MIAMIBEACH

PLANNING DEPARTMENT
Staff Report & Recommendation

PLANNING BOARD

TO: Honorable Chairperson and Members
Planning Board

October 27, 2009

FROM: Jorge G. Gomez, AICP
Planning Director

SUBJECT: File No. 1722 – Bancroft – 1501 Collins Avenue – Modification to change tenant/operator

The applicant, 1501 Group LLC, is requesting a modification to the previously approved Neighborhood Impact Establishment in order to change the tenant/operator as required by Condition No. 2 of the Conditional Use Permit.

STAFF ANALYSIS

On August 23, 2005 the Planning Board granted Bancroft Management Group LLC a Conditional Use Permit to operate a Neighborhood Impact Establishment on the first and second floors of the Bancroft Hotel. Condition 2 required that "any change of operator or ownership be subject to review and approval by the Board as a modification to the Conditional Use Permit". The new tenant and operator, 1501 Group LLC, intends to continue operating the same type of establishment and is now before the Board to request that the Conditional Use Permit be modified to reflect this change.

A staff search of City records found that the Bancroft has an active business tax receipt - issued 11/17/08. The establishment is approved for 350 seats with an occupancy load of 454. There were no violations for the property.

STAFF RECOMMENDATIONS

In view of the foregoing analysis, staff recommends that this request for modification be approved:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall come back to the Board as may be deemed necessary by the Planning Director and provide a progress report. ~~within 90 days of the date of approval of the Occupational License, and provide a progress report~~. 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 ~~Bancroft Management Group LLC~~ 1501Group LLC for the operation of the existing Neighborhood Impact Establishment on the first and second floors of the Bancroft at 1501 Collins Avenue. ~~Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use~~

~~Permit.~~ Subsequent owners and operators shall be required to appear before the Board, to affirm their understanding of the conditions listed herein.

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. The hours of operation shall be as proposed by the applicant: dinner service from 5:30 p.m. to 1:00 a.m. and shall include food service at all times; the lounge on the 2nd floor may remain open until 4:00 a.m. No rooftop operations shall be permitted.

5. **All** performances shall be limited to the interior of the restaurant. To the greatest extent possible the noise shall be contained within the building and the doors to the patio shall be self-closing to diminish noise emanating outside. No outdoor speakers shall be permitted.

6. Business identification signs shall be limited to sign copy indicating the name of the establishment only and shall be subject to the review and approval of historic preservation and design review staff.

7. The applicant is required to build the facility substantially according to the plans reviewed by the Planning Board. Any change to the plans shall be reviewed by staff, and if not in agreement, the changes shall be reviewed by the Planning Board.

7. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

8. The applicant shall ensure that the establishment complies with the patron-age restriction as stated in Section 6-5 of the City Code.

9. A full building permit shall be obtained within one year of the date of this public hearing. A final certificate of completion or certificate of occupancy, whichever may apply including an occupant load certificate for the entire combined space, shall be obtained before an application is made for a modified certificate of use.

10. The applicant shall produce a binding agreement or contract that evidences the availability of 49 parking spaces for the patrons of the restaurant through a validation process. In addition, a binding contract with a valet operator that would serve the parking needs of the patrons that indicates where the vehicles will be stored shall also be submitted for the review and approval of staff. Valet storage of vehicles shall not be permitted in public facilities. These documents shall have to be submitted at the time of obtaining a building permit for any interior alterations that may be necessary, or if no building permit is necessary, at the time of applying for ~~an occupational license~~ a modified business tax receipt. ~~An occupational license~~ A modified business tax receipt shall not be approved by Planning Department staff until this condition is in compliance.

11. The Planning Board shall retain jurisdiction to call the operators back before them, as provided Section 118-194 and impose new conditions, modify the hours of operation, other noise conditions, or the occupant load should there be issuance of written warnings and/or notices of violation (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual late night noise.

12. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") Section 46-152, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.

~~13. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about late night noise. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.~~

14. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), as deemed necessary and determined by the Transportation Concurrency section.

15. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.

16. In the event that queuing of people is necessary, stanchions shall be placed to control crowds and allow for the free-flow of pedestrians on public sidewalks. The placement of the stanchions shall be shown on a site plan that shall be submitted to staff for review and approval.

17. 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~~ a modified business tax receipt to operate this entertainment establishment.

18. 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.

19. This Conditional Use Permit shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a ~~building permit~~, modified certificate of use or ~~occupational license~~, modified business tax receipt, whichever occurs first.

20. 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 constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

JGG\ML\KH
c: Gary Held, First Assistant City Attorney
F:\PLAN\$PLB\2009\10-27-09\1722 - 1501 Collins Av\1722 - Bancroft CUP rpt.doc

CFN 2005R0952894
OR Bk 23764 Pgs 1822 - 1825; (4pgs)
RECORDED 09/09/2005 15:29:00
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA

PROPERTY: 1501 Collins Avenue

FILE NO. 1722

IN RE: The Application by Bancroft Management Group LLC, requesting a Conditional Use Permit for a Neighborhood Impact Establishment a restaurant with entertainment with an occupant load of 300 persons or more - on the first and second floors of this building

LEGAL DESCRIPTION: Lots 18-20 and South ½ of Lot 17 and Lots 4 and 17, Block 56, Alton Beach 1st Subdivision according to the Plat thereof, as recorded in Plat Book 2, page 77 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: August 23, 2005

CONDITIONAL USE PERMIT

The applicant, Bancroft Management Group LLC, filed an application with the Planning Director for a Conditional Use Permit for a Neighborhood Impact Establishment with an occupant load of 300 persons or more on the first and second floors of this building. Notice of the request for Conditional Use 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 the staff recommendation, 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 come back to the Board within 90 days of the date of approval of the Occupational License, and provide a progress report. 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 Bancroft Management Group LLC for the operation of a Neighborhood Impact Establishment on the first and second floors of the Bancroft at 1501 Collins Avenue. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit.

3. The hours of operation shall be as proposed by the applicant: dinner service from 5:30 p.m. to 1:00 a.m. and shall include food service at all times; the lounge on the 2nd floor may remain open until 4:00 a.m. No rooftop operations shall be permitted.

4. **All** performances shall be limited to the interior of the restaurant. To the greatest extent possible the noise shall be contained within the building and the doors to the patio shall be self-closing to diminish noise emanating outside. No outdoor speakers permitted.

5. Business identification signs shall be limited to sign copy indicating the name of the establishment only and shall be subject to the review and approval of historic preservation and design review staff.

6. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.

7. The applicant is required to build the facility substantially according to the plans reviewed by the Planning Board. Any change to the plans shall be reviewed by staff, and if not in agreement, the changes shall be reviewed by the Planning Board. No outdoor bars or outdoor bar counters shall be permitted.

8. The applicant shall ensure that the establishment complies with the patron-age restriction as stated in Section 6-5 of the City Code.

9. A full building permit shall be obtained within one year of the date of this public hearing. A final certificate of completion or certificate of occupancy, whichever may apply including an occupant load certificate for the entire combined space, shall be obtained before an application is made for a Certificate of Use.

10. The applicant shall produce a binding agreement or contract that evidences the availability of 49 parking spaces for the patrons of the restaurant through a validation process. In addition, a binding contract with a valet operator that would serve the parking needs of the patrons that indicates where the vehicles will be stored shall also be submitted for the review and approval of staff. Valet storage of vehicles shall not be permitted in public facilities. These documents shall have to be submitted at the time of obtaining a building permit for any interior alterations that may be necessary, or if no building permit is necessary, at the time of applying for an occupational license. An occupational license shall not be approved by Planning Department staff until this condition is in compliance.

11. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about late night noise. Violation of the Miami-Dade County Code Section 21-28 (a/k/a "noise ordinance") shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.

12. The applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), as deemed necessary and determined by the Transportation Concurrency section.

13. The applicant shall be responsible for maintaining the areas adjacent to the facility, such as the sidewalk and the areas of the street adjacent to the property. When sweeping the sidewalk in front of the establishment, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.

14. In the event that queuing of people is necessary, stanchions shall be placed to control crowds and allow for the free-flow of pedestrian on public sidewalks. The placement of the stanchions shall be shown on a site plan that shall be submitted to staff for review and approval.

15. 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.

16. 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.

17. This Conditional Use shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a building permit, certificate of use or occupational license, whichever occurs first.

18. 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.

Dated this 2nd day of September, 2005.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Jorge G. Gomez, Planning Director
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 2nd day of September, 2005, by Jorge G. Gomez, Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

Charles A Taft
My Commission DD233174
Expires July 17, 2007

Notary:
Print Name: CHARLES A. TAFT
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department (DJT 8/31/05)

F:\PLAN\$PLB\2005\08-23-05\1722 - 1501 Collins-Bancroft NIE CU.doc