, the DJ will only operate from 12 p.m. to 4 p.m. on Friday, Saturday and Sunday.

The DJ will use the existing sound system to play music at an ambient level and will not operate any additional amplification devices or microphones. Volume access controls are to be restricted to hotel management.

Sound

The applicant provided a sound study prepared by Criterion Acoustics indicating how the sound system would function and be operated. The applicant's sound consultant concludes that venue sound needs to be at 87dBA to be within ambient levels at the property line and that a sound level limiter needs to be installed and maintained on the sound system.

The analysis was peer reviewed by the City's sound consultant, Arpeggio. The City's sound consultant concurs with the sound study and does not anticipate noise-related issues, assuming the system is operated as proposed by the applicant. However, the analysis notes:

"the proposed sound level limit is well above those that would be considered "ambient." In other words, if the venues are, in fact, intended to feature DJ entertainment at ambient sound levels and are operated as such, the proposed sound level limit proposed by CA should rarely, if ever, be exceeded or even approached."

Staff has a concern with these findings, as ambient/background music is that which is played at a level that does not interfere with normal conversation. Staff requested additional clarifications from the city's consultant, as the city's definition of ambient speaks to the ability of patrons to converse easily. Using that definition, a sound level limit of 87 dBA would not allow for normal conversation given that the average raised male speech is approximately 65 dBA at a distance of 3' while that for women is 62 dBA. Normal speech is approximately 58 dBA and 55 dBA for men and women, respectively. If music is playing at 87 dBA, people would have to shout in order to be heard.

Given that the City does not use dBA to measure or enforce sound levels, staff recommends that the sound system be tested and calibrated to ensure that does not exceed ambient levels for the entire rear yard; not only at the property line. This is consistent with the applicant's request for the approval of outdoor entertainment consisting of a DJ playing at ambient levels.

Staff has incorporated the following conditions into the draft order to ensure that sound is played at ambient levels and does not impact surrounding properties:

- a) Only the Applicant's approved speakers, as approved by this Conditional Use Permit, shall be used. DJ's, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's as to the requirements of this conditional use permit related entertainment.
- b) Prior to the issuance of certificate of use for entertainment, the applicant's sound engineer shall revise the sound study to ensure that sound levels do not exceed ambient levels within the outdoor venue, subject to review by the City's peer reviewer, and the review and approval of staff. The applicant shall be responsible to cover the fees of the City's peer reviewer.

- c) The house sound system shall be calibrated and set in such manner as to limit the acoustical output for ambient levels within the entire rear yard.
- d) The house sound system shall have password protected security on all controls at all times in accordance with the design intent and recommendations of the revised sound study and the conclusions of Staff and the City's peer review.
- e) Per applicant's consultant and operational plan, a sound level limiter needs to be installed and maintained on the sound system and staff shall have decibel readers to ensure that the sound levels are within ambient background levels.
- f) At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.
- g) Sound from the entertainment establishment shall not be plainly audible from the Beach walk and northern right of way of 17th Street.
- h) Before the issuance of a certificate of use, a field visit with the applicant's sound engineer and Planning staff shall be required to verify the sound system operations.
- i) A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor entertainment.
- j) Audio from the subject property, including any vibrations of a low-frequency or greater, shall not be plainly audible or felt within the interior of any residential unit or home, at any time.

Traffic and Parking

The Surfcomber Hotel lies within the Collins Avenue/Ocean Drive Local Historic District, and as such, has no parking requirements for the existing structure. As there is no on-site parking, it provides valet services for its guests and patrons utilizing the existing semicircular driveway. Other parking is available at meters, surface lots and parking garages nearby. The Applicant further anticipates that many patrons will arrive by foot via the beach walk. A traffic statement was submitted and reviewed by Transportation Department where no significant impact on traffic was stated, therefore a traffic study was not required. Staff has incorporated conditions to minimize transportation impacts.

Access, Security and Crowd Control

The High Tide Restaurant can be access both from the hotel and the beach walk. However, the applicant is proposing to have public access limited to the rear area where this venue is located and will be separated from the private pool deck by management and staff through the use and monitoring of wristbands, as well as a system of ropes and stanchion sets between the two areas.

STAFF RECOMMENDATION

In view of the foregoing analysis, staff recommends that the application be approved subject to the conditions enumerated in the attached Draft Order.

ZONING/SITE MAP

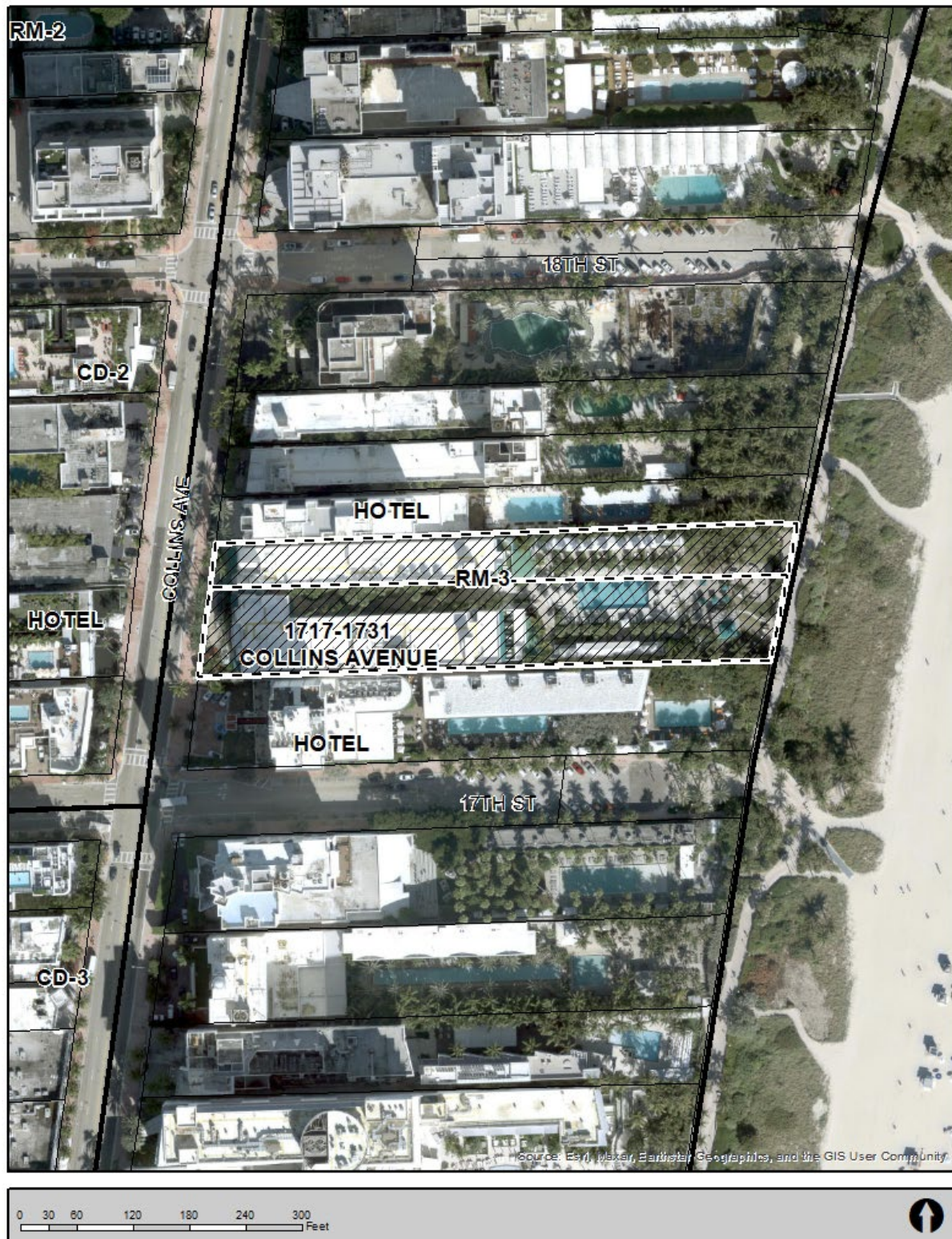


Exhibit A – Legal Description
(Per application and survey submitted by the applicant)

LEGAL DESCRIPTION:

PARCEL I:

Lots 3 and 18 and the South 40 feet of Lots 4 and 17, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida.

PARCEL II:

Beginning at the Southeast corner of Lot 3, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida, run in a Northerly direction along the East line of Block 28, a distance of 91.26 feet to a point; thence run in an Easterly direction along a line parallel to and 10 feet South of the North line of Lot 4, Block 28 produced, to High Water Line of the Atlantic Ocean; thence run in a Southerly direction, meandering said High Water Line a distance of 91.26 feet plus or minus to a point; thence run in a Westerly direction along the South line of Lot 3, Block 28 produced, to the Point of Beginning.

PARCEL III:

The South half of: North 10.00 feet of Lots 4 and 17; all of Lots 6 and 16, and the South 40 feet of Lots 8 and 18, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida; together with the land lying to the East thereof, to the high water mark of the Atlantic Ocean.



Arpeggio
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Atlanta, Georgia 30345
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(404) 806-6104 (FAX)

August 30, 2022

Mr. Alejandro Garavito
Senior Planner
Miami Beach Planning Department
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: Surfcomber Hotel, 1717 Collins Avenue, PB22-0554
Criterion Acoustics Sound Study Peer Review

Dear Mr. Garavito:

This letter serves as our review of the nine-page sound study for the Kimpton Surfcomber Hotel High Tide Beach Club venue prepared by Criterion Acoustics and dated August 29, 2022. Additionally, the Letter of Intent dated August 29, 2022, the Operations Plan, and architectural plans prepared by Design Core Studio were reviewed to add context to the sound study.

It is our understanding that the Conditional Use Permit is being sought to allow entertainment at ambient sound levels at the exterior High Tide Beach Bar and Grill (identified as "Venue"). The hotel itself is located on the east side of Collins Avenue between 17th Street and 18 Street and backs up to the Atlantic Ocean, thus the exterior Venue is adjacent to the beach to the east, the SLS South Beach Hotel to the south and the Marseilles Beachfront Hotel to the north.

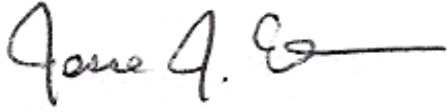
According to reviewed documentation, the exterior Venue is open 10 am until 8 pm but the DJ is only being proposed for 12 pm to 4 pm on Friday, Saturday, and Sunday. As previously stated, DJ entertainment at ambient sound levels is being proposed. Furthermore, the existing sound system is to be used for DJ entertainment and volume access controls are to be restricted to hotel management.

Criterion Acoustics (CA) underwent a robust site sound study which comprised simultaneous sound level measurements near DJ booths as well as other pertinent locations during an event at the venue. Based on the data, it appears that the measured event was significantly louder than ambient. Regardless, based on these measurements, CA proposed a sound level limit of 87 dBA at the exterior Venue in order to limit noise impact on adjacent properties and also recommended a sound level limiter to maintain this limit. We have no issue with the study performed or resulting conclusions or recommendations. We note, however, that the proposed sound level limit is well above those that would be considered "ambient." In other words, if the venues are, in fact, intended to feature DJ entertainment at ambient sound levels and are operated as such, the proposed sound level limit proposed by CA should rarely, if ever, be exceeded or even approached.

Based on the discussion above, we concur with the sound study and do not anticipate noise-related issues at the High Tide Beach Bar and Grill, assuming it is operated as described in the Letter of Intent.

Please feel free to contact me 404-277-6528 or jehnert@arpegiollc.com if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse J. Ehnert", followed by a horizontal line.

Jesse J. Ehnert, INCE Bd. Cert.
Arpeggio

PLANNING BOARD CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 1717 - 1731 Collins Avenue

FILE NO. PB22-05544

IN RE: An application has been filed requesting a conditional use permit for a Neighborhood Impact Establishment and the introduction of outdoor entertainment to the existing outdoor restaurant use located on the rear yard. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code.

**LEGAL
DESCRIPTION:** See exhibit A at the end of this document.

MEETING DATE: December 20, 2022

CONDITIONAL USE PERMIT

The applicant, Chisholm Properties So Beach Inc, requested a Conditional Use Permit for a Neighborhood Impact Establishment with outdoor entertainment, and an occupant content exceeding 300 persons. Specifically, the applicant is requesting the introduction of Entertainment on the existing outdoor restaurant use located on the rear yard. pursuant to Chapter 118, Article IV and Chapter 142, Article V of the City Code. Notice of the request 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 of the record for this matter:

That the property in question is located in the RM-3 Residential Multifamily, High Intensity District zoning district; and

That the use is consistent with the Comprehensive Plan for the area in which the property is located; and

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; and

That structures and uses associated with the request are consistent with the Land Development Regulations; and

That the public health, safety, morals, and general welfare will not be adversely affected; and

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

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, as approved by the Planning Board, and accepted by the applicant, that a Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions:

1. This Conditional Use Permit is issued to Chisholm Properties So Beach Inc, as owner/operator of the Sagamore Hotel for a Neighborhood Impact Establishment with outdoor entertainment and an occupant content exceeding 200 persons. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Business Tax Receipt.
2. 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 a Neighborhood Impact Establishment with Outdoor Entertainment to the existing outdoor restaurant use located on the rear yard with the criteria listed below:
 - i. The only type of entertainment allowed under this Conditional use permit is a DJ with ambient music played at a level that does not interfere with normal conversation.
 - ii. The High Tide Beach bar and Grill restaurant will only operate from 10:00 am to 8:00 p.m.
 - iii. The DJ will only operate from 12 p.m. and cease by 4 p.m. Friday, Saturday and Sunday.
 - iv. These hours shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage and/or entertainment establishments.
 - v. Up to 170 seats may be located at the rear yard and shall have a maximum occupant content of 957 persons or any lesser such occupant content as determined by the Fire Marshal.

vi. Entertainment shall be permitted on the outdoor areas subject to the following regulations:

- a) Only the Applicant's approved speakers, as approved by this Conditional Use Permit, shall be used. DJ's, shall be required to connect to the Applicant's house sound system. The Applicant shall be required to inform all guest DJ's as to the requirements of this conditional use permit related entertainment.
- b) Prior to the issuance of certificate of use for entertainment, the applicant's sound engineer shall revise the sound study to ensure that sound levels do not exceed ambient levels within the outdoor venue, subject to review by the City's peer reviewer, and the review and approval of staff. The applicant shall be responsible to cover the fees of the City's peer reviewer.
- c) The house sound system shall be calibrated and set in such manner as to limit the acoustical output for ambient levels within the entire rear yard.
- d) The house sound system shall have password protected security on all controls at all times in accordance with the design intent and recommendations of the revised sound study and the conclusions of Staff and the City's peer review.
- e) Per applicant's consultant and operational plan, a sound level limiter needs to be installed and maintained on the sound system and staff shall have decibel readers to ensure that the sound levels are within ambient background levels.
- f) At all times when any operations approved under this Conditional Use Permit are open, the Applicant shall continuously maintain a Manager on Duty (or equivalent) ("Manager on Duty"), on premises, to oversee the operations. Passwords for sound systems shall be provided only to the Manager on Duty. Only the Manager on Duty shall have access to house sound system maximum audio level controls. Only the Manager on Duty is authorized to allow access by verified installers, programmers, and repair personnel to the full complement of the Outdoor Speaker System's controls and adjustments, ensuring compliance with the sound and noise requirements, restrictions, and limitations in this Conditional Use Permit.
- g) Sound from the entertainment establishment shall not be plainly audible from the Beach walk and northern right of way of 17th Street.
- h) Before the issuance of a certificate of use, a field visit with the applicant's sound engineer and Planning staff shall be required to verify the sound system operations.
- i) A progress report regarding the outdoor entertainment shall be scheduled 60 days from the issuance of a business tax receipt (BTR) for outdoor

entertainment.

- j) Audio from the subject property, including any vibrations of a low-frequency or greater, shall not be plainly audible or felt within the interior of any residential unit or home, at any time.

vii. Full meals shall be available during all hours that entertainment is present.

- b. Deliveries may only occur between 8:00 AM and 5:00 PM, daily, on the weekends, only Saturday, Between the hours of 9:00 AM and 1 PM.
 - c. Delivery trucks shall not be allowed to idle in the loading zones.
 - d. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - e. Trash collections may occur daily between 7:00 AM and 9:00 AM.
 - f. Garbage dumpster covers shall be closed at all times except when in active use.
 - g. Exterior speakers for fire, life safety purposes and background ambient music played at a volume that does not interfere with normal conversation may be permitted.
 - h. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - i. As proposed by the applicant, security staff and management staff shall be onsite during hours in which entertainment is taking place. Rope and stanchion sets shall be in place dividing the pool area from the rear yard where the venue covered under this Conditional Use Permit is located. Security staff shall monitor patron circulation and occupancy levels in order to ensure compliance with occupant load limits.
 - j. Patrons shall not be allowed to queue on any public rights-of-way or the exterior premises. Security staff shall monitor the crowds to ensure that they do not interfere with the free flow of pedestrians on the public sidewalk or the beach walk.
 - k. The Operator 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.
3. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use Permit, including the hours of operation and/or the occupant load of the restaurant, as well as modifications to the parking operations, should there be valid complaints or violations (as determined by Code Compliance) about valet operations and loud, excessive, unnecessary, or unusual noise.

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4. The applicant shall address the following Transportation, Mobility, Concurrency and Parking requirements, as applicable:
 - a. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.
 - b. A Method of Transportation (MOT) shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
 - c. The developer shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit.
 5. 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.
 6. 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 for the outdoor entertainment located on the rear yard. 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).
 7. 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.
 8. 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.
 9. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
 10. 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.
 11. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
 12. 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.

13. 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.
14. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit (not private residences or hotel rooms) for inspection by the City (i.e. Planning Department, Code Compliance Department, Building Department, and Fire Department staff), to ensure compliance with the terms and conditions of this Conditional Use Permit. Failure to provide access may result in revocation of the Conditional Use Permit.

Dated _____

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Rogelio A. Madan, AICP
Development and Resiliency Officer
for Chairman

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Rogelio A. Madan, Chief of Community Planning and Sustainability for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

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

Approved As To Form: _____
Legal Department _____ ()

Filed with the Clerk of the Planning Board on ()

Exhibit A – Legal Description

(Per application and survey submitted by the applicant)

LEGAL DESCRIPTION:

PARCEL I:

Lots 3 and 18 and the South 40 feet of Lots 4 and 17, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida.

PARCEL II:

Beginning at the Southeast corner of Lot 3, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida, run in a Northerly direction along the East line of Block 28, a distance of 91.26 feet to a point; thence run in an Easterly direction along a line parallel to and 10 feet South of the North line of Lot 4, Block 28 produced, to High Water Line of the Atlantic Ocean; thence run in a Southerly direction, meandering said High Water Line a distance of 91.26 feet plus or minus to a point; thence run in a Westerly direction along the South line of Lot 3, Block 28 produced, to the Point of Beginning.

PARCEL III:

The South half of: North 10.00 feet of Lots 4 and 17; all of Lots 6 and 16, and the South 40 feet of Lots 8 and 18, in Block 28, of FISHER'S FIRST SUBDIVISION OF ALTON BEACH; according to the Plat thereof, as recorded in Plat Book 2, at Page 77, of the Public Records of Miami-Dade County, Florida; together with the land lying to the East thereof, to the high water mark of the Atlantic Ocean.