

January 7, 2026

**SENT VIA EMAIL**

DESIGN REVIEW BOARD  
c/o City Planning Staff  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida, 33139

**RE: 1 Ocean Drive; DRB25-1146.**

Dear Chair and members of the Board:

Our firm represents Erika Soto, who resides at 300 S. Pointe Drive, directly southwest of the subject property. Ms. Soto founded SOFI Moms group which currently has 1,017 members. While currently this firm represents Ms. Soto, as of today there are 25 other neighbors who have expressed an interest in joining the advocacy to reduce the adverse impacts of the super-sized project proposed at 1 Ocean Drive or the public lands know as "Pier Park."

It appears many neighbors were caught off guard of the 1) enlargement of this project, and 2) the scheduling of the planning board and design review board meetings so early in the year when the notices would have been mailed out during the holidays. Because this is a City Code Sec. 2-17 "Residents' Right to Know" application, we strongly urge you to continue this item until February.

*Legislative intent.* It shall be the policy of the city to provide targeted neighborhood notice, timely opportunities for input, and procedural fairness in hearings for any proposed policy, ordinance, project, or other matter that impacts residents' quality of life.

City Code Sec. 2-17(a).

The Planning Board continued to February and so should this item. I called and spoke with attorney Michael Larkin about this request and he declined. I cannot attend your meeting because I have another public hearing in Collier County and will have to represent my client via zoom, which is not ideal. If "fairness" is truly a policy of the City then please move this item to the February meeting.

**Litigation.**

I confess, I don't know the entire history of how the concession agreement for this public park was awarded to the Boucher Brothers Pier Park, LLC ("Boucher") or why the Nikki Beach owners ("Penrod") were excluded, but I am aware there is a complicated litigation over this between the City, Boucher and Penrod, the outcome of which could make your time spent and decision on the Boucher application moot and a waste of government resources. See case number 2023-016657-CA-01 in the 11<sup>th</sup> Judicial Circuit for Miami-Dade County.

**Planning Board.**

There's a very important issue that needs to be considered by the Planning Board before you expend time and effort on the Boucher application. Specifically, the fact that the proposed commercial uses are not permitted under the current comprehensive plan.

The proposed uses identified above are consistent with the concession agreement and, as the property is zoned GU, the uses must be authorized by the City Commission. **However, Section 7.2.16.3 of the LDRs specifies that no GU property may be used in a manner inconsistent with the Comprehensive Plan. Under policy RLU 1.1.19 of the 2040 Comprehensive Plan, the uses permitted in the ROS future land use classification are limited to recreation and open space facilities.**

As the proposed uses are largely commercial in nature, **an amendment to policy RLU 1.1.19 of the 2040 Comprehensive Plan will be required**, prior to final action by the City Commission approving any of the proposed uses.

See Planning Board Staff Report, Page 2 (emphasis supplied). This is a serious issue that staff identified but unfortunately seems to downplay. A text amendment to the comprehensive plan is not a quick process. See FS 163.3184 - Process for adoption of comprehensive plan or plan amendment. What this text amendment says and does to ROS designated lands needs to be understood before any decisions are made, and that text amendment ordinance should probably travel with the Boucher applications for total transparency. Also, it seems fundamental that the underlying land use issues are worked out before the design of the project is heard. It's my understanding that this very timing issue was raised recently and now applications will follow the order of planning board first. This certainly seems to be the correct process for the Boucher application, especially since it involves public land. There should be no rush to decisions when public land – on the beach – is under consideration.

I must remind you that your decision results in a “final order” and it has already been established that the uses for the buildings you are reviewing are not permitted under the comprehensive plan. Therefore, the order presented to you by city staff, if you approve it, would be inconsistent with the highest land use legislation in the city.

The City's comprehensive plan is the superior document, adopted by ordinance and approved by the State of Florida, controlling development in the City. Section 163.3161, Fla. Stat, contains clear language as to the intent and purpose of the Community Planning Act:

- (2) It is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and manage future development consistent with the proper role of local government.
- (6) It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that **no public or private development shall be permitted except in conformity with comprehensive plans**, or elements or portions thereof, prepared and adopted in conformity with this act.

(Emphasis supplied).

### **Variances**

The Boucher application requests three variances from the City's land development regulations (“LDR”). These variances are self-created and only serve to make the development on public land bigger. The hardship criteria at LDR Section 2.8.3 requires meeting all of the criteria, not some. There are no “special conditions or circumstances” except those that “result from the action of the applicant.” Granting these variances inherently gives the applicant special privileges not enjoyed by others in the same zoning district and they most certainly will create a bigger development on public land in a neighborhood where large restaurants and nightclubs are clearly incompatible. And once again, these commercial uses, which rely on the granting of the three variances, are inconsistent with the comprehensive plan as explained above. Based on this, the Boucher application fails to meet the necessary criteria for the variances.

Courts routinely invalidate illegitimate variances:

On the other hand, by invalidating the variance, we reaffirm this Court's solemn promise, which it has steadfastly honored, that

[t]he law . . . will not and cannot approve a zoning regulation or any governmental action adversely affecting the rights of others which is based on no more than the fact that those who support it have the power to work their will.

Allapattah Cmty. Ass'n, Inc. of Fla. v. City of Miami, 379 So. 2d 387, 394 (Fla. 3d DCA 1980), cert. denied, 386 So. 2d 635 (Fla. 1980).

See Auerbach v. City of Miami, 929 So.2d 693, 31 Fla. L. Weekly D1432 (May 24, 2006).

### **Lost Parking & Traffic Congestion.**

The Board's Design Review Criteria in Section 2.5.3.1 addresses many critical topics including compatibility with neighborhood and surrounding areas. A super-size building on a City park cannot be considered compatible with the surrounding family-oriented neighborhood. The extra-large restaurant venues will not be a local asset, rather they will be a destination for people well beyond the City's boundaries. This is antithetical to the south of fifth community fabric. The greatest impact will be the loss of parking, which will force overflow and illegal parking that interferes with the local residents, and traffic snarls especially at the peak times. The traffic report clearly illustrates substantial and serious traffic during the peak times, which makes it very difficult for local residents who are coming and going, but also pedestrians who seek to cross the many intersections in the street grid south of Fifth avenue. Construction for this super-sized development on public land will be at least 3 years, causing many interruptions and hazards.

### **Parks.**

As you know, Miami-Dade County is the oldest "charter county" in Florida. Charter counties typically have greater authority than non-charter counties, and frequently preempt powers of the municipalities within their jurisdiction. For example, Miami-Dade's charter states

SECTION 6.02. MUNICIPAL POWERS. Each municipality shall have the authority to exercise all powers relating to its local affairs **not inconsistent with this Charter**. Each municipality may provide for higher standards of zoning, service, and regulation than those provided by the Board of County Commissioners in order that its individual character and standards may be preserved for its citizens.

(Emphasis supplied).

Recently amendments were adopted in the County's charter related to "parks, aquatic preserves and preservation lands." At the top of Article 7 it is noted that "This Article **does not apply** to municipal property in Coral Gables, Hialeah, Hialeah Gardens, Miami, Sweetwater and West Miami. See Section 7.04." (Emphasis supplied). Miami Beach is not mentioned, however Sec. 7.04 states:

Except as otherwise provided herein the provisions of this Article **shall apply to all County and municipal parks**, aquatic preserves, and lands acquired by the County for preservation now in existence or hereafter acquired, **provided that if this Article was not favorably voted upon by a majority of the voters voting in any municipality at the time of the adoption of this Article the municipal parks of such municipality shall be excluded from the provisions of this Article.**

(Emphasis supplied).

I raise this issue because Sec. 7.01 states in part that

[Parks] shall be protected from commercial development and exploitation and their natural landscape, flora and fauna, and scenic beauties shall be preserved. In lands acquired by the County for preservation and in parks along the Ocean or the Bay the public's access to and view of the water **shall not be obstructed or impaired by buildings or other structures or concessions which are in excess of 1500 square feet each.**

(Emphasis supplied).

If this provision does in fact apply to Pier Park, the commercial development proposed by Boucher is in violation of the County Charter. With additional time, I would be able to verify this, which is another reason for continuing this agenda item.

**Conclusion.**

For the forgoing reasons stated above, I strongly recommend you either continue this item to February or deny the application. I reserve the right to supply additional information before or at the public hearing.

Thank you for your time and attention.

Sincerely,

DICKMAN LAW FIRM



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Andrew Dickman, Esq., AICP

cc: Thomas Mooney, Planning Director