



July 13, 2018

**To:** Planning Board Members

**Cc:** Tom Mooney, Michael Belush, Tui Munday, and Eve Boutsis

**From:** 1500 Ocean Drive Condominium Association, Inc.

**Re:** Royal Palm Hotel - 1545 Collins Avenue – Modification Hearing - Planning Board July 24, 2018 Meeting – File PB 17-108 (f/k/a File No. 2032)

Dear Planning Board Members,

The 1500 Ocean Drive Condominium Association, Inc. (the “Association”) is deeply appreciative of your unanimous decision to set the above Modification Hearing.

Our Association respectfully requests that, at the Modification Hearing, you amend the Modified Conditional Use Permit, approved by you on April 25, 2017, by adopting the proposed Two Modifications as attached to this letter (the “Two Modifications”).\* We support the position taken in his individual capacity by our Unit Owner, Henry Stolar, in his attached letter.\*\*

There are multiple competing and conflicting demands for use of the shared driveway, which runs east and west between the Royal Palm Hotel (north side of shared driveway); the 1501 Collins Avenue commercial condominium (west end of south side of shared driveway); and our Association’s residential condominium (east end of south side of shared driveway).

Of all seven sources of those demands for use of the shared driveway (listed below), only the Hotel has its own separate 15-foot wide loading and unloading strip. That enclave-like paved strip is located immediately south of the Hotel and immediately north of the shared driveway. The Two Modifications are needed in order to provide more clarity and eliminate ambiguity as to the Hotel’s obligations concerning the driveway.

There are seven sources of demands for use of the driveway for pickups, deliveries, and other services:

- (1) the Hotel itself, with its 390 guest rooms; several function rooms; and two swimming pools (which are themselves often the sites of functions);
- (2) the Hotel’s three restaurants: Florida Cookery, Byblos, and The Grove;
- (3) the Hotel’s two bars: the Lobby Bar and the Pool Bar;

- (4) Quality Meats, a large restaurant in the 1501 Collins Avenue commercial condominium;
- (5) Tequila Chica's, a large restaurant in the 1501 Collins Avenue commercial condominium;
- (6) the large underground public parking garage in the 1501 Collins Avenue commercial condominium; and
- (7) our Association's needs for both (A) the entry and exit of our 114 Unit Owners' personal vehicles; and (B) pickups and deliveries for the Association and our Unit Owners.

In view of the Hotel's possession of its own separate area for pickups and deliveries, and in view of the numerous demands for use of the shared driveway by individuals and other entities, we respectfully request that you adopt the Two Modifications.

Sincerely yours,

1500 OCEAN DRIVE CONDOMINIUM ASSOCIATION, INC.

By: \_\_\_\_\_

Gregory G. Mario, President

Attachments:    \*(1) proposed Two Modifications – Draft dated 6/28/18 (two pages)

          \*\* (2) letter to Planning Board from Henry Stolar dated July 13, 2018 (xxx pages)

6/28/18

Royal Palm Hotel – 1545 Collins Avenue

Planning Board – File PB 170108 (f/k/a File No. 2032)

Modified Conditional Use Permit dated April 25, 2017 (“MCUP”)

Modification Hearing – July 24, 2018 Planning Board Meeting

Two Proposed Modifications

Black = Present Text

Blue = Proposed Modification

Proposed Modification No. 1

MCUP - Page 7 - Condition No. 26(C) - Deliveries and Pickups

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

\* \* \* \* \*

(C) be conducted, ~~to the greatest extent possible~~: [Same provisions, but relocated, with modifications:]

(i) not before 9 AM and not after 6 PM;

(ii) within the northern fifteen feet of the shared driveway adjacent to approximately 15-foot-wide strip, running east-west approximately 179 feet, and located between, on the north, the hotel’s southern wall, and on the south, the yellow stripe described in Condition No. 26(D) below; and

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

\* \* \* \* \*

[Condition No. 26 continued, adding two new subparagraphs]:

(F) [Same provisions, but relocated, with modifications:] Parking in the 15-foot-wide strip is prohibited between 8:30 AM and 6:30 PM 365 days a year, except for vehicles while actively engaged in delivery and pickup operations. Applicant shall not block or obstruct in any manner any part of the 15-foot-wide strip, except for vehicles while actively engaged in delivery and pickup operations. On a 24-hour basis, Between 8:30 AM and 6:30 PM 365 days a year, applicant’s management personnel shall regularly inspect the private shared driveway and the 15-foot-wide strip, in order to determine whether it is (i) either or both of them are being used for parking by any hotel guest, employee, or contractor, or by any other person or entity whose vehicle is attributable to applicant’s hotel, and (ii) whether there is any blockage or obstruction in the 15-foot-wide-strip. If either or both conditions exist, the applicant and shall promptly take appropriate action to remove any such vehicle and/or to remove any such blockage or obstruction.



(G) [Same provisions, but relocated, with modifications:] ...be handled and managed by a dockmaster supervisor, who shall be continuously on duty between 8:30 AM and 6:30 PM 365 days a year, and who shall be continuously stationed at a location where the entire shared driveway and the 15-foot-wide-strip can be observed and immediately accessed. The dockmaster supervisor who shall be responsible for:

(i) ~~controlling hotel-related deliveryies and refuse pickup traffic in order to minimize disruption of traffic on Collins Avenue and in order to minimize interference with the business and resident traffic of the respective~~ shared driveway's respective owners; and

(ii) enforcing the provisions of this condition relating to Deliveries and Pickups.

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Proposed Modification No. 2

MCUP - Page 7-8 – Proposed New Separate Condition No. 27 - Garbage and Trash

27. [Provisions modified, and moved from present Condition No. 26, into this separate Condition No. 27, dealing with garbage and trash]

Trash/garbage operations shall be governed by the provisions of Condition No. 26 and by the following further requirements:

Trash/garbage containers shall have rubber wheels and be maintained in a clean and fully operable condition. Trash/garbage containers shall be kept in the trash room, with its door completely closed except during trash and garbage pickups, after which the containers shall be promptly returned to the trash room, its door completely closed, and all trash, debris, and garbage shall be removed from the area in front of the door.

[Omitted material concerning dockmaster supervisor; that material remains in Condition No. 26, above]

A high-level trash/garbage compacting device shall be located in an the air-conditioned trash/garbage holding room located on the south side of the south building.

[Omitted material concerning (i) the hours for deliveries and pickups, and (ii) use of the 15-foot-wide strip for parking; that material remains in Condition No. 26, above]

[End of the two proposed modifications]

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

**Tel: 305-673-8172**  
**Fax: 305-673-8501**

**E-Mail: [henrystolar@bellsouth.net](mailto:henrystolar@bellsouth.net)**

July 13, 2018

**To:** Planning Board Members

**Re:** Royal Palm Hotel - 1545 Collins Avenue – Modification Hearing – Planning Board July 24, 2018 Meeting - File PB 17-0108 (f/k/a File No. 2032)

Dear Planning Board Members,

I write this letter in my individual capacity. In front of my letter is a letter, also dated today, from the President of our Condominium Association. That letter expresses the Association's request that you adopt the Two Proposed Modifications (attached to the Association President's letter) as amendments to the Royal Palm Hotel's Modified Conditional Use Permit approved by you on April 25, 2017.

Thank you for your unanimous decision, at the May 22 meeting, to set the Modification Hearing to be held at your forthcoming meeting on July 24.

This letter is divided into two sections: the highlights of the Two Proposed Modifications, and an update of what I wrote to you on May 14 in advance of your May 22 unanimous decision.

### **THE TWO PROPOSED MODIFICATIONS - HIGHLIGHTS**

Here are five highlights of the Two Proposed Modifications:

**(1) Separate Conditions for (A) General Delivery and Pickup Operations, and (B) Specific Garbage and Trash Operations.** Condition No. 26 is way too long and convoluted. It is particularly difficult to follow because it intertwines **(A)** provisions governing all deliveries and pickups, with **(B)** provisions governing only garbage and trash pickups.

So, for comprehensibility, the Two Proposed Modifications would split up Condition No. 26 into two Conditions:

**(A)** one condition governing all deliveries and pickups including garbage and trash pickups (Condition No. 26); and

**(B)** the other condition specifying additional requirements for garbage and trash pickups (new Condition No. 27).

**(2) Elimination of "to the greatest extent possible".** That phrase is the first of two current MCUP provisions that has particularly drawn the attention of both Board members and Planning staff. At your May 22 meeting, I understood senior Planning staff to characterize it as vague and ambiguous; I understood the Chair and one or more Board members to express the view that it is a practical impossibility to enforce.

Proposed Modification No. 1 eliminates that phrase "to the greatest extent possible", and substitute more explicit requirements for conducting all delivery and pickup operations within the Hotel's 15-foot-wide strip (which is north of the shared driveway).

**(3) Prohibition on Parking.** Since the first edition of this CUP seven years ago, the following provision has appeared as the very last sentence of Condition No. 26. Through no one's fault, it is detached from the earlier part of Condition No. 26, which contains the related provisions. But, in my opinion, the Hotel has continuously violated this provision:

"On a 24-hour basis, applicant's management personnel shall regularly inspect the private driveway in order to determine whether it is being used for parking by any hotel guest, employee, or contractor, and shall promptly take appropriate action to remove any such vehicle." (MCUP, carryover sentence on Pages 7-8).

In addition to the observable violations of this parking prohibition, conversation with the driver of a vehicle parked in the Hotel's 15-foot-wide strip confirmed that that driver was an employee who was arriving for work.

The Hotel's 15-foot-wide strip is 179 feet in length (running east-west). The Hotel's chronic daily violations of the above provision are the result of the Hotel's own actions which defeat the 24-hour prohibition on parking in that strip. Following are the "reasons"—created by the Hotel itself—that the Hotel's 15-foot-wide strip is not used for all Hotel deliveries and pickups:

**(A)** the Hotel's use of the western portion of its 15-foot-wide strip for parking six or seven vehicles, contrary to the above express prohibition on parking; and

**(B)** the Hotel's erection and maintenance of a concrete post, bolted into the pavement of the 15-foot-wide strip.

Accordingly, the Two Proposed Modifications, in proposed Condition No. 26(F) at the bottom of Page 1, include an amendment to the above present parking prohibition, so that the prohibition will be clearly articulated in order to address these problems.

This amendment would also be beneficial to the Hotel, because it reduces, from 24 hours a day to 10 hours a day, the prohibition on parking, thus freeing up 14 hours a day for the Hotel to use for parking. (The ten-hour prohibition parallels the unchanged authorized delivery and pickup hours [Condition No. 26(C)(i), above], plus a half hour at the beginning and a half hour at the end.)

**(4) Presence of the Dockmaster Supervisor.** This is the second of the two current MCUP provisions that has drawn attention as ambiguous and vague. Accordingly, the Two Proposed Modifications include, as Condition No. 26(G) at the top of Page 2, a clearer description of the Dockmaster Supervisor's duties.

That proposed amendment is the second one that would be beneficial to the Hotel. It eliminates uncertainty as to the instructions to be given by the Hotel to the Dockmaster Supervisor.

**(5) Garbage and Trash Operations - Door Closing and Clean-Up Requirements.** The Two Proposed Modifications address (Proposed Modification No. 2 – second half of Page 2) the problems of:

(A) the garbage room's overhead door being left open; and

(B) the failure, after the Hotel's trash and garbage have been picked up, to clean up the pavement by removing trash and garbage which have fallen to the pavement during the trash and garbage pick-up process.

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That concludes the first section of this letter, identifying five highlights of the Two Proposed Modifications.

## **UPDATE**

### **I.**

#### **The Hotel's Continuing Refusal to Engage in Any Discussion or Negotiation**

This second section updates what I wrote to you on May 14, in advance of your May 22 meeting, at which you unanimously voted to hold this Modification Hearing.

My earlier letter advised you that, in early May, Mr. Patrick Dougherty, the Hotel's General Manager, advised us of the Hotel's rejection in full of amendments that we had then proposed, and offered no alternative language of his own.

That pattern of, "We won't even talk to you", has continued in full force. Last time, the approach was made by our Condo Vice President and me. This time, the approach to the Hotel was made by the Planning Department itself.

By email dated June 29 to the Hotel's counsel, the Department advised the Hotel's counsel of a meeting among Department staff, our Association's Vice President, and me, and forwarded to the Hotel's counsel the above Two Proposed Modifications. That email advised the Hotel's counsel that we were willing to meet for direct discussion.

Most significantly, that Department email to the Hotel's counsel affirmatively requested the Hotel's participation and response to the Department:

**We would like to hear your response and/or suggestions as to the proposed modifications and any other modifications you would like to proffer.**

This second effort at amicably soliciting the Hotel for discussion was, like the first effort, rejected out-of-hand by email dated July 3 from the Hotel's counsel to the Planning Department.

These two rejections of invitations to discussion are especially remarkable in view of the fact that the Two Proposed Modifications include amendments that would be beneficial to the Hotel (Item Nos. 3 and 4 in the first section of this letter).

## **II.**

### **The General Manager of the Royal Palm Hotel Has Taken Written Positions that are Directly Contrary to the Language and Purpose of the Modified Conditional Use Permit approved April 25, 2017 (the "MCUP")**

The principal reasons for adopting the Two Proposed Modifications are the ambiguity and enforcement difficulty of the MCUP. Those reasons have been expressed by both Planning Board members at the May 22 meeting, and by senior Planning Department staff.

But, a further reason is the inaccurate interpretations by the Hotel of 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. The Planning Department was copied on both emails. Therefore, they are now in the public record and reflect the Hotel's positions.

Those positions are in direct conflict with the MCUP. They should not be allowed to stand unrefuted. So, a secondary reason for adoption of the Two Proposed Modifications is to preclude any suggestion of acquiescence or concurrence by the Planning Board or the Planning Department in the Hotel's two unfounded interpretations of the MCUP. If they are allowed to remain uncorrected, the Hotel's positions will come back to haunt both the City and the Hotel's adversely affected residential and commercial neighbors.

Here are the two positions expressed in the General Manager's two attached emails—positions which are flat out unsustainable under the terms of the MCUP:

**(1) Location of Deliveries and Pickups.** Mr. Dougherty states in both emails that trucks making deliveries or pickups can park in the shared driveway:

"We are allowed to park on either side of the alley, just not in the middle of the alley."  
(March 30, 2018 email).

"Vendors servicing any of the businesses are allowed to park on the North side of the Driveway, and to do so squarely...." (April 2, 2018 email).



Those claims are completely contrary to the long-standing language and purpose of the MCUP, which clearly states that trucks serving the Hotel are to use the area now marked by the yellow stripe—that is, north of the shared driveway and south of the Hotel's south wall.

Proposed Modification No. 1—in addition to addressing the principal problems of the present provision's ambiguity and vagueness—also expressly counter, on the record, the erroneous interpretations by the Hotel's chief executive which are now in the record.

**(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:

“It is not a MCUP violation because you don't see my dockmaster.”  
(March 30, 2018 email).

That is completely contrary to the language and purpose of the MCUP. It states plainly 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).

Proposed Modification No. 2 clarifies the location at which the Dockmaster Supervisor is to perform his duties—a clarification that the Hotel should welcome instead of rejecting.

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I respectfully request that you adopt the Two Proposed Modifications in the form attached to the letter from the President of our Condominium Association.

Sincerely,



Henry S. Stolar

cc with the two attached emails: Tom Mooney  
Michael Belush  
Tui Munday  
Eve Boutsis

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

(emphasis added)

**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!

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**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>  
**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")

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

As for your 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.