

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 23, 2023

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB23-0577 - 230 1st Street - 81 Washington Ave – Le Jardin Boucherie**

An application has been filed requesting a conditional use permit for a Neighborhood Impact Establishment for a restaurant, pursuant to Section 118, Article IV and Chapter 142, Article V of the City Code.

RECOMMENDATION

Approval with conditions.

BACKGROUND

November 14, 2017: The Historic Preservation Board approved a Certificate of Appropriateness for the partial demolition and renovation of the existing 3-story building and site design modifications, including the removal of the existing parking lot to be replaced with outdoor restaurant seating (HPB17-0143).

ZONING/SITE DATA

Legal Description:

Lots 20 & 21, Block 10, Ocean Beach Florida Subdivision, According to the Plat Thereof, as Recorded in Plat Book 2, Page 38, of the Public Records of Miami-Dade County, Florida.

Zoning District:

C-PS1 Commercial Performance Standard limited mixed use

Future Land Use Designation:

Limited Mixed Use Commercial Performance Standards (C-PS1)

Surrounding Uses:

North:	Commercial Establishments
South:	Residential Multifamily
West:	Commercial Establishments
East:	Residential Multifamily

THE PROJECT

The applicant, 81 Washington LLC, has submitted plans entitled "LE JARDIN BOUCHERIE - 81 WASHINGTON – 230 1ST STREET", prepared by Beilinson Gomez Architects dated March 27, 2023. The proposal is for a restaurant, with alcohol service, to occupy the ground floor and the second floor of the existing building.

The proposed restaurant fronts Washington Avenue and First Street. The ground floor has an interior bar and restaurant area with 125 seats and an outdoor dining area with 158 seats; the occupancy load on the ground floor is 413 persons. The second floor has 167 seats with an occupancy load of 210 persons. The total occupancy load proposed for both levels is 623 persons.

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 limited Mixed Use Commercial Performance Standard Category (C-PS-1) as designated on the Future Land Use Map within the 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 – 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 – 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.**

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

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

Partially Consistent – The applicant will utilize valet parking services to park vehicles at a nearby storage location. Additionally, there are public parking facilities and street parking adjacent to the site. While the contributing structure does not have a parking requirement, parking may be required for the outdoor seats. A full zoning analysis will be performed as part of the building permit review. If required parking cannot be provided, participation in the fee in lieu of parking program may be necessary.

- 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 neighborhood.

- 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.**

Partially Consistent – There are other restaurants within the vicinity, neighborhood impact establishments are permitted in the C-PS-1 Zoning District as a conditional use. If not carefully controlled, such concentration could negatively impact the surrounding neighborhood.

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 including details of hours for deliveries, hours of operation, number of employees, 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.**

There are no parking spaces on site and the applicant will utilize valet parking services. Additionally, there are adequate public parking facilities and street parking adjacent to the site.

- 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.**

A crowd control plan was not included with the application. Staff is proposing conditions to mitigate any potential issues with crowd control and queuing in the outdoor areas and sidewalk.

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

The applicant has indicated that there will be cameras to monitor the facility. The operational plan mentions that patron age limitations will be enforced by any alcohol server.

- 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 Study was provided. Based on the analysis, the Applicant has committed to implement best practices with its valet operations to ensure minimal impacts, as well as other traffic mitigation strategies.

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

The operations plan indicates how garbage collections are intended to take place. Staff has included recommended conditions to mitigate any potential issues related sanitation operations.

7. A noise attenuation plan which addresses how noise would be controlled to meet the requirements of the noise ordinance.

A sound study was submitted.

8. Proximity of proposed establishment to residential uses.

There is a building that contains residential units adjacent to the site on the south, and another residential building on the East across from the Alley. (Collins Ct).

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

There are other restaurants within the vicinity in this district. If not carefully controlled, such concentration could negatively impact the surrounding neighborhood.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(a) of the Land Development 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.

Satisfied. The applicant shall provide a recycling or salvage plan as part of any building permit.

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

Satisfied. Windows are hurricane impact windows.

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

Per letter of intent, The Applicant will provide, where feasible, passive cooling systems.

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

Satisfied. Per letter of intent, all landscaping will be Florida friendly and resilient.

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.

Satisfied.

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.

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

Satisfied. All critical mechanical and electrical systems will be located above BFE.

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

Satisfied. Per letter of intent, the building is existing and was developed in 2014 in accordance with applicable floodplain regulations.

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.

Satisfied. Per letter of intent, Habitable spaces below base flood elevation plus freeboard will use flood proofing system in accordance with the Code.

10. Where feasible and appropriate, water retention systems shall be provided.

Satisfied. Per letter of intent, water retention systems will be provided.

11. Cool pavement materials or porous pavement materials shall be utilized.

Satisfied. Per letter of intent, Cool pavement materials or porous pavement materials will be utilized where possible.

12. The design of each project shall minimize the potential for heat island effects on-site.

Not Applicable.

ANALYSIS

Project Description and Operations

The proposal is for the renovation of an existing commercial space and the applicant is proposing to operate a restaurant serving alcoholic beverages with a total projected occupancy load of 623 persons. As per the plans, letter of intent, and operational plan, the following is a breakdown of the areas of the venue, the occupant content, and the proposed hours:

Ground floor information per plans submitted (A-101)*:

- Interior Seats: 125
- Exterior Seats: 158
- Subtotal Seats: 283
- Occupancy Load: 413

Second floor information per plans submitted (A-102)*:

- Interior Seats: 167
- Occupancy Load: 210

- Total number of Seats: 450
- Total Occupancy Load: 623

Proposed Hours: Monday-Sunday: 11:00 AM to 12:00 AM

*Staff noticed some discrepancies in the number of seats from the Letter of Intent, operational plan and floor plans. For the purpose of this approval, staff is using the information provided on the architectural plans.

The ground level is divided into two areas. The western side is an outdoor dining terrace, with some of the seating area proposed to be covered by a canopy. The main entry point is through the outdoor terrace facing Washington Avenue. The interior portion of the restaurant is on the eastern side of the property, and contains the main dining area, two bars, restrooms, an elevator, stairs, a kitchen, and a secondary entry point facing First Street. The second floor provides space for a dining area, lounge, bathrooms, kitchen and back of house.

Sound

The applicant is proposing to ambient background music, played at a level that does not interfere with normal conversation. The applicant submitted a sound study prepared by Criterion Acoustics, which, indicates that the restaurant will have reduced or “ambient” level music playback in the garden (70dBA / 75 dBC).

The sound study was peer reviewed by the City’s consultant, Arpeggio Acoustic Consulting, LLC. The peer reviewer had the following conclusion and suggestions:

“In conclusion, we proffer that the sound study report may overestimate the existing ambient sound level at the site, particularly later at night (i.e., near midnight versus 9 pm, when the survey was conducted) but do agree with several recommendations made. Specifically, we encourage adherence to the following recommendations made in the report concerning the outdoor audio system:

- *Distributed loudspeakers should have 6” or smaller bass drivers and be mounted low and downward facing.*
- *Cardioid loudspeakers should be used if possible.*
- *Subwoofers should be eliminated from the design.*
- *Loudspeakers near the south property line should be moved, eliminated, or significantly lowered in level.*
- *A digital tamper-resistant sound level limiter, which is only accessible by offsite corporate management, should be installed.*

Additionally, sound level calibration should be performed after the system is installed. This calibration should incorporate the following features:

- *Calibration should maintain an ambient sound level during system operation of no greater than 65 dBA in the dining area to allow for normal patron conversation. This would be consistent with the statement in the LOI that “[o]nly pre-recorded background music played at ambient background levels will be utilized.”*
- *Calibration should address and establish C-weighted (dBC) as well as A-weighted (dBA) sound levels so that low-frequency bass is controlled.*
- *Calibration should consider residences at 100 Washington Avenue as well as at 75*

Washington Avenue.

Staff agrees with the peer reviewer's findings regarding background music. Staff also has some concerns with the proximity of the outdoor dining area to an abutting residential building located to the south of the site at 75 Washington Avenue. Given that there are residential units facing the proposed outdoor dining area, staff recommends that the outdoor operations cease by 11:00 p.m. and that the music cease by 10:00 p.m. on Friday and Saturday and 9:00 p.m. from Sunday to Thursday. Staff has recommended additional conditions in the attached draft order to ensure that the impact of the sound related operations are minimized.

Hours of Operation

The applicant is requesting to operate from 11:00 a.m. to 12:00 a.m. (midnight), seven days per week. Staff is concerned with the proximity of the outdoor dining area to a residential building, as well as the potential impact from patrons congregating in the exterior areas of the property and public sidewalks late in the evening to wait for transportation. To address these issues, staff is proposing that the outdoor hours of operation be limited to 11:00 p.m., every day, in order to minimize the impacts to nearby residents.

Deliveries and Sanitation

The operations plan indicates that all deliveries will be made from the rear alley on Collins Court. The plan indicates that no trucks larger than 5-tons will be permitted to access the existing loading and delivery area and that the restaurant will work with all vendors to ensure this. Deliveries will only be permitted between 8:00 a.m. and 12:00 p.m. Staff has concerns with deliveries taking place during peak hours of traffic and recommends that they not occur before 9 a.m. Staff also suggests that deliveries be allowed to continue an additional hour beyond what is suggested by the applicant in order to maintain a four-hour delivery window.

Refuse collection will also take place from the rear alley on Collins Court six days per week. The operations plan indicates that weekend collections will not occur before 9:00 a.m. to prevent residential disturbances. The trash room is located at the southeast corner of the building, which faces the adjacent residential building. Staff is recommending that this trash room be air conditioned and that it be closed except when sanitation pickups are occurring.

Valet Parking

Valet parking is proposed to take place via a valet station located on Washington Avenue and the valet operator is expected to utilize the garage on 5th Street and Lenox Avenue. The Transportation Department has concerns with the distance between the parking garage and the restaurant. The distance exceeds 2,500 feet, which is the maximum allowed by Section 18-337(6)(a) of the City Code, unless otherwise approved by the City Manager. To address this concern, the following condition has been incorporated into the draft order:

- The Applicant shall make best efforts to secure a valet storage location within 2,500 feet of the property. If no valet storage lot is available within 2,500 feet of the property at the time the valet operator seeks a business tax receipt for operation of the valet stand, the valet operator shall seek approval of the proposed valet storage location in accordance with Section 18-339(6)(a) of the City Code, and subject to the review and approval of the Parking and Transportation Departments.

Site Access

Per the operations plan, patron access to the restaurant is from Washington Avenue. The operations plan indicates that entering patrons will be guided to a host station upon entering. However, the plans do not depict the exact location of the entrance and the host station. Staff is

recommending a condition that would require the applicant to clarify the location of the entrance and host station to ensure that there is sufficient space to accommodate patrons waiting to enter or leave the restaurant and ensure that there is no queuing within the limited sidewalk area, as follows:

- Provide a revised floor plan identifying the location of the main patron entrance and the host station. The host station shall be located a minimum of ten (10) feet away from the main patron entrance in order to ensure that there is no queuing on the public right of way, subject to the review and approval of the Planning Department.

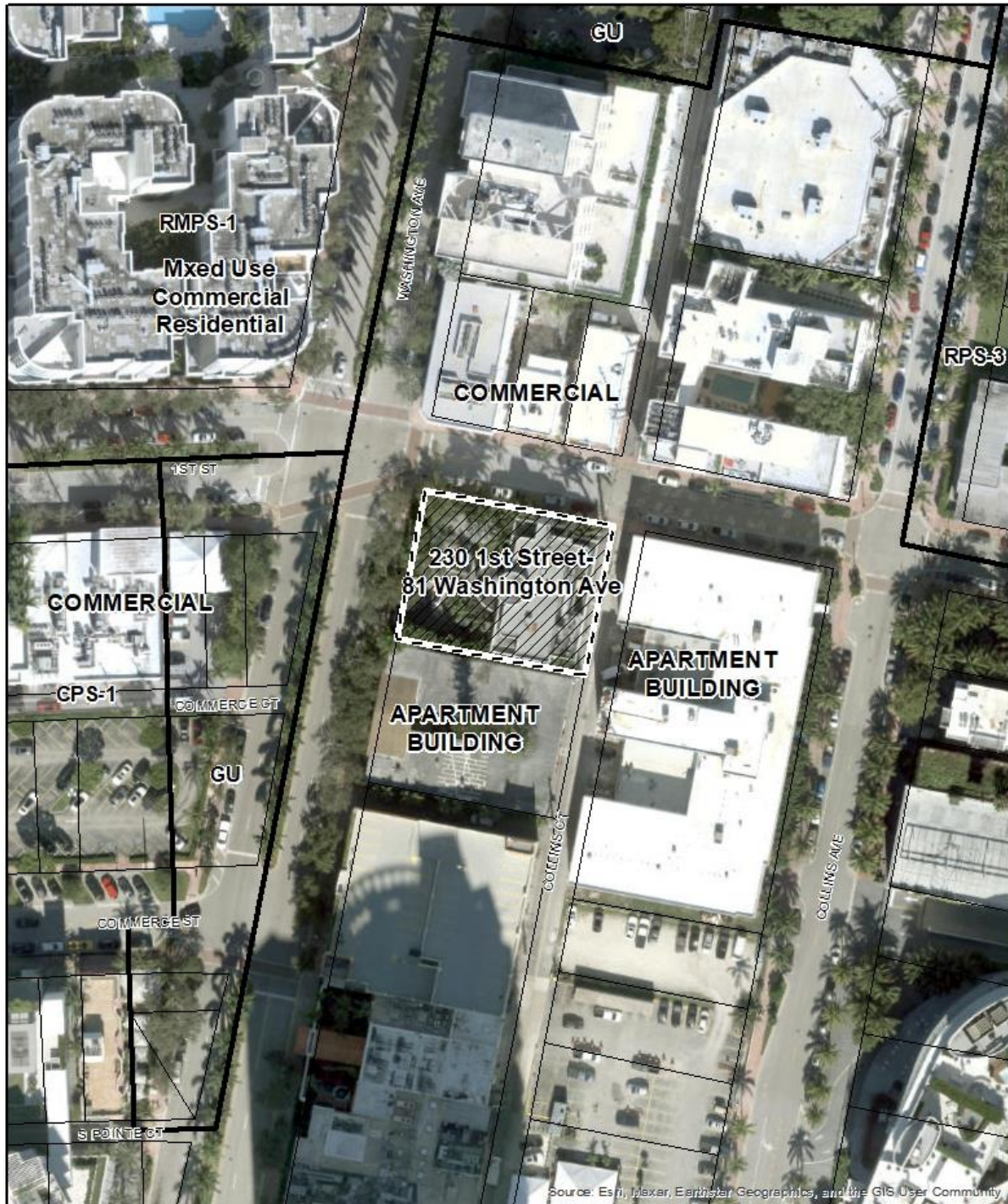
Security and Crowd Control

The operations plan does not indicate if security personnel is proposed to be onsite during operating hours; however, the plan did indicate that there will be cameras onsite to monitor the facilities. Also, pursuant to the operational plan patron age limitations will be enforced by alcohol serving staff. Staff has recommended conditions in the attached draft order to address security and crowd control.

STAFF RECOMMENDATION

In view of the foregoing, staff recommends the application be approved, subject to the conditions in the attached draft order.

ZONING/SITE MAP



**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 230 1st Street - 81 Washington Ave – Le Jardin Boucherie

FILE NO. PB23-0577

IN RE: An application has been filed requesting a conditional use permit for a Neighborhood Impact Establishment for a restaurant, pursuant to Section 118, Article IV and Chapter 142, Article V of the City Code

LEGAL DESCRIPTION: Lots 20 & 21, Block 10, Ocean Beach Florida Subdivision, According to the Plat Thereof, as Recorded in Plat Book 2, Page 38, of the Public Records of Miami-Dade County, Florida.

MEETING DATE: May 23, 2023

CONDITIONAL USE PERMIT

The applicant, 81 Washington, LLC, filed an application with the Planning Director requesting a Conditional Use approval for a Neighborhood Impact Establishment 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 C-PS-1 Commercial Performance Standard limited mixed use.

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

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;

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

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

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, that the Conditional Use Permit be GRANTED, as provided below:

1. 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. 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 81 Washington, LLC, as tenants and operators of the Neighborhood Impact Establishment consisting of a restaurant and bar. 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 Certificate of Use/Business Tax Receipt. A progress report shall be scheduled within 60 days following the applicant's submission and staff's approval of the affidavit.
3. 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.
4. 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.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. 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. The project authorized by this Conditional Use Permit includes the creation and operation of the proposed 450 seat Neighborhood Impact Establishment, subject to the criteria listed below:
 - i. The restaurant and bar subject to this CUP shall have a maximum occupant content of 623 persons or any lesser such occupant content as determined by the Fire Marshal.
 - ii. The indoor portions of the establishment may operate from 11:00 AM until 12:00 AM
 - iii. The outdoor seating areas of the establishment may operate from 11:00 AM until 11:00 PM.
 - 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. Entertainment, as defined in City Code Section 114-1, shall be strictly prohibited in all indoor and outdoor areas.
 - vi. Recorded background music, played at a level that does not interfere with normal conversation is permitted, provided that a sound system with directional speakers and a digital tamper-resistant sound level limiter is used to minimize impacts to adjacent properties.
 - vii. Outdoor music shall cease at 10:00 PM from Friday to Saturday and 8:00 PM from Sunday to Thursday.
 - viii. Sound generated from the venue, including, but not limited to, recorded music and patron conversations, shall not be plainly audible from the adjacent residential building.
 - ix. Televisions and projectors shall not be located anywhere in the exterior areas of the property.
 - x. No dancehall shall be permitted on the site.
 - xi. Special event permits shall be prohibited.
 - xii. After normal operating hours, 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.
- B. Deliveries may only occur between 9:00 AM and 1:00 PM each day.
- C. Deliveries must be conducted via designated loading zones or loading areas at the rear of the property on Collins Court. No deliveries shall be made from undesignated loading areas on Washington Avenue or First Street. Additionally, at no time shall delivery or service vehicles block any portion of the near public rights-of-way
- D. Delivery trucks shall not be allowed to idle in the loading zone.
- E. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
- F. Deliveries and waste collections may occur daily between 9:00 AM and 5:00 PM, or as specified by the City approved loading zones in the vicinity.
- G. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
- H. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient

- interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
- I. Trash room(s)/garbage room(s) shall be large enough, or sufficient in number to accommodate enough dumpsters so that more than one pick up of garbage per day will not be necessary.
 - J. Garbage dumpster covers shall be closed at all times except when in active use.
 - K. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.
 - L. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property.
 - M. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
 - N. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
7. Provide a revised floor plan identifying the location of the main patron entrance and the host station. The host station shall be located a minimum of ten (10) feet away from the main patron entrance in order to ensure that there is no queuing on the public right of way, subject to the review and approval of the Planning Department.
 8. 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. The applicant shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit.
 - C. The applicant shall coordinate with the Parking Department to provide valet parking at the proposed valet parking ramps. The applicant will provide text-to-order valet parking services to limit crowding on the exterior of the venue.
 - D. All valet parking operations shall be conducted within the rented on-street parking space(s) for the valet ramp and shall not block, at any time, the right of way on Washington Avenue.

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- E. The Applicant shall make best efforts to secure a valet storage location within 2,500 feet of the Property. If no valet storage lot is available within 2,500 feet of the property at the time the valet operator seeks a business tax receipt for operation of the valet stand, the valet operator shall seek approval of the proposed valet storage location from the City Manager in accordance with Section 18-339(6)(a) of the City Code. Subject to the review and approval from The Transportation Department.
9. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this entertainment establishment.
 10. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
 11. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
 12. 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.
 13. 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.
 14. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
 15. 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.
 16. 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.
 17. 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

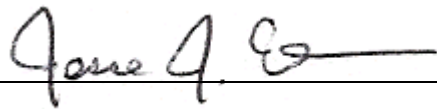


**Peer Review of Sound Study for
230 1st Street-81 Washington Avenue
PB 23-0577**

Prepared for:

**Miami Beach Planning Department
1700 Convention Center Drive
Miami Beach, Florida 33139**

Prepared by:



**Jesse J. Ehnert, INCE Bd. Cert., Principal
Arpeggio
1947 Aspen Drive, NE
Atlanta, Georgia 30345
jehnert@arpeggiollc.com
404-277-6528 (Direct)**

April 11, 2023

Table of Contents

1 Introduction 1
2 Project Description..... 1
3 Discussion 1
4 Conclusions..... 2

1 Introduction

This report documents a peer review of an acoustic study conducted for the City of Miami Beach related to an application for a Conditional Use Permit for a Neighborhood Impact Establishment at 81 Washington Avenue. The reviewed report, prepared by Criterion Acoustics (CA) and dated March 27, 2023, describes the project, acoustic measurements made on site, and analyses based on SoundPLAN modeling of potential impact of the outdoor dining area on the environs.

2 Project Description

The proposed French restaurant, Le Jardin Boucherie, would be located in an existing three-story building at the southeast corner of the intersection of Washington Avenue and 1st Street, in the South of Fifth neighborhood. It is planned to consist of three areas:

- (1) Exterior garden seating with approximately 172 seats
- (2) Ground level interior dining room with approximately 92 seats
- (3) Second level interior dining room with approximately 122 seats

The hours of operation are planned to be 11 am to 5 pm for lunch and 5 pm to midnight for dinner. According to the Letter of Intent (LOI), “[o]nly pre-recorded background music played at ambient background levels will be utilized.” The LOI also indicates that patrons will be asked to wait for their vehicles inside the restaurant when they are ready to leave in order to minimize noise from patrons queueing for the valet.

The nearest residential neighbors are identified in the report as being at 75 Washington Avenue immediately to the south of the restaurant. There also appears to be a multi-story condominium or apartment building at 100 Washington Avenue at the northwest corner of the intersection of Washington Avenue and 1st Street. These two developments appear to be the most likely to be impacted by the proposed restaurant.

3 Discussion

The CA sound study presents results utilizing the commercial SoundPLAN acoustic modeling program using an exterior sound system design developed by SUPPORT 360 which includes full-range loudspeakers with 8” bass drivers and subwoofers with 10” bass drivers. The model appears to have been built well and we have no reason to question its accuracy or results.

We do, however, question claims about the existing ambient sound level at the site, which is reported as 64 to 65 dBA and 74 to 76 dBC at street level near the restaurant property. These measurements were taken between 9:00 pm and 9:30 pm, purportedly on December 8, 2023. Assuming this was actually 2022, then this was a Thursday evening. These levels are reported as equivalent sound levels, presumably measured over up to 15 minutes. Equivalent sound levels are essentially average sound levels over a defined period and, as such, are particularly influenced by loud sounds (e.g., passing cars). A more appropriate sound level metric to assess the background sound level would have been the 90th-percentile exceeded level, L₉₀. We believe this level would have likely been a few

decibels lower and provided a better assessment of the sound level without the influence of transient sounds. Additionally, it is very likely that the ambient sound level is different at different times of day and, in fact, may be lower nearer midnight in this area given the lack of nightclubs in the area.

Given the potential for existing ambient sound levels at the site being lower than reported, particularly later in the evening, the sound levels produced by the SoundPLAN model would be more obtrusive. For example, sound levels at the north façade at 75 Washington Avenue are modeled as being 71 to 72 dBA, which would certainly be above the existing ambient. Additionally, sound levels along the residential façade at 100 Washington Avenue are modeled as being approximately 59 dBA, which may be near the existing ambient, particularly later at night.

In light of the SoundPLAN modeling results, CA makes several recommendations to mitigate noise issues in the area. These recommendations include reducing levels predicted by the model by seven decibels, limits on loudspeaker sizes as well as elimination of subwoofers from the exterior dining area, tight controls or elimination of loudspeakers closest to the south property line, and installation of a sound level limiter.

4 Conclusions

In conclusion, we proffer that the sound study report may overestimate the existing ambient sound level at the site, particularly later at night (i.e., near midnight versus 9 pm, when the survey was conducted) but do agree with several recommendations made.

Specifically, we encourage adherence to the following recommendations made in the report concerning the outdoor audio system:

- Distributed loudspeakers should have 6" or smaller bass drivers and be mounted low and downward facing.
- Cardioid loudspeakers should be used if possible.
- Subwoofers should be eliminated from the design.
- Loudspeakers near the south property line should be moved, eliminated, or significantly lowered in level.
- A digital tamper-resistant sound level limiter, which is only accessible by offsite corporate management, should be installed.

Additionally, sound level calibration should be performed after the system is installed. This calibration should incorporate the following features:

- Calibration should maintain an ambient sound level during system operation of no greater than 65 dBA in the dining area to allow for normal patron conversation. This would be consistent with the statement in the LOI that "[o]nly pre-recorded background music played at ambient background levels will be utilized."
- Calibration should address and establish C-weighted (dBC) as well as A-weighted (dBA) sound levels so that low-frequency bass is controlled.
- Calibration should consider residences at 100 Washington Avenue as well as at 75 Washington Avenue.