

BANCROFT AND OCEAN STEPS – 1501 COLLINS AVENUE

LAND USE BOARD HEARING APPLICATIONS

**(1) HISTORIC PRESERVATION BOARD – FILE NO. HPB22-0559
HEARING ON APRIL 11, 2023 (OR ANY SUBSEQUENT DATE)**

**(2) PLANNING BOARD – FILE NO. PB23-0572
HEARING ON APRIL 25, 2023 (OR ANY SUBSEQUENT DATE)**

OBJECTIONS TO APPLICATIONS AND TO HEARINGS

To (via email): Historic Preservation Board Members; Planning Board Members; Planning Department; City Attorney’s Office; City Clerk

**CC (via email): Rory Bret Greenberg, Applicant’s Representative
Tracy R. Slavens, Applicant’s Counsel**

April 10, 2023

Property Owner and Objector

**Henry S. Stolar, Trustee of Henry S. Stolar Revocable Trust dtd. 10/13/89
 (“Property Owner”)**

and

Henry S. Stolar (“Objector”)

**1500 Ocean Drive – Apt. 803
Miami Beach, FL 33139**

Tel: 305-673-8172

Fax: 305-673-8501

Email: henrystolar@bellsouth.net

OBJECTIONS TO APPLICATIONS AND TO HEARINGS

On the grounds and for the reasons set forth below, the undersigned Property Owner and Objector (collectively, “Opponents”), hereby file these Objections; object to the two Applications; and object to the Hearings on those Applications, all as set forth on the preceding cover page (respectively, “Objections”, “Application(s)”, and “Hearing(s)”).

Request for Confirmation from the City Attorney’s Office and the Planning Department. Opponents respectfully request a brief email acknowledgment, from each of the City Attorney’s Office and the Planning Department, of their respective receipt of these Objections and the entry of these Objections into the Historic Preservation Board’s and the Planning Board’s respective files, as identified by file number on the preceding cover page, and into the general files of the City of Miami Beach government.

Opponents seek confirmation that any official record or transcript of any action seeking the appeal or review of one or both of the respective Boards’ decisions on the Applications and/or these Objections will include these Objections as proper components of the official record or transcript.

Standing. For more than 18 years, the Revocable Trust identified on the preceding cover page has been the owner in fee simple of Unit 803 of the 1500 Ocean Drive Condominium Association, Inc., 1500 Ocean Drive, Miami Beach, Florida 33139 (“the Property”). The Property is within the 375-foot radius of the external boundaries of Applicant’s property, conferring upon the Opponents the standing to file these Objections.

For the same period of more than 18 years, the Objector identified on the preceding page and his spouse, Suzanne J. Stolar, have resided at the Property as their sole home. The Applicant’s property directly abuts the 1500 Ocean Drive condominium building, with no space between the two structures.

Incorporation by Reference. By this reference, Opponents incorporate into these Objections, from previous proceedings of the two Boards, and from the Opponents’ filings, correspondence, and testimony that asserted the same or similar arguments or grounds as the reasons and arguments set forth in these Objections.

Opponents rely upon these Objections to create a clear record for such further actions and/or proceedings as may occur on the subjects addressed in these Objections. In previous proceedings of the two Boards, the issues presented by these Objections have been decided adversely to Opponents. Accordingly, Objector does not now anticipate testifying in either or both of the two Hearings, because he does not wish to impose upon the responsibilities and time constraints of others. Opponents believe that these Objections are sufficient to create a record of them.

Location. Both Applications concern the unified property located at 1501 Collins Avenue and known generally as the Bancroft and Ocean Steps (“the Bancroft”). It is a large unoccupied property, with substantial frontage on both Collins Avenue and 15th Street.

The Neighborhood. The Bancroft stands across the street from two residential condominiums (Il Villaggio and the Drake) and immediately abuts a third residential condominium without any intervening space between the two buildings (1500 Ocean Drive). Opponents estimate that there is a total of approximately 290 residential units in the three condominiums.

The Bancroft’s Conditional Use Permit. The Planning Board has authorized the Bancroft to proceed with a massive renovation of the property with extensive, intensive, and heavily-populated new uses (Conditional Use Permit, File No. PB 20-0416, May 22, 2021 – “the Conditional Use Permit”), including:

a total of eight restaurants and bars

a total occupancy load of 1,913 people

a total of 1,079 restaurant and bar seats, consisting of 553 outdoor seats and 526 indoor seats

The Public Interest. There is always a compelling public interest in knowing who owns and who operates commercial real estate. That is especially true here, where the Bancroft’s massive operations will occur within close proximity to approximately 290 residential condominium units.

Conclusion. In the view of Opponents, the two Applications to which these Objections are filed are fatally defective and, therefore, cannot be heard in their present condition as now scheduled for their respective hearings:¹

(1) Tuesday, April 11, 2023 (tomorrow) by the Historic Preservation Board; and

(2) Tuesday, April 25, 2023 by the Planning Board (for continuance to May 21, 2023).

¹These Objections are based upon the Opponents’ examination of the following four documents, all of which are believed by Opponents to be the most recent documents filed: (1) Application dated January 4, 2023, filed with the Historic Preservation Board; (2) Amended and Restated Letter of Intent dated February 6, 2023, filed with the Historic Preservation Board; (3) Application dated March 28, 2023, filed with the Planning Board; and (4) Amended and Restated Letter of Intent dated March 29, 2023, filed with the Planning Board.

If any of these four documents has been updated, revised, or superseded, Opponents request copies of the new documents.

THE REASONS

Here are the reasons that the two Applications cannot be heard as scheduled (above):

The HPB Application - The Wrong Applicant

The stated name of the Applicant, in the Application to the Historic Preservation Board (“HPB”), is 1501 Collins, LLC. However, the previous Order of the HPB was issued to Bancroft Oceans Five Holdings, LLC (File No. HPB 20-0444).²

Therefore, only Bancroft Oceans Five Holdings, LLC has standing to seek modification of the HPB’s Order.

Both Applications – The Purported Disclosures of Interest

Opponents consider the Applications’ purported Disclosures of Interest to be opaque, impenetrable thickets of non-disclosure—completely contrary to the legal requirements, public policy imperatives, and the purpose (and name) of, a Disclosure of Interest (Applications – Pages 6-7 and the one-page attachment³).

Here is why:

The Property. Both Applications concern the unified property located at 1501 Collins Avenue and known generally as the Bancroft and Ocean Steps (“the Bancroft”). It is a large unoccupied property, with substantial frontage on both Collins Avenue and 15th Street.

The Neighborhood. The Bancroft stands across the street from two residential condominiums (Il Villaggio and the Drake) and immediately abuts a third residential condominium without any intervening space between the two buildings (1500 Ocean Drive). Opponents estimate that there is a total of approximately 290 residential units in the three condominiums.

²There is apparently a second HPB Order in File No. HPB22-0504, a copy of which is being requested by Opponents. If so indicated by that 2022 Order, Opponents will modify or withdraw this objection on the subject of standing.

³The attachment is 14 months old. It is titled “1501 Collins Avenue Org[anizational] Structure as of 02-08-2022”.

The Bancroft’s Conditional Use Permit. The Planning Board has authorized the Bancroft to proceed with a massive renovation of the property⁴ with extensive, intensive, and heavily-populated new uses (Conditional Use Permit – pages 2-4), including:

a total of eight restaurants and bars;

a total occupancy load of 1,913 people; and

a total of 1,079 restaurant and bar seats, consisting of 553 outdoor seats and 526 indoor seats

The Public Interest. There is always a strong public interest in knowing who owns and who operates commercial real estate. That is especially true here, where the Bancroft’s massive operations will occur in close proximity to approximately 290 residential condominium units.

However, from the purported Disclosures of Interest, here are the twenty owners in this more-than-complex web of ownership—but, without information as to the individuals who are principally responsible:

Entities

1501 Beach, LLC (Del.)
RonRuss Investments I, LLC (FL)
Nikea, LLC (Nev.)
Ocean Five Beach, LLC (Del.)
1501 Collins Pref. Equity, LLC (FL)
1501 Collins Holdings, LLC (Del.)
1501 Collins, LLC (Del.)
1501 Collins Pebb Manager LLC (Del.)
Barbara Rosenberg 2016 Trust I (FL)
Fara Horowitz 2018 Trust (FL)
Todd Rosenberg 2016 Trust (FL)
PCM Holdco LLC (Del.)

Individuals⁵

Rick Weisfisch
Ryan Weisfisch
George Macricostas
Todd Rosenberg
Barbara Rosenberg
Fara Horowitz

⁴Estimated to Objector by one of the Bancroft’s owners as costing \$90,000,000.

⁵Each of these individuals does not necessarily hold any interest or position in the entity whose name appears to the left and on the same line as the name of each of these individuals. These individuals’ and entities’ respective names appear opposite each other on the same line not by reason of any connection between the individual and entity; any such connection would be coincidental.

This arrangement of entities’ and individuals’ names is solely for the purpose of presenting the information in columnar form.

Pebb Capital Management, LLC (Del.)
1501 Collins Manager, LLC (Del.)

Total: 16 entities in three jurisdictions

Total: 6 individuals

This impervious barrier to knowing who is responsible is exacerbated by the public record, as it relates to the Planning Board Application and Letter of Intent. According to the Florida Division of Corporations' *Sunbiz.org* website:

(1) Bancroft Oceans Five Holdings LLC—the stated present owner—is a Florida limited liability company. The only name disclosed in the public record is the Manager, identified as yet another Florida limited liability company.

(2) 1501 Collins, LLC—the intended new owner—is a Delaware limited liability company.

It would surely have been appropriate, candid, and forthcoming if either the Planning Board Application or the Planning Board Letter of Intent had said something along the lines of:

“There is no material change in the identity of the ultimate individual beneficial owners or their respective ownership percentages.”

or

“The only material change in ultimate beneficial ownership is that John Jones’s percentage decreased from 45% to 15%, and the 30% reduction has been divided equally among Jane Smith and Eleanor Rigby, each of whom now owns 15%.”

One searches in vain for any such candor.

The Application Form and Public Policy. The City’s public policy is clear from the Application form used by the Applicant, as required, in both cases:

“If the owners consist of one or more corporations, partnerships, trusts, partnerships [sic] or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.” (Applications, pages 6 and 7 – emphasis supplied).

That same Application form was in use when Objector was appointed to the Planning Board on January 8, 2008; continued to be used, without change, throughout the six-year period of his service as a Planning Board member; and continues to be used, without change, today.

So, for at least more than fifteen years, the Application form has been used with the same instructions as are quoted above. The public policy enshrined in those instructions is nothing more than the well-known and generally-accepted principle of **piercing the corporate veil**—i.e., looking through the entity to identify the real live people who own the entity. That is the only way in which responsibility for the entity’s actions and inactions can be ascertained.

During a time when the Land Use Boards took no August vacation, Objector attended, during his Planning Board service, 71 out of the 72 scheduled meetings. Using a conservative estimate of two Applications per meeting, Objector sat on perhaps 142 cases. Objector cannot recall any case in which an applicant tried to erect an impenetrable wall between entities and the individuals who owned them as Applicant seeks to do here.

Throughout that six-year period, the City Attorney’s Office was represented at Planning Board meetings by Gary M. Held, First Assistant City Attorney. In Objector’s view, Mr. Held would never have allowed the violation of core principles of transparency, openness, and disclosure reflected here in this Applicant’s opaque and inscrutable non-disclosure of ultimate beneficial ownership by real live people.

The Proposed New Separation of Owner and Operator

The Conditional Use Permit provides:

“This Conditional Use Permit is issued to Bancroft Oceans Five Holdings, LLC, as owner/operator...” (Paragraph 1 – emphasis added).

So, the owner and the operator are unified in a single entity. But, now, the Planning Board Application and Letter of Intent seek to separate those two functions and assign them to two separate entities, so that the above provision would be revised to read:

“This Conditional Use Permit is issued to 1501 Collins, LLC as owner and LDV Hospitality as operator...” (Letter of Intent, page 2 – emphasis added).

With this proposed bifurcation of owner and operator, the operator must be directed to file its own separate Planning Board application:

“Any change of operator or 50% or more stock ownership...shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.” (Paragraph 1 – emphasis added).

This requirement for a separate application by the proposed new operator is clear enough by its own terms. But, if more were needed, this case makes that requirement especially urgent. Here is everything that the public record discloses about the proposed new operator, who will be

responsible for a total occupancy load of 1,913 people and eight restaurants and bars with 553 outdoor seats and 526 indoor seats:

The only similarly-named entity found by Objector in a search of the Florida Division of Corporations' *Sunbiz.org* website is LDV Hospitality Holdings, LLC. It is a Delaware limited liability company. The only individual named is the Manager, one John Meadow, whom one can find on the 7th Floor of 130 West 25th Street in New York City.

The Planning Board should not be approving a new operator for this massive establishment on the strength of claims in the Letter of Intent (e.g., "LDV is a renowned hospitality group....").⁶

Failure to Furnish Addresses of Individual Owners

Both Disclosures of Interest in the Application form (pages 6 and 7) require the addresses of the individual owners. Applicant has omitted their addresses in both places and on the attachment.

Objector recalls that, at one of the previous hearings on the Bancroft, its representative argued that there is no requirement in the City Code for disclosure of addresses.

That argument ignores a central principle of administrative law. Administrators are always authorized to adopt procedures and forms for the implementation of legislation, unless a procedure or form is plainly beyond the legislative language and intent. The latter cannot be claimed here.

Here, in the exercise of its administrative authority, the Planning Department, long ago, adopted the Application form, and continues to require the use of that form to this day. Requiring disclosure of owners' addresses is clearly within the scope of the Planning Department's authority.

Actually, Applicant had no difficulty complying with the Applications' multiple other requirements that addresses be furnished. There are eight places where addresses are required (Application pages 1, 2, and 8). Applicant furnished addresses in all eight of those places. So, Applicant has conceded that the Planning Department can require addresses to be furnished.

Accordingly, Applicant cannot be permitted the luxury of selectivity—i.e., to pick and choose those addresses that are furnished and those addresses that are withheld.⁷

⁶No useful purpose would be served here by a discussion of the Letter of Intent's acknowledgment that approval of the new owner is intended to reflect a transfer of ownership that occurred one year and seven months ago (September 3, 2021.)

⁷In other places in the two Applications, Applicant has purported to arrogate to itself the right to pick and choose what it will disclose and what it will not disclose. Both Applications simply

(One cannot imagine—and, in fact, there probably isn't—any City application form to any Department for any purpose on which directly interested and affected individuals and/or entities are not required to include their addresses. Other than the applicant's name, what could be more basic than the applicant's address?)

Failure to Furnish the Required Disclosure of Interest for Trusts

Both Applications identify three Trusts as owners. But, the Applications leave blank and empty the Application page titled “Disclosure of Interest – Trustee”.

City Code Provisions

Without limiting Opponents' right to rely upon other City Code provisions, the following two provisions have immediate bearing:

(1) The “Complete Application” Requirement and the City Attorney’s “Certification” Requirement. The Code requires that an application be complete before it can be considered, and that the City Attorney’s Office certify that it is ready for consideration. In view of the Applications’ failure to disclose the individual owners of entities, and failure to disclose the addresses of the owning individuals and entities, the City Attorney cannot certify that either of these Applications is ready for consideration.

Further, the Planning Department’s own standard Board Application Check List form advises applicants right up front in bold face (page 1):

“Incomplete, or submittals found to be insufficient will not be placed on a Board agenda.”

That Planning Department statement implicates another Administrative Law precept: A governmental agency is bound by its own rules, procedures, and requirements. It cannot waive them on an individual basis—especially here, where the public interest in disclosure is compelling.

Commendably, the City Attorney’s Office has long recognized these obligations:

“As to whether [the City Attorney’s Office] sign[s] off on the HPB’s jurisdiction to hear applications, the answer is YES.” (CAO June 3, 2022 email – all caps in original).

ignore and blow past five places where cell phone numbers are required (Applications – pages 1-2). And, in the Application to the Planning Board, the Applicant simply ignores and blows past six sections seeking Project Information (page 2).

(2) The 5% Provision – City Code Sec. 2-482(c). In previous Bancroft proceedings, the City has relied upon this provision as the basis for non-disclosure, by Land Use Board applicants, of names and addresses of entities’ individual owners.

That reliance has been misplaced. That provision is part of City Code Sec. 2-482 (“Registration; Disclosures”) of Division 3 (“Lobbyists”) of Article VII (“Standards of Conduct”). Division 3 deals with lobbyists and Sec. 2-482 deals with lobbyists’ registration requirements. Nothing in these provisions has anything to do with Land Use Board applicants.

The express terms of the second sentence of Sec. 2-482(c) make equally clear that it is only lobbyists to which the 5% provision applies. The lobbyist is required to include, in the lobbyist registration application, the following:

“...the lobbyist shall also identify all persons holding, directly or indirectly, a five-percent or more ownership interest in such corporation, partnership, or trust.” (emphasis supplied).

That under-5% disclosure exemption for lobbyists simply has nothing to do with Land Use Board applicants or applications.

The two present Applications eloquently demonstrate the mischief of contorting a lobbyist exemption to apply to applicants. Here, we have sixteen owning entities (spread out over three jurisdictions). If those entities’ corporate veils or trust veils were pierced, we might find, for example, that one individual has ownership interests in four of those sixteen entities. In that instance, it may be the fact that, when his or her four ownership interests are aggregated, they may total 5% or more of the total ownership of the Applicant.

Conclusion

For the reasons stated in these Objections, neither the HPB Application nor the Planning Board Application, in their present forms, are sufficient to vest jurisdiction to be heard for any purpose by the respective Boards. If either of them were to be heard in its present form, it would be contrary to law and the public interest, and would create precedents for non-disclosure of vital information that ought to be available to the public.

Respectfully submitted,

Respectfully submitted,

HENRY S. STOLAR REVOCABLE
TRUST DTD. 10/13/89
By: /s/ Henry S. Stolar, Trustee

/s/ Henry S. Stolar

“Property Owner”

“Objector”