

MIAMI BEACH
PLANNING DEPARTMENT
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: January 7, 2025

FROM: Thomas R. Mooney, AICP  for TRM
Planning Director

SUBJECT: **PB24-0719. 1350 Collins Avenue**

An application has been filed requesting a Conditional Use Permit for an outdoor entertainment establishment in association with a restaurant, pursuant to Chapter 2, Article V, and Chapter 7, Article II, Section 7.2.13 of the Miami Beach Resiliency Code.

RECOMMENDATION

Approval with conditions.

Legal Description: Lot 2, Block 27, Of Ocean Beach Addition No.2, According To The Plat Thereof, As Recorded In Plat Book 2, Page 56, of The Public Records Miami-Dade County, Florida.

Zoning/Site Data

Zoning District:	MXE (Mixed Use Entertainment)
Future Land Use Designation:	MXE (Mixed Use Entertainment)
Local Historic District:	Ocean Drive /Collins Avenue Historic District
National Register District:	Miami Beach National Register Historic District

Surrounding Uses: **North:** Apartment building with HPB approval to convert back to original ‘Commodore Hotel’ w/accessory restaurant and active roof deck.
South: The Shepley South Beach Hotel
West: Bar/ Retail / Restaurant
East: Apartment building w/ accessory restaurant

THE PROJECT

The applicant, 1350 Collins Owner LLC, has submitted plans entitled “Conditional Use Application of Existing Building” Prepared by Ari L. Sklar, dated November 3, 2024.

As indicated by the applicant, the property contains a 2-story, 6-unit building (Orchidea Hotel), with an existing 82 seat restaurant (‘Donatella’) at the ground floor. The applicant is proposing to add outdoor entertainment as part of a new restaurant operation, which would consist of either a DJ or live music. Outdoor entertainment is proposed during the following days/times:

Fridays:	07:00 PM to 02:00 AM (Saturday)
Saturdays:	12:00 PM to 04:00 PM
	07:00 PM to 02:00 AM (Sunday)
Sundays:	12:00 PM to 04:00 PM
	07:00 PM to 02:00 AM (Monday)

COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the Miami Beach Resiliency Code Chapter 2, Article V, 2.5.2.2:

- 1. The use shall be consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

Consistent – Outdoor entertainment is a Conditional Use in the MXE, Mixed Use Entertainment zoning district.

- 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 shall be consistent with these Land Development Regulations.**

Partially Consistent –Outdoor entertainment establishments are a conditional uses in this zoning district, and subject to Planning Board approval, based upon compliance with the conditional use criteria set forth in the City Code.

- 4. The public health, safety, morals and general welfare shall not be adversely affected.**

Partially Consistent – The proposed outdoor entertainment component, as proposed, would adversely affect the general welfare of nearby residents, particularly if noise and hours of operation are not controlled. Staff has recommended conditions to ensure that the general welfare is maintained. Additionally, the use would have to comply with all applicable laws and regulations for licensure.

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

Consistent – No parking is required for the proposed use within the existing contributing building. Valet parking will be provided from the front of the property along Collins Avenue.

- 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 shall not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.**

Partially Consistent - Staff has proposed conditions to minimize the potential for negative impacts.

- 8. The structure and site comply with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.**

Not Applicable – The site consists of existing contributing structures within the local historic districts. While the buildings will be renovated, no new construction is proposed.

9. **Appropriate consideration is given to the safety of and friendliness to pedestrian traffic, passageways through alleys is encouraged where feasible and driveways shall be minimized to the extent possible.**

Not Applicable – The site consists of an existing contributing structure within the local historic districts. While the buildings will be renovated, no new construction is proposed, and no on-site parking is provided.

NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES

In accordance with Chapter 7, Article 5 Sec. 7.5.5.4 of the Miami Beach Resiliency 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 2, Article V:

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.**

Partially Consistent –The operational plan provided includes all necessary information; however the extent of entertainment and hours proposed is excessive, in relation to the context of the surrounding area.

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.**

Consistent – Valet parking will be provided from the front of the building along Collins Avenue.

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.**

Consistent – The layout of the restaurant and operations plan provided, should ensure that there would be no need to control a large group.

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

Consistent – The submitted LOI indicates that no crowding or large groups are anticipated.

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.**

Not Applicable – A traffic study was not required, as there is no increase in size to the permitted venue.

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

Consistent – Sanitation operations will be conducted from the rear service alley.

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

Partially Consistent – The applicant is proposing outdoor entertainment, which may negatively impact nearby properties. Staff has recommended conditions to minimize impact, including limiting entertainment to a DJ only during limited days / times.

8. Proximity of proposed establishment to residential uses.

Partially Consistent – The subject property is surrounded by a mix of residential and hotel uses and negative impacts to these uses may occur if the occupancies and sound levels are not carefully controlled. Staff is recommending conditions to ensure that nearby residents and hotel guests are not negatively affected.

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

Partially Consistent – If not carefully controlled, outdoor entertainment could have a negative impact on adjacent uses, including nearby residential buildings.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4 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.

Not Applicable.

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

Satisfied

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

Satisfied

4. Resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) shall be provided, in accordance with Chapter 4 in Land Development Regulations.

Consistent. Resilient, Florida-friendly landscaping will be provided.

5. The project applicant shall consider the 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. The applicant shall also specifically study the land elevation of the subject property and the elevation of surrounding properties.

Consistent. The existing structure took into consideration adopted sea level rise projections

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 and shall provide sufficient height and space to ensure that the entry ways and exits can be modified to accommodate a higher street height of up to 3 additional feet in height.

Not Applicable.

7. As applicable to all new construction, all critical mechanical and electrical systems shall be located above base flood elevation. All redevelopment projects shall, whenever practicable and economically reasonable, include the relocation of all critical mechanical and electrical systems to a location above base flood.

Not Applicable.

8. Existing buildings shall, wherever reasonably feasible and economically appropriate, be elevated up to base flood elevation.

Not Applicable.

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 in General Ordinances.

Not Applicable.

10. As applicable to all new construction, stormwater retention systems shall be provided.

Not Applicable.

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

Not Applicable.

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

Not Applicable.

ANALYSIS

Project Description and Operations

The applicant is proposing outdoor entertainment as part of the new restaurant. As proposed, entertainment would consist of either a DJ or live music only during the following days/times:

Fridays:	07:00 PM to 02:00 AM (Saturday)
Saturdays:	12:00 PM to 04:00 PM
	07:00 PM to 02:00 AM (Sunday)
Sundays:	12:00 PM to 04:00 PM
	07:00 PM to 02:00 AM (Monday)

Sound

The applicant submitted a sound study prepared by Brooks Acoustic Corporation (BAC), dated October 10, 2024. Arpeggio Acoustic Consulting, LLC, peer reviewed the applicants sound study, and provided a response, dated, November 18, 2024.

The response by Arpeggio indicates the following:

The summary (by Brooks Acoustic) claims that “music played over the loudspeakers in the proposed venue during both background ambient operation and also non-ambient entertainment are expected to be below normal conversation sound levels at the outside receiver locations of interest.” Given the assumptions pertaining to sound levels generated within the venue from the sound system (e.g., from DJs), we do not dispute the claim. It should be acknowledged, however, that sound produced by live instruments which may not be amplified (e.g., drums, trumpets, etc.), are not included in the claim in the summary.

In conclusion, we have concern over the audibility of entertainment-level music within guestrooms above at the Orchid Hotel as well as within south-facing guestrooms at the Commodore Hotel. Results given in the report indicate a great likelihood of audibility within the former set of guestrooms and we feel that there is a real possibility of audibility within the latter set of guestrooms, depending on the unknown construction or quality of guestroom windows. To that end, we recommend that sound system testing be conducted in a subset of guestrooms at both hotels to establish sound level limits and that those limits be established in terms of dBC.

In response to the peer review by Arpeggio, BAC provided a reply, dated December 13, 2024, which includes the following highlighted statements:

2. *Impact on Guestrooms in the Orchid Hotel and the Commodore Hotel*

Sound tests and calibration will be done post-installation of the audio equipment, as per typical conditions in the staff report. These sound tests and calibrations will be done to assist in and complete the commissioning of the audio system. Calibration, using measurements taken with both the dBA and dBC scales will be conducted so as to minimize the potential for audibility in the hotel guest rooms.

3. *Sound Survey on Collins Avenue and environs*

The immediate purpose and goal of this sound survey was to conduct ambient baseline sound testing as requested by the City of Miami Beach for a Conditional Use Permit (CUP).

Summary

Sound survey testing was conducted to establish the ambient sound levels at and around the site of the proposed Casa Orchidea restaurant venue. Ambient sound levels were acquired by testing at seven (7) locations at and around the venue site. Five of locations were at adjacent properties to the site. Two locations were on the site, with one location in an outdoor courtyard and the other location in a hotel suite on the second floor above the proposed restaurant venue.

The ambient sound levels at the outdoor locations ranged from 56 to 80 dBA and from 69 to 85 dBC.

The ambient sound levels in the indoor location was 41 dBA and 51 dBC.

Staff would note that although a sound survey was conducted as recommended by Arpeggio, the issue of live music was not addressed. Further, it was recommended that sound system testing also be conducted from the guest rooms of the Commodore Hotel, which would be the most impacted property, as it is the closest affected building.

It is also important to note that there are three (3) existing residential buildings within the 1300 block of Collins Avenue, all of which are much taller than 2-stories. Given the tendency of sound to travel upward, staff has additional concerns regarding the impact on the residential units in these buildings. Although not abutting the subject property, they are in close enough proximity that residents could be disturbed.

In light of the concerns with the sound study, as well as the proximity of the establishment to existing residential buildings, staff does not recommend in favor of entertainment consisting of both DJs and live musicians, as well as for the extended hours proposed. The subject property is only 50 feet in width and entertainment level music is likely to be disruptive to neighboring properties, especially at the extended hours proposed. Additionally, it is simply impossible to control the volume of music generated by live musicians, and conditions attempting such regulation are impractical. To address these issues, staff recommends the following:

- Entertainment shall be limited to a DJ, provided all equipment can be controlled by limits on the sound system.
- Entertainment shall only be permitted on Saturdays and Sundays, between 12:00 p.m. and 4:00 p.m. Entertainment shall not be permitted on Fridays, nor after 4:00 p.m. on Saturdays and Sundays.
- Entertainment music shall not exceed ambient levels at any time. Alternatively, if the applicant can ensure, through an approved and tested distributed sound system, that music from the establishment will not be audible beyond the property boundaries, in all directions, music played above ambient levels can be considered.
- The testing of the sound system shall be performed from the hotel rooms of the Commodore Hotel, in order to ensure that sound levels are not plainly audible from these guest rooms during hours of entertainment.

Deliveries and Sanitation

Refuse and loading operations will be provided along the alley at the rear of the site, and loading may also take place from designated on-street loading zones, near the property. Trash pick-up would occur a minimum of 5-6 days a week, or daily when needed.

Valet Parking & Transportation

The applicant has indicated that valet service will be available at the front of the building on Collins Avenue.

Security and Crowd Control

The applicant has indicated that this is a restaurant and not a night club and will not attract a large crowd waiting to gain entry. Reservation times will be staggered to avoid long lines, and the applicant has indicated that the main walkway and entrance will always be kept clear. Based upon the floor plan provided, and the operations indicated, staff does not anticipate any problems with crowd control on the subject property.

Summary

In summary, while a sound survey was conducted as recommended by Arpeggio, the issue of live music was not addressed, and further testing from the abutting Hotel's guest rooms (the closest

*PB24-0719. 1350 Collins Ave
January 7, 2025*

Page 8 of 8

affected property) was recommended. Due to concerns about noise disruption, as well as the proximity of existing residential buildings, staff recommends a more measured approach to outdoor entertainment, as noted in the conditions included in the draft CUP.

STAFF RECOMMENDATION

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

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

PROPERTY: 1350 Collins Avenue

FILE NO. PB24--0719

IN RE: An application for a Conditional Use Permit for an outdoor entertainment establishment in association with a restaurant, pursuant to Chapter 2, Article V, and Chapter 7, Article II, Section 7.2.13 of the Miami Beach Resiliency Code.

LEGAL DESCRIPTION: Lot 2, Block 27, Of Ocean Beach Addition No.2, According To The Plat Thereof, As Recorded In Plat Book 2, Page 56, of The Public Records Miami-Dade County, Florida.

MEETING DATE: January 7, 2025

CONDITIONAL USE PERMIT

The Applicant, 1350 Collins Owner LLC, requested a Conditional Use Permit for an outdoor entertainment establishment in association with a restaurant, pursuant to Chapter 2, Article V, and Chapter 7, Article II, Section 7.2.13 of the Miami Beach Resiliency 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 MXE – Mixed Use Entertainment zoning district;

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 staff recommendations, as may have been modified by the Planning Board, that a Conditional Use Permit as requested and set forth above, be GRANTED subject to the following conditions to which the applicant has agreed.

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 Resiliency Code Sec. 2.5.2.5.
2. The applicant shall be required to provide a letter to the Planning Department subsequent to the initial progress report and on an annual basis thereafter attesting to the applicant's compliance with all conditions of the CUP. The Planning Director shall include a copy of all such letters on the next available meeting agenda of the Planning Board for informational purposes. Following receipt of an applicant's annual letter, the Planning Board may elect to schedule a progress report before the Board at its next available meeting. Failure to provide such letter on an annual basis shall constitute a violation of the CUP and a progress report shall be scheduled. In addition to all enforcement provisions herein, the Board reserves the right to schedule a modification / revocation hearing if determined necessary when reviewing any annual progress report.
3. This Conditional Use Permit is issued to 1350 Collins Owner LLC, as the owner and operator of restaurant venue. Any change of operator or 50% (fifty percent) or more stock ownership shall require the new operator or owner to submit an affidavit, approved by City, to the City of Miami Beach Planning Department, transferring approval to the new operator or owner 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 followed by the submission and acceptance of the affidavit.
4. 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.
5. 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.
6. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
7. 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 a restaurant with limited outdoor entertainment, with a maximum occupant content of 199 persons or any lesser such occupant content as determined by the Fire Marshal.
- B. The establishment shall operate as a restaurant, preparing and serving food at all times. At no time shall the establishment become or operate as a bar.
- C. The sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application. The equipment and installation plan for the sound system, including the location of all speakers and sound level controls shall be submitted for the review and approval of the Planning Department. Prior to the issuance of the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and Planning Department staff, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application. This shall include the requirement that noise from the sound system shall not be plainly audible within the guest rooms of the adjacent properties, nor at the sidewalk along Collins Avenue.
- D. Except as provided below, only ambient background music played at a volume that does not interfere with normal conversation may be permitted in the outdoor/open air areas.
 - a. The only type of entertainment that shall be permitted is a DJ, playing pre-recorded music.
 - b. Entertainment level music may only be permitted if the applicant can substantiate that music shall not be plainly audible, at any time and in any direction beyond the boundaries of the property. Additionally, entertainment and entertainment level music shall be limited to the following days/times:

Saturdays:	Noon to 4:00 p.m.
Sundays:	Noon to 4:00 p.m.
 - c. The outdoor speaker system shall require the deployment of multiple small, closely spaced speakers driven at low individual volumes. The system design shall physically distribute sound uniformly within the listening area.
 - d. All outdoor speakers shall be oriented in such a way as to minimize sound propagation towards abutting properties.
 - e. Only the outdoor speakers approved pursuant to this Conditional Use Permit shall be used. All DJs shall be required to connect to the applicant's house sound system. The applicant shall be required to inform all guest DJ's as to the requirements of this conditional use permit related to outdoor sound.

- f. The house sound system shall be installed and set in such a manner as to limit the acoustical output of the system and have password protected security on all controls at all times in accordance with the design intent and recommendations of the sound system study submitted as part of this application and the conclusions of the City's peer review.
 - g. Televisions shall not be located anywhere in the exterior areas of the property.
 - E. Delivery trucks shall not be allowed to idle in the loading zone area.
 - F. Equipment and supplies shall not be stored in areas visible from streets, alleys or nearby buildings.
 - G. 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.
 - H. 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. A high-level trash/garbage compacting device shall be located in an air-conditioned trash/garbage holding room within the facility.
 - I. Garbage dumpster covers shall be closed at all times except when in active use.
 - J. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
 - K. Valet operator shall monitor pick-up and drop-off areas to ensure that queuing of vehicles will not interfere with traffic on Collins Avenue.

8. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as determined by the Transportation/Concurrency Management Division, prior to obtaining a Certificate of Occupancy or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing. Without exception, all concurrency fees, mitigation fees and concurrency administrative costs shall be paid prior to the issuance of a Certificate of Occupancy or Business Tax Receipt.

9. A bicycle parking plan shall be submitted for staff review and approval prior to the issuance of a Building Permit.

10. 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.

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 of the accessory uses proposed for the project 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 2.5.2.5 of the Land Development Regulations (LDRs) of the City of Miami Beach, Florida, entitled "Compliance with conditions; revocation or modification".
 13. The applicant agrees and shall be required to provide access to areas subject to this CUP (not including private residences) for inspection by the City (i.e.: Planning, Code Compliance, Building Department, Fire Safety), to ensure compliance with the terms and conditions of this CUP.
 14. 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.
 15. The executed Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County, Florida, at the expense of the applicant. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
 16. 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 1.3.7 of the Land Development Regulations (LDR's), entitled "ENFORCEMENT", and such enforcement procedures as are otherwise available. Any failure by the owner, applicant or operators 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 permit.
 17. 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.
 18. Prior to the addition of entertainment to the Business Tax Receipt (BTR), the sound system shall be tested under the supervision of a qualified acoustical professional and Planning Staff, to ensure that all aspects of the system's performance comply with the design intent and recommendations of the sound system study submitted as part of this application.

Dated _____.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Michael Belush, AICP
Planning & Design Officer
For Chairman

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Michael Belush, Planning & Design Officer of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

{NOTARIAL SEAL]

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

Approved As To Form:
Legal Department: _____ ()

Filed with the Clerk of the
Planning Board: _____ ()



**Peer Review of Sound Study for
1350 Collins Avenue
Casa Orchidea
PB 24-0719**

Prepared for:

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

Prepared by:

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

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

November 18, 2024

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 (CUP) for a new restaurant at 1350 Collins Avenue, Casa Orchidea. The reviewed report, prepared by Brooks Acoustics Corporation (BAC) and dated October 10, 2024, describes the project and modeling results related to potential impacts on hotel guestrooms above as well as on nearby properties.

2 Project Description

The existing two story property, located on the west side of Collins Avenue south of 14th Street, is to comprise the restaurant on the first floor and six boutique hotel suites above. There is a large courtyard between two east-facing buildings where outdoor dining with accompanying music is being proposed. This area would primarily host ambient background music, however, on occasion, live, DJ, or pre-recorded music above ambient levels will be featured. Proposed allowable hours for such entertainment programs are given below:

Friday:	7 pm – 2 am (Saturday)
Saturday:	12 pm – 4 pm
	7 pm – 2 am (Sunday)
Sunday:	12 pm – 4 pm
	7 pm – 2 am (Monday)

The venue is bordered immediately to the north by the Commodore Hotel, which has south-facing guestroom windows. Across Collins Avenue to the east are the Rock Apartments while to the southeast across Collins Avenue is the Hotel Clifton. Immediately to the south of the property is The Shepley South Beach Hotel with a residence at 1334 Collins Avenue immediately to the south of that. Club Deuce is located to the west, across the alley behind the property. According to the report, there will be trees planted in the vicinity of the property which, contrary to the report, should not be counted on to act as sound barriers, given the dearth and limited density of trees that would fit.

3 Discussion

The BAC study thoroughly describes the venue, its environs, and codified as well as recommended limits on sound emissions from the venue. It also thoroughly describes what appears to be diligent sound mapping of the venue and six judiciously-chosen receptor locations using the EASE commercial acoustic simulation software. We have no issue with either the methodology or execution of the study. However, we would encourage consideration of a few matters as they relate to conclusions reached.

The summary claims that “music played over the loudspeakers in the proposed venue during both background ambient operation and also non-ambient entertainment are expected to be *below normal conversation sound levels at the outside receiver locations of interest.*” Given the assumptions pertaining to sound levels generated within the venue from the sound system (e.g., from DJs), we do not dispute the claim. It should be

acknowledged, however, that sound produced by live instruments which may not be amplified (e.g., drums, trumpets, etc.), are not included in the claim in the summary.

It should also be acknowledged by all parties that this claim does not mean that entertainment at the venue will be inaudible at adjacent properties, as is implied on page 11 of the report where it states that, due to elevated background sound levels from vehicular traffic on Collins Avenue, “the estimated sound levels from the restaurant venue at the outside receiver locations, as described above, are expected to be *below the ambient sound level* in the area.” In fact, it is unknown whether entertainment will be audible (i.e., below the ambient sound level) since no site noise survey was conducted. Given the location of the venue, inaudibility may certainly be achieved at certain parts of the day but may not be at other, quieter, parts of the day or night.

Ultimately, our main concerns relate to potential impact on two specific adjacent areas—guestrooms within the Orchid Hotel directly above the venue in the same buildings and south-facing guestrooms at the Commodore Hotel immediately to the north.

Addressing the former, the report states plainly that sound levels within those rooms could be approximately 55 dBA (65 dBC) while entertainment sound levels are being produced in the venue below. This will assuredly be audible to guests in these rooms.

Addressing the latter, there is a not-insignificant chance that sound from the venue will be audible within south-facing guestrooms at the Commodore Hotel immediately to the north due, in part, to reflections from the south wall of the courtyard at Casa Orchidea. Considering the graphic modeling results on page 16 of the BAC report, which show levels as high as 52-53 dBA on that north façade of the Commodore as the result of ambient music, the levels could be expected to be approximately 67-68 dBA during entertainment programs (according to assumptions within the BAC report). This could result in interior guestroom sound levels (in dBA) in the low to mid 40s, which could certainly be audible particularly if guestroom air-conditioning units provide low masking noise. The greater concern relates to low-frequency sound transmission at these locations which would more easily transmit through the existing windows (of unknown construction or quality) and likely not be sufficiently masked by air-conditioning.

Given the aforementioned, we recommend that sound system testing, as cited on page 2 of the BAC report, take place at least within one or more guestrooms at the Orchid Hotel directly above the venue as well as one or more guestrooms on the south façade of the Commodore Hotel. Furthermore, we recommend that this testing, and the established sound level limits developed from the testing, focus on C-weighted sound levels (dBC) to address the transmission of low-frequency sound as is likely to be more problematic with music types such as EDM or percussive latin music.

4 Conclusions

In conclusion, we have concern over the audibility of entertainment-level music within guestrooms above at the Orchid Hotel as well as within south-facing guestrooms at the Commodore Hotel. Results given in the report indicate a great likelihood of audibility within the former set of guestrooms and we feel that there is a real possibility of audibility within the latter set of guestrooms, depending on the unknown construction or quality of guestroom windows. To that end, we recommend that sound system testing be conducted in a subset of guestrooms at both hotels to establish sound level limits and that those limits be established in terms of dBC.