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May 14, 2018

To: Planning Board Members

Re: Royal Palm Hotel - 1545 Collins Avenue - Progress Report - File PB 17-0108 (f/k/a File No. 2032) - Planning Board May 22, 2018 Meeting – Agenda Item No. 6

Dear Planning Board Members,

I respectfully request that, at the above Progress Report, you set this case for a Modification Hearing.

I write this letter entirely in my individual capacity. Its creation is solely mine. However, Kevin Fox—as a Board Member, the Vice President, and the Secretary of the 1500 Ocean Drive Condominium Association, Inc. who has been authorized to speak for the Association on this matter—has authorized me to advise you that, on behalf of the Association, he supports this request.

Background

As you know, the City Code first requires a Planning Board decision to set a modification hearing before the Board can consider modifications to a Conditional Use Permit. So, at your meeting next week, serious consideration of possible modifications in the Royal Palm Hotel's Modified Conditional Use Permit must be deferred until that modification hearing (which would be at your July meeting if you decide next week to set one).

Nonetheless, at your March meeting, Daniel Veitia and other members, properly and understandably, wondered: What modifications would be proposed if indeed the Board does set a modification hearing?

Therefore, as recommended by both Planning staff and Planning Board members, Mr. Fox and I contacted Patrick Dougherty to arrange a meeting, to which he promptly agreed. Given your inquiries about what modifications might be proposed, Mr. Fox and I concluded that we should make a proposal to Mr. Dougherty to see if agreement could be reached on modifications.

We met with him on Monday, April 30. We gave him a one-page sheet, proposing only two modifications to existing Conditions and no new Conditions. We discussed our draft briefly but, since he was seeing it for the first time, we asked only that he study it and get back to us with a response.

A week later, Mr. Dougherty advised us of his rejection in full of our two proposed modifications, and offered no alternative language. That leads to this letter, asking that you do set a modification hearing, so that those two proposed changes can be considered by you—together, of course, with the Planning staff's recommendations.

Here are three groups of reasons for making this request for a modification hearing:

I.

The General Manager of the Royal Palm Hotel has now taken written positions that are directly contrary to the language and purpose of the Modified Conditional Use Permit approved April 25, 2017 (the "MCUP").

Attached are copies of the following two emails from Mr. Dougherty: March 30, 2018 (5:50 PM), and April 2, 2018 (9:56 AM). I have added the boldfacing in order to highlight those portions of the two emails to which I invite your particular attention. All three of you were copied on those two emails, so they are now in the public record and in the files of the Planning Department.

Those two emails reflect positions by the Hotel which are in direct conflict with the MCUP. Our two proposed amendments—rejected out of hand by Mr. Dougherty—are designed to counter expressly his wholly inaccurate reading of the MCUP.

Here are the two positions expressed in the attached emails from Mr. Dougherty—positions which are flat out unsustainable under the terms of the MCUP. Then, each of those two positions is followed by a proposed curative amendment designed to eliminate any present ambiguity:

(1) Location of Deliveries and Pickups. Mr. Dougherty states in both emails that trucks making deliveries or doing pickups can park in the shared driveway. That is completely contrary to the language and purpose of the MCUP, which clearly states that trucks serving the hotel are to use the area marked by the yellow stripe—that is, north of the shared driveway and south of the Hotel's south wall. I will bring to the meeting a recent photograph of what Mr. Dougherty's interpretation means. It will supplement the numerous photographs previously submitted.

That interpretation cannot and should not be allowed to stand. It is now in the public record. Uncorrected, it will come back to haunt both the City and the parties adversely affected.

Here is what we proposed to Mr. Dougherty as an amendment to the MCUP, intended to make even clearer that there is no basis for his position that the MCUP allows trucks to be parked anywhere in the shared driveway, and not just in the loading and unloading zone north of the yellow stripe:

Black = Present Text
Blue = Proposed Modification

MCUP - Page 7 - Condition No. 26(c) - Location of Deliveries and Pickups

26. Deliveries and ~~garbage trash~~ and pickups shall...

* * * * *

(C) be conducted, to the greatest extent possible, so as to minimize disruption of traffic within the shared driveway:

(i) ~~within the northern fifteen feet of the shared driveway adjacent to~~
approximately 15-foot strip located between the hotel's southern wall and
the yellow stripe described in Condition No. 26(D) below; and

(ii) not in the shared driveway, which is located immediately to the south of
the 15-foot strip;

* * * * *

(2) **The Dockmaster Supervisor.** Mr. Dougherty, in the first of the attached emails, has expressed the indefensible position that the MCUP does not require the dockmaster supervisor to be plainly visible on the job. That is completely contrary to the language and purpose of the MCUP. It makes clear that the dockmaster supervisor is:

“...responsible for (A) controlling hotel related deliveries and refuse pick up traffic...in order to minimize interference with the business and resident traffic of the respective [shared] driveway’s owners....” (MCUP, Page 7, Condition No. 26, excerpted from the second-to-last paragraph).

Again, I suggest that Mr. Dougherty’s claim about the dockmaster supervisor cannot and should not be allowed to stand. It is now in the public record. It will come back to haunt both the City and the parties adversely affected. Here is what we proposed to the GM as the second of our two amendments to the MCUP, intended to make even clearer the duties of the dockmaster supervisor:

Black = Present Text
Blue = Proposed Modification

MCUP - Page 7 - Condition No. 26 - Dockmaster Supervisor

[Unnumbered Provision Following Condition No. 26(E) – Third Sentence]

...Deliveries and pickups shall be handled and managed by a dock master supervisor who, between the hours of 9 AM and 6 PM 365 days a year, shall be on duty continuously except as permitted by applicant’s normal meal and bathroom breaks, and who shall be continuously stationed outdoors at a place where he can observe the entire shared driveway and the 15-foot strip. The dock master supervisor ~~who~~ shall be responsible for:

* * * * *

II.

Continuing MCUP Violations

In my view, the Royal Palm has been a serial violator of the MCUP. I have reported to Mr. Dougherty, with copies to Planning Department staff, a total of twenty apparent violations during only a seven-month period beginning August 28, 2017 and ending April 1, 2018. Those reports are in the following three emails from me: February 9, 2018 (attaching nine previous emails); March 30, 2018; and April 2, 2018. It is especially disturbing that the last seven of those twenty apparent violations occurred within the first five days after the Planning Board hearing on March 27, 2018.

Additionally, and as noted at that hearing, no reply at all was received from Mr. Dougherty to my February 9, 2018 email or any of the nine attached to it. The two emails from Mr. Dougherty which are attached to this letter are purported replies to my March 30, 2018 and April 2, 2018 emails.

If and when we reach the modification hearing, I have asked staff to propose some type of action in response to those twenty apparent violations during only a seven-month period.

III.

Record of Other Violations

My view is that the Royal Palm has a record, taken as a whole, which reflects a pattern and practice of failure to comply with applicable requirements, including the following:

- (1) littering – I will bring to our meeting a photograph of a recent illustration (which is in addition to photographs entered into the record in previous hearings);
- (2) failure to pay a \$3,000 fine for littering;
- (3) failure to obtain a BTR for a period of more than three and one-half months;
- (4) failure to paint the yellow stripe required by the MCUP;
- (5) repeated failures to comply with MCUP Condition No. 12(B), which is intended to prevent the “tenement effect”, by prohibiting the hanging of clothes on balcony railings.

I believe that all these matters have been submitted to you and/or are elsewhere in the public record. In some instances, these actions and inactions by the Royal Palm resulted in its being prosecuted before the Special Master.

Again, as with the preceding Group II MCUP Violations, if we reach the modification hearing stage, I have asked staff to fashion appropriate proposed actions for the Planning Board to take in response to this pattern and practice of non-compliance.

Sincerely,

/s/ Henry S. Stolar

Attachments – Two Emails from Patrick Dougherty, Royal Palm Hotel General Manager

From: Patrick Dougherty [mailto:patrick.dougherty@royalpalmsouthbeach.com]

Sent: Friday, March 30, 2018 5:50 PM

To: henrystolarbellsouth.net

Cc: kevin fox <kevinfoxny@optonline.net>; Mooney, Thomas <ThomasMooney@miamibeachfl.gov>; <MichaelBelush@miamibeachfl.gov>; Munday, Tui <TuiMunday@miamibeachfl.gov>; Boutsis, Eve <EveBoutsis@miamibeachfl.gov>; cmcdowell@bilzin.com; Carly Grimm <cgrimm@bilzin.com>

Subject: Re: Royal Palm Hotel, 1545 Collins Avenue (the "Hotel") - Planning Board File PB 17-0108 - Modified Conditional Use Permit dated April 25, 2017 (the "MCUP")

Thank you Henry. The hotel does not purchase from Sysco. **It is not a MCUP violation because you don't see my dock master. We are allowed to park on either side of the alley, just not in the middle of the alley.** Like your previous 13 non-violations, no traffic was blocked, no pedestrians injured, no condo guest negatively impacted in any way, line is still yellow, no violation registered. Enjoy your holiday!

From: Patrick Dougherty [mailto:patrick.dougherty@royalpalmsouthbeach.com]

Sent: Monday, April 02, 2018 9:56 AM

To: henrystolar@bellsouth.net

Cc: kevin fox <kevinfoxny@optonline.net>; Mooney, Thomas <ThomasMooney@miamibeachfl.gov>; Belush, Michael <MichaelBelush@miamibeachfl.gov>; Munday, Tui <TuiMunday@miamibeachfl.gov>; Boutsis, Eve <EveBoutsis@miamibeachfl.gov>; Carter McDowell <cmcdowell@bilzin.com>; Carly Grimm <cgrimm@bilzin.com>

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Henry, that's okay we have all hit send too quickly one time or another.

As for you violations, none of them are actual MCUP violations. **Vendors servicing any of the businesses are allowed to park on the North side of the Driveway, and to do so squarely,** minimizes any chance of disruption by individuals trying to leave from the garage. As stated by your VP of the condo association, clear egress is the top priority; I am happy to read his top priority was again satisfied. The dock master would not need to interact due to the lack of a violation. I see nothing in the MCUP relating to the garage door times or any mention of the garage doors but I will let the team know to close the door after completing the task for which they were opened. I hope you and all the others emailed enjoyed your Easter or Passover celebrations.