

ZBA22-0143
153-157 Collins Avenue

APPEAL OF THE PLANNING DIRECTOR'S
NOVEMBER 15, 2022 ADMINISTRATIVE DETERMINATION
on behalf of 125 Collins, LLC





2nd Street

157 Collins Parcel

The Strip

Property owned by
125 Collins LLC

Collins Avenue



2nd Street

157 Collins Ave
Folio 02-4203-003-0030

153 Collins Ave
Folio 02-4203-003-0290

151 Collins Ave
Folio 02-4203-003-0281

141 Collins Ave
Folio 02-4203-003-0280

137 Collins Ave
Folio 02-4203-003-0271

125 Collins Ave
Folio 02-4203-003-0250

Collins Avenue

The Strip



2nd Street

157 Collins Ave
Lot 16 Block 2

153 Collins Ave
North 1/2 Lot 15 Block 2

151 Collins Ave

141 Collins Ave

137 Collins Ave

125 Collins Ave

Collins Avenue

The Strip

Request for Interpretation submitted September 8, 2022 by property owner of 157 Collins Avenue

REQUEST FOR FORMAL INTERPRETATION: Based on the above, our client seeks a formal interpretation by the City of Miami Beach that our client's property and the Strip constitute "one building site" pursuant to Section 118-564 of the Miami Beach Code of Ordinances. We further seek a formal interpretation that, as "one building site," in order to develop the Strip (including erecting a fence), 125 Collins LLC would be required to process a "lot spilt" with the City of Miami Beach which would require our client's written consent.

Criteria for Issuance of a Zoning Interpretation

Sec. 114-2. - Interpretation, purpose and conflict.

(b) In interpreting and applying the provisions of the land development regulations, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. **It is not intended by these land development regulations to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, or to repeal any provisions of the City Code. Where the regulations imposed by these land development regulations are more restrictive than those imposed by any other ordinances, rules, regulations, easements, covenants or agreements, then these land development regulations shall supersede them; however, when any of the above are more restrictive than this subpart, then the more restrictive provision shall govern to the extent necessary to give effect to its provisions.** When there are different regulations, one general and one more specific, both of which may apply to a given subject, the more specific one shall govern, regardless of whether it be part of the City Code or this subpart and regardless of the date of enactment.

(Ord. No. 89-2665, § 21-7, eff. 10-1-89)

Zoning Interpretation response by Planning Director provided on November 15, 2022

Conclusion

Based upon the foregoing, the following is noted regarding the requested determination:

1. The property located at 153 Collins Avenue (the “Strip”) and the property located at 157 Collins Avenue (“157 Collins”) constitute “one building site”, in accordance with the regulations of the City Code. Any modifications to, or development of the Strip, including, but not limited to, site improvements (e.g., fencing), as well as new construction, would require a joint application by both the owner of the Strip and the owner of 157 Collins for permit approval
2. To develop the Strip independently from 157 Collins, including the erection of a fence, a lot split approval by the Planning Board would be required. The request for a lot split would require a joint application by both the owner of the Strip and the owner of 157 Collins.

Determination by Planning Director based ONLY upon:

- Building Site Analysis pursuant to Section 114-1 of the City's Land Development Regulations (LDRs).
 - Building Permit plans B9400397 entitled "Renovations for Big Pink".
 - Building Permit plans B9801070 entitled "Interior Renovations for Ted's Hideaway".
 - Property Survey dated October 05, 2022 submitted by the current owner of 157 Collins.
- Lot Split Requirements pursuant Section 118-321 of the City's Land Development Regulations (LDRs).

Planning Director did NOT consider:

- Ownership at time of request for Determination.
- The Strip was not subject to the 1990's building permits for the 157 Parcel.
- The Board of Adjustment zoning approvals received in 1990.
- Where a building site includes multiple lots, a unity of control covenant is required contemporaneous with building permitting and before a building site can be created.
- Covenant Running With the Land recorded in 1991.
- Private agreements between the Parties.
- The rights of all property owners within the City.

Sec. 114-1 - Definition of “Building Site”

Building site means any improved lot, plot, or parcel of land where there may exist a main permitted structure and any accessory/auxiliary building or structure including, but not limited to, swimming pools, tennis courts, walls, fences, or any other improvement which was heretofore constructed on property containing one or more platted lots or portions thereof shall constitute one building site.

Building Permit plans B9400397 entitled “Renovations for Big Pink”
and
Building Permit plans B9801070 entitled “Interior Renovations for Ted’s
Hideaway”

The City says that the evidence “clearly and unambiguously” identifies the 157 Parcel and Strip as the subject property of that permitting.

Close examination of the permit records necessitates the opposite conclusion, that the permit records conspicuously omit the Strip throughout...

The following slides show the Building Permit plans B9400397 entitled “Renovations for Big Pink” as well as additional permitting materials.

Renovations to:
BIG PINK

157 Collins Avenue

Miami Beach, Florida

LIST OF DRAWINGS

ARCHITECTURAL

- A-0 COVER SHEET
- A-1 GROUND LEVEL FLOOR PLAN
- A-2 GROUND LEVEL REFLECTED CEILING PLAN
- A-3 SECOND FLOOR PLAN
- A-4 SECOND FLOOR REFLECTED CEILING PLAN
- A-5 ROOF PLAN
- A-6 GENERAL NOTES
- A-7 INTERIOR ELEVATIONS AND DETAILS
- A-7a INTERIOR ELEVATIONS AND DETAILS
- A-8 ENLARGED PUBLIC RESTROOMS
- A-8a ENLARGED BATHROOMS
- A-9 ARCHITECTURAL DETAILS
- A-10 SCHEDULES AND SPECIFICATIONS

EQUIPMENT

- Q-1 EQUIPMENT PLAN
- Q-2 PLUMBING ROUGH-IN
- Q-3 ELECTRICAL ROUGH-IN

PLUMBING

- P-1 GROUND FLOOR PLUMBING PLAN
- P-2 SECOND FLOOR PLUMBING PLAN
- P-3 DIAGRAMS
- P-4 DIAGRAMS AND DETAILS

ELECTRICAL

- E-1 GROUND FLOOR POWER PLAN
- E-2 SECOND FLOOR POWER PLAN
- E-3 GROUND FLOOR POWER PLAN
- E-4 SECOND FLOOR POWER PLAN
- E-5 PANELS
- E-6 NOTES

MECHANICAL

- M-1 GROUND FLOOR MECHANICAL PLAN
- M-2 SECOND FLOOR MECHANICAL PLAN
- M-3 NOTES AND DETAILS

STRUCTURAL

- S-1 FOUNDATION/GROUND FLOOR FRAMING PLAN
- S-2 SECOND FLOOR AND LOW ROOF FRAMING PLAN
- S-3 ROOF FRAMING PLAN
- S-4 STRUCTURAL BUILDING SECTIONS
- S-5 STRUCTURAL DETAILS

OFFICE COPY
CITY OF MIAMI BEACH

APPROVED FOR PERMIT BY
THE ENGINEER:

BUILDING: [Signature]
ZONING: [Signature]
PLUMBING: [Signature]
ELECTRICAL: [Signature]
MECHANICAL: [Signature]
STRUCTURAL: [Signature]

NOTICE TO OWNER, DESIGNER & CONTRACTOR
THIS PLAN HAS BEEN PREPARED FOR COMPLIANCE WITH THE PROVISIONS OF THE CONDOMINIUM ACT, CHAPTER 718, F.S., AND THE AMERICANS WITH DISABILITIES ACT (ADA), TITLE II, 28 C.F.R. PART 36.105. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MIAMI BEACH AND THE STATE OF FLORIDA.

SURVEY

Renovations to:
BIG PINK

157 Collins Avenue

Miami Beach, Florida

Renovations to: BIG PINK

157 Collins Avenue

Miami Beach, Florida

LIST OF DRAWINGS

ARCHITECTURAL

- A-0 COVER SHEET
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- A-7 INTERIOR ELEVATIONS AND DETAILS
- A-7a INTERIOR ELEVATIONS AND DETAILS
- A-8 ENLARGED PUBLIC RESTROOMS
- A-8a ENLARGED BATHROOMS
- A-9 ARCHITECTURAL DETAILS
- A-10 SCHEDULES AND SPECIFICATIONS

EQUIPMENT

- Q-1 EQUIPMENT PLAN
- Q-2
- Q-3

ELECTRICAL

- E-1 GROUND FLOOR ELECTRICAL POWER PLAN

STRUCTURAL

- S-1 FOUNDATION/GROUND FLOOR FRAMING PLAN

PLUMBING

- P-1
- P-2
- P-3
- P-4

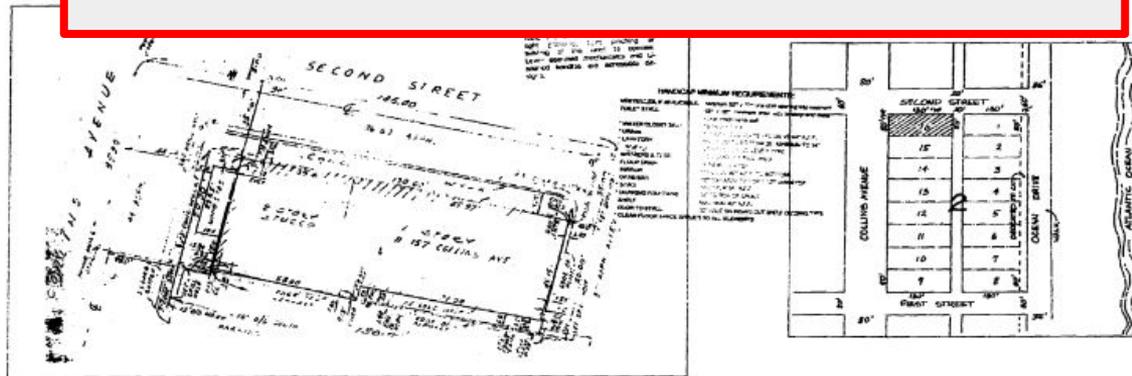
LEGAL DESCRIPTION

LOT 16, BLOCK 2, OCEAN BEACH, FLORIDA SUBDIVISION,
RECORDED IN PLAT BOOK 2 AT PAGE 38 OF THE
PUBLIC RECORDS OF DADE COUNTY, FLORIDA

AREA OF LOT IS 6500 SQ.FT. OR 0.149 Ac. ±

LEGAL DESCRIPTION

LOT 16, BLOCK 2, OCEAN BEACH, FLORIDA SUBDIVISION,
RECORDED IN PLAT BOOK 2 AT PAGE 38 OF THE
PUBLIC RECORDS OF DADE COUNTY, FLORIDA
AREA OF LOT IS 6500 SQ.FT. OR 0.149 Ac. ±



Owner's Affidavit dated April 18, 1995

OWNER'S AFFIDAVIT

I, LAWRENCE F KAINE certify that I am the owner of the property described as:

ADDRESS: 157 COLLINS AVE
LOT: 116 BLOCK: 2 SUBDIVISION: OCEAN BEACH

I authorize _____ as my agent to obtain a building permit for the following work:

WINDOWS & DOORS, STRUCTURAL REPAIRS
TO REMODEL RESTAURANT

CITY OF MIAMI BEACH
BUILDING DEPARTMENT
1600 WILMINGTON AVENUE, 7TH FL
MIAMI BEACH, FLORIDA 33139

DATE: 4/18/95

ATTENTION: BUILDING OFFICER

OWNER'S AFFIDAVIT

I, LAWRENCE F KAINE certify that I am the owner of the property described as:

ADDRESS: 157 COLLINS AVE
LOT: 116 BLOCK: 2 SUBDIVISION: OCEAN BEACH

I authorize _____ as my agent to obtain a building permit for the following work:

WINDOWS & DOORS, STRUCTURAL REPAIRS
TO REMODEL RESTAURANT

Lawrence F Kaine

STATE OF FLORIDA
COUNTY OF DADE

On this the 18 day of April, 1995, before me, the undersigned Notary Public of the State of Florida, personally appeared:

LAWRENCE F KAINE
and whose name(s) is/are subscribed to the within instrument, and he/she/they, acknowledge that he/she/they executed it.

Witness my hand and official seal.

Ch Sanchez
NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Public: Print or Type as Commissioned)

Personally known to me, or

Produced ID: _____ (Type of ID Produced)

DID take an oath, or

DID NOT take an oath.

NOTICE OF COMMENCEMENT MUST BE FILED IF JOB VALUATION EXCEEDS \$ 2,500.00 IN LABOR AND MATERIAL

NOTICE OF COMMENCEMENT MUST BE POSTED PRIOR TO JOB COMMENCING

NOTICE OF COMMENCEMENT CAN BE FILED AT:
44 WEST FLAGLER STREET, 8TH FLOOR, MIAMI, FLORIDA

Provides address and legal description of 157 Collins Ave, not the Strip.

Inspection Report dated August 25, 1995

INSPECTION REPORT

TO: City Of Miami Beach
Building Department
555 Hank Meyer Blvd.
Miami Beach, Florida 33139

PROJECT: 157 Collins Ave
Miami Beach, Fl

CONTRACTOR: Construction International, Inc
6915 Red Road, Suite 213-c
Coral Gables, Fl 33143

PERMIT NO: B-9400397

INSPECTOR: Farrokh Rasekhi, P.E

DATE OF INSP.: Aug. 25, 1995

Provides address only of 157
Collins Ave, not the Strip.

S. D. I.

Architecture • Engineering • Interior • Inspections • Construction Management

STRUCTURAL DESIGN, INC.

INSPECTION REPORT

TO: City Of Miami Beach
Building Department
555 Hank Meyer Blvd.
Miami Beach, Florida 33139

PROJECT: 157 Collins Ave
Miami Beach, Fl

CONTRACTOR: Construction International, Inc
6915 Red Road, Suite 213-c
Coral Gables, Fl 33143

PERMIT NO: B-9400397

INSPECTOR: Farrokh Rasekhi, P.E

DATE OF INSP.: Aug. 25, 1995

WEATHER: Sunny

CONSTRUCTION PHASE: Beams and columns

CONSTRUCTION AREA: Exterior walls on the South and West

WORK DESCRIPTION: Inspection of the reinforcements and setting of the rebar used reinforcements in the columns on the North and West walls, including the existing beams

REMARKS: All reinforcements were inspected and instructions given on adding new bars at all areas requiring additional bars.

BY:  8/25/95
FARROKH RASEKHI, P.E
Fl Registration #38001
Special Inspector #919

Notice of Commencement

Recorded in Official Records book 17270 at page 3238 in the Public Records of Miami-Dade County, Florida.

Description of Property: Lot 16, Block 2, Ocean Beach, Florida, according to the Plat thereof, recorded in Plat Book 2, at Page 38 of the Public Records of Dade County, Florida also known as 157 Collins Avenue, Miami Beach, Florida 33139

Provides address and legal description of 157 Collins Ave, not the Strip.

Prepared By
Myles Chefetz
100 Collins Avenue
Miami Beach, Florida 33139
NOTICE OF COMMENCEMENT

OFF. REC. 17279/3238

Permit Number BMS61000

Tax Folio Number
02 4203 003 0300

State of Florida
County of Dade

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement

Description of Property: Lot 16, Block 2, Ocean Beach, Florida, according to the Plat thereof, recorded in Plat Book 2, at Page 38 of the Public Records of Dade County, Florida

also known as 157 Collins Avenue, Miami Beach, Florida 33139

Description of improvement: Interior and Exterior for restaurant

Information: Big Pink, Inc. 100 Collins Avenue, Miami Beach, Florida 33139 Interest: Lessee

Name and Address of fee simple titleholder: Lawrence F. Kaine, 305 N. W. 12 Avenue, Miami, Florida 33128

Contractor: Dacra Construction, Inc. 230 Fifth Street, Miami Beach, Florida 33139

Surety: None

Lender: None

Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by section 713.13 (1) (a) 7 Florida Statutes Myles Chefetz, 100 Collins Avenue, Miami Beach, Florida 33139

In addition to himself, Owner designates Dacra Construction, Inc Attn: Cole Haynes, 230 Fifth Street, Miami Beach, Florida 33139 to receive a copy of the Lienor's notice as provided in Section 713.13 (1) (b) Florida Statutes

Expiration date is July 1, 1997.

Subscribed and sworn to before me this 15th day of July, 1996. by Myles Chefetz as president of Big Pink, Inc.
Produced ID
Notary Public

PERSONALLY KNOWN

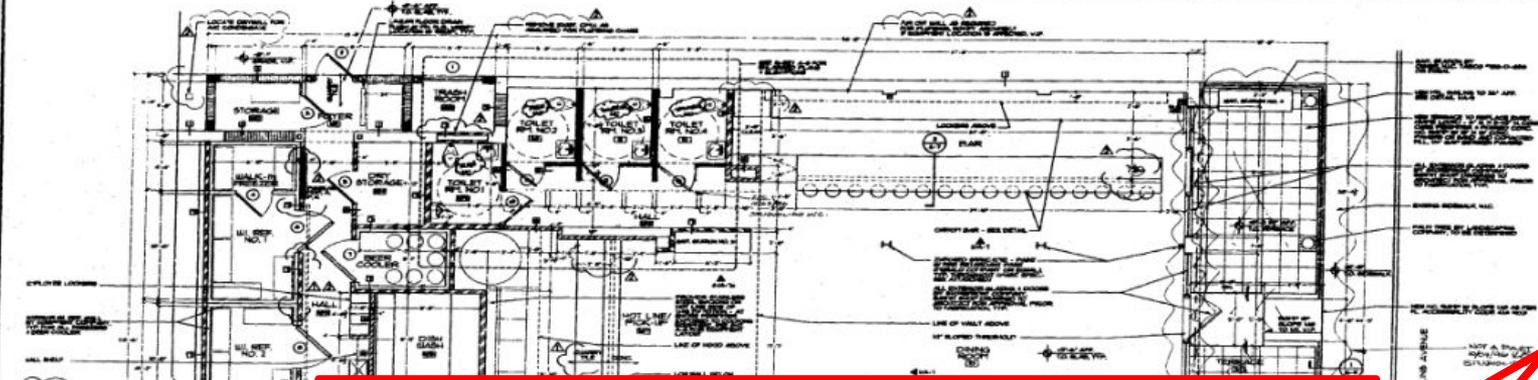
LAWRENCE F. KAINE
COMMISSION # CC 540377
EXPIRES MAR 14, 2000
BONDED THRU
ATLANTIC BONDING CO., INC.

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD VERIFIED
HARVEY RUVIN
CLERK CIRCUIT COURT

96R317712 1996 JUL 19 09:56

The City has stated the following:

“On September 6, 1994, the City issued a building permit for “Renovations to Big Pink”. The approved plans include the construction of a one-story addition located along the south property line of 157 Collins, immediately abutting the north property line of the Strip. As shown on Sheet A-1 the addition contained a foyer, trash room and storage room. Access to the foyer is provided via a single door located on the south property line and internally through the kitchen and back of house area of the restaurant. The trash room is accessible only from the Strip via a roll-up gate.”



RENOVATIONS TO:
BIG PINK
 157 Collis Avenue
 Miami Beach, Florida 33138

RENOVATIONS TO:
BIG PINK
 157 Collis Avenue
 Miami Beach, Florida 33138

RENOVATIONS TO:
BIG PINK
 157 Collis Avenue
 Miami Beach, Florida 33138

GROUND FLOOR/
 SITE PLAN

OFFICE COPY
 CITY OF MIAMI BEACH

APPROVED FOR THE CITY OF MIAMI BEACH

REVISION	DATE
1	07-15-96
2	08-07-96
3	
4	
5	
6	
7	
8	
9	
10	

GROUND FLOOR
 SCALE: 1/4" = 1'-0"



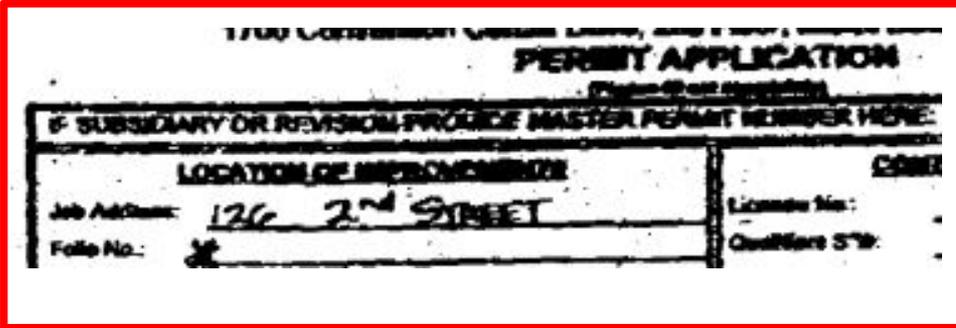
44722-0

- 1. PROVIDE CLARIFICATIONS WHERE REQUIRED FOR THE REGULATIONS, UNLESS OTHERWISE NOTED.
- 2. PROVIDE PLAN FROM AN ARCHITECTURAL DRAWING.
- 3. CONSIDERATIONS AND OTHER PROVISIONS TO BE FULLY OBSERVED.
- 4. USE BASE MAP TO VERIFY PROVISIONS WITH AN ORIGINAL.
- 5. PROVIDE EVIDENCE OF THE ACCURACY OF THE BASE MAP.
- 6. PROVIDE EVIDENCE OF THE ACCURACY OF THE BASE MAP.

A-1

The following slides show the Building Permit plans B9801070 entitled “Interior Renovations for Ted’s Hideaway” as well as additional permitting materials.

Building Permit Application



Provides address of 126 2nd Street, not the Strip.

CITY OF MIAMI BEACH - BUILDING DEPARTMENT - APPENDIX 2
 1700 Convention Center Drive, 2nd Floor, Miami Beach, Florida 33139
PERMIT APPLICATION

If SUBSIDIARY OR REVISION PROVIDE MASTER PERMIT NUMBER HERE: _____

LOCATION OF IMPROVEMENTS		CONTRACTOR INFORMATION	
Job Address: <u>126 2nd STREET</u>	License No.:	Contractor S'N:	Company Name:
Folio No.: <u>38</u>		Qualify: Name:	Address:
Room:		City/State/Zip:	Phone Number:
Subdivisor:			
P. B. Page:			

TYPE OF IMPROVEMENT			
Description of Work: <u>INTERIOR RENOVATION</u>		Value of Work: <u>\$ 40,000</u>	No. of Units: <u>NA</u>
Current Property Use: <u>BAR & GRILL</u>		Old Use: <u>NA</u>	No. of Floors: <u>1</u>
Sq. Ft. Feet: <u>2,117</u>	Linear Feet: <u>NA</u>		
<input type="checkbox"/> New Construction	<input type="checkbox"/> Foundation Only	<input type="checkbox"/> 3rd Party	<input type="checkbox"/> Sign
<input type="checkbox"/> Vertical Load	<input type="checkbox"/> Enclosure	<input type="checkbox"/> Addition Attached	<input type="checkbox"/> Railing
<input checked="" type="checkbox"/> Alteration Interior	<input type="checkbox"/> Repair	<input type="checkbox"/> Addition Detached	<input type="checkbox"/> Substrate Floor/Slab
<input type="checkbox"/> Alteration Exterior	<input type="checkbox"/> Repair due to Fire	<input type="checkbox"/> Addition/Canopies	<input type="checkbox"/> Hurricane Shutters
<input type="checkbox"/> Relocation of Structure	<input type="checkbox"/> Demolish	<input type="checkbox"/> Fencing	<input type="checkbox"/> Window/Door

PERMIT TYPE		CHANGE TO EXISTING		OWNER'S INFORMATION	
<input type="checkbox"/> Building	<input type="checkbox"/> Electrical	<input type="checkbox"/> Change Contractor	<input type="checkbox"/> Revision	Name: <u>TIMOTHY WILCOX</u>	
<input type="checkbox"/> Mechanical	<input type="checkbox"/> Plumbing	<input type="checkbox"/> Elevation	<input type="checkbox"/> Upgrade	Address: <u>4299 COLLINS AVE</u>	
<input type="checkbox"/> L.P.G.X.		<input type="checkbox"/> Supplement	<input type="checkbox"/> Rehabilitation	City/State/Zip: <u>MIAMI BEACH, FL 33140</u>	
				Home Phone: <u>672-4472</u>	
				Cell No.:	

ARCHITECT INFORMATION		ENGINEER INFORMATION	
Name: <u>DVIDIO A. OXIOS</u>	Name: <u>RPJ</u>	Name: _____	Name: _____
Address: <u>115 W. 3rd COURT</u>	Address: <u>4207 SALSWOOD AVE</u>	Address: _____	Address: _____
City/State/Zip: <u>MIAMI BEACH, FL</u>	City/State/Zip: <u>MIAMI BEACH, FL</u>	City/State/Zip: _____	City/State/Zip: _____
Phone: <u>914-2204</u>	Phone: <u>491-1523</u>	Phone: _____	Phone: _____

FEE SIMPLE TITLE ENGINEER'S INFORMATION		MORTGAGE LENDER INFORMATION	
Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
City/State/Zip: _____	City/State/Zip: _____	City/State/Zip: _____	City/State/Zip: _____
Phone: _____	Phone: _____	Phone: _____	Phone: _____

PEV 107 Page 1 of 12

Receipt for Building Work Permit

CITY OF MIAMI BEACH
 Building Department
 1700 Convention Ctr Drive, 2nd Floor
 Miami Beach, Florida 33139
 Phone: (305) 673-7370 Office: (305) 673-7610

ACTIVITY: INTERIOR WORK PERMIT
 -202

Activity Number: B9801070

Status: CLOSED Issued By: BUILALAA

Site Address: 157 COLLINS AV MBCH Applied: 01/15/1998
 Parcel #: 42030030300 Approved: 02/10/1998
 Completed: To Expire: 08/16/1999
 Valuation: \$40,000.00

Applicant: AMEBA ENG. & CONSTRUCTION Property Owner: LAWRENCE F KAINÉ
 21SE 10 STREET
 DEERFIELD BEACH, FL 33441 33441
 954/571-8451

Description: INTERIOR REMODELING-TEDS HIDEAWY REST
 Inspector Area: S

Activity: INTERIOR REMODELING-TEDS HIDEAWY REST
 Inspector Area: S

=====
 Total of All Fees: \$943.92
 Total of Payments: \$943.92
 Balance Due: \$0.00
 =====

Provides address of 157 Collins Ave, not the Strip.

Notice of Commencement

Recorded in Official Records book 17974 at page 3713
in the Public Records of Miami-Dade County, Florida.

Legal description of property and street address: 124 2nd STREET MIAMI BEACH FL.
LOT 16 BLOCK 2 OCEAN BEACH TR. 2 P 38
Description of improvement: INTERIOR REMODELING

Provides address and legal description of 124 2nd Street, not the Strip.

CITY OF MIAMI BEACH - BUILDING DEPARTMENT - APPENDIX 2
NOTICE OF COMMENCEMENT
REC. 1797403713

PERMIT NUMBER: XB37801070 TAX FOLIO NUMBER: 4203-005-0300
STATE OF FLORIDA COUNTY OF DADE

THE UNDERSIGNED hereby gives notice that improvements will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

Legal description of property and street address: 124 2nd STREET MIAMI BEACH FL.
LOT 16 BLOCK 2 OCEAN BEACH TR. 2 P 38
Description of improvement: INTERIOR REMODELING

Owner(s) name and address: LAURENCE F. KAINE
MIAMI FL. 33128
ADUC

Amount of bond: \$ NONE
Lender's name and address: _____

Persons within the state of Florida designed by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes.
Name and address: LAURENCE F. KAINE 305 N.W. 4th AVE
MIAMI FL. 33128

In addition to himself, Owner designates the following person(s) to receive a copy of a Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.
Name and address: TIMOTHY WILCOX 4299 Collins Ave
MIAMI BEACH FL. 33140

Expiration date of this Notice of Commencement: (the expiration date is one (1) year from the date of recording unless a different date is specified) _____

Laurence F. Kaine
SIGN: TITLE OF OWNER

Print Owner's Name: LAURENCE F. KAINE
Sworn to and subscribed before me on this 10
day of Feb 19 98
 Personally Known, or
 Produced ID
 Oath taken Oath not taken

Prepared by: _____
Address: _____
Notary Public: Paul J. Borch
Print Notary's Name: Ineah Spotton
Commission Expiration: 6/23/2000

RECORDED IN OFFICIAL RECORDS BOOK
17974-005-0300
MAY 1998
HARVEY RUBIN
CLERK SUPREME COURT

REV 1/97

Page 11 of 12

95RC061299 1998 FEB 10 12:59

The City has stated the following:

“Also, on February 10, 1998, the City issued a building permit for the buildout of Ted’s Hideaway. Sheet P.1 of the approved plans includes the installation of a grease trap within the Strip. A sub permit was issued for the new grease trap (BP980583) on March 13, 1998 and a Certificate of Completion was issued for the project on March 4, 1999 after City inspections were performed.”

BP980583 Receipt for grease trap installation sub-permit.

CITY OF MIAMI BEACH
Building Department
1700 Convention Ctr Drive, 2nd Floor
Miami Beach, Florida 33139
Inspections: (305) 673-7370 Office: (305) 673-7610

BUILDING-PLUMBING WORK P
08-23-2023

Activity Number: BP980583

Status: FINAL Issued By: BUILRODR

Site Address: 157 COLLINS AV MBCH Applied: 03/12/1998
Parcel #: 42030030300 Approved: 03/13/1998
Completed:
To Expire: 08/16/1999
Valuation: \$2,000.00

Applicant: UNLIMITED SEPTIC TANS, INC. Property Owner: LAWRENCE F KAINE
9957 NW 25 TERRACE
MIAMI FLORIDA 33172 33172
305-447-8110

Description: INSTALL GREASE TRAP 4"
Inspector Area: S

=====
Total of All Fees: \$55.01
Total of Payments: \$55.01
Balance Due: \$0.00
=====

Site Address: 157 COLLINS AV MBCH
Parcel #: 42030030300 Ap

Provides address and legal description of 157 Collins Ave, not the Strip.

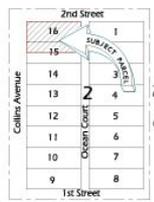
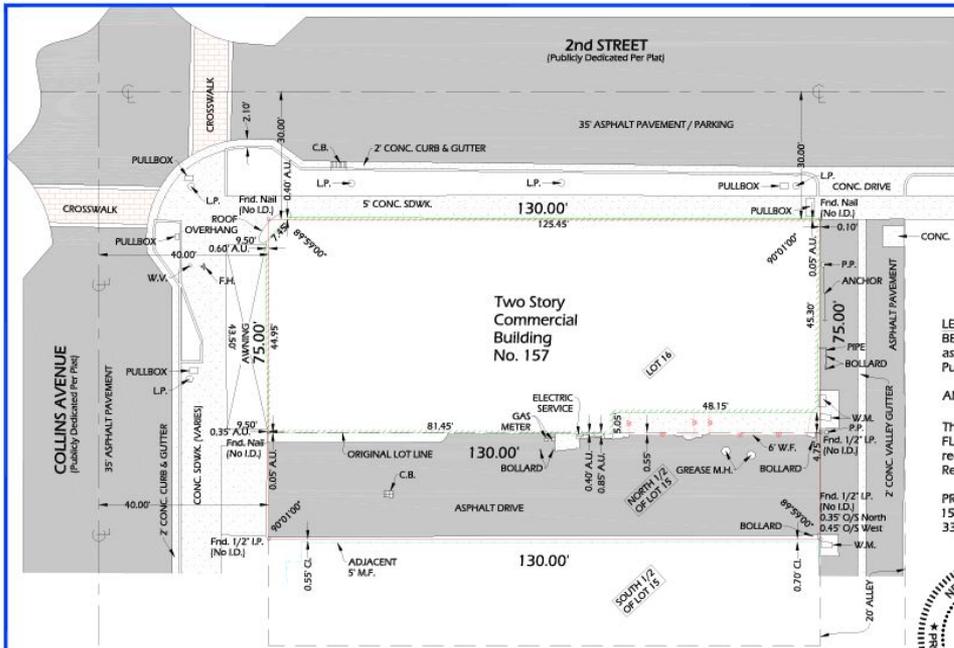
The permit documents that the City says it is **exclusively** relying upon clearly and repeatedly demonstrate express legal owner authorization for development **only at the 157 Parcel.**

Should the Strip been included within these permit documents, the address and legal description should have been included as well.

Therefore, the Strip **cannot be part of any legal building site with the 157 Parcel.**

The City has stated the following:

“The aforementioned improvements were constructed when the previous property owner (Lawrence F. Kaine) was the sole owner of the Strip. Additionally, gas meters and electrical service panels are shown encroaching into the Strip on the property survey submitted by the current owner of 157 Collins.”



Location Sketch
NTS

LEGEND

- Central Angle
- A.U. = Apparent Usage
- A/C = Air Conditioner
- BBO = Barbecue
- C = Calculated
- C.B. = Catch Basin
- C.B.S. = Concrete Block Structure
- C.E. = Covered Entry
- CH = Chord
- Charta. = Chattahoochee
- CL = Center Line
- CLF = Chain Link Fence
- CL = Chair
- CLC. = Concrete
- D = Deed
- D = Diameter
- DH = Drill Hole
- DME = Drainage & Maintenance Easmt
- Easmt = Easement
- Enc. = Encroachment
- F.H. = Fire Hydrant
- FIP = Found 1/2" Iron Pipe
- FPL = Florida Power & Light
- IC.V. = Inspection Control Valve

LEGAL DESCRIPTION: Lot 16, Block 2, OCEAN BEACH FLORIDA, according to the Plat thereof as recorded in Plat Book 2, Page 38, of the Public Records of MIAMI-DADE County, Florida

AND

The North } of Lot 15, Block 2, OCEAN BEACH FLORIDA, according to the Plat thereof, as recorded in Plat Book 2, Page 38, of the Public Records of MIAMI-DADE County, Florida.

**PREPARED FOR: 157 Collins Avenue, LLC,
153-157 Collins Avenue, Miami Beach, FL
33139**

PREPARED FOR: 157 Collins Avenue, LLC,
153-157 Collins Avenue, Miami Beach, FL
33139



LEGEND

- Property Line
- PL = Planter
- PLS = Professional Land Surveyor
- P.O.B. = Point of Beginning
- P.O.C. = Point of Commencement
- P.P. = Power Pole
- PRC = Point of Reverse Curvature
- PRM = Point of Reference Monument
- PT = Point of Tangency
- R = Radius
- Res. = Residence
- RLS = Registered Land Surveyor
- RVG = Range
- R/R = Railroad
- RSM = Registered Surveyor & Mapper
- R/W = Right-of-Way
- SdWk = Sidewalk
- Sec. = Section
- T = Tangent
- TWP = Township
- U.E. = Utility Easement
- UTL = Utility
- W.F. = Wood Fence
- W.M. = Water Meter
- WME = Wall Maintenance Easement

- Surveyor's Notes:**
- All clearances and/or encroachments shown hereon are of apparent nature. Fence ownership by visual means. Legal ownership of fences not determined.
 - Underground structures, if any, not located.
 - Bearings, if shown, are based on assumed meridian or Plat of Record.
 - Lands shown hereon were not abstracted for easements and/or right-of-ways of records.
 - Legal description provided by client.
 - This certification is only for land as described. It is not a certification of title, zoning, easements, or freedom from encumbrances. ABSTRACT NOT REVIEWED.
 - There may be additional restrictions not shown on this survey that may be found in the public records of this county. ABSTRACT NOT REVIEWED.
 - This BOUNDARY SURVEY has been prepared for the exclusive use of the entities named hereon. The Certificate does not extend to any unnamed party.
 - This survey was based on the monuments found on the field.

SURVEYOR'S SEAL
This survey has been digitally signed and sealed by Nelson Mojarra, P.S.M. on the date adjacent to the seal. Printed copies are not considered signed and sealed and the signature must be verified on any electronic copies.

REVISED:

BOUNDARY SURVEY

Nelson Mojarra
NELSON MOJARRA
Registered Surveyor & Mapper No. 5504
State of Florida

MOJARRA & ASSOCIATES, INC.
Land Surveyors & Mappers
Certificate of Authorization No. 6698
P.O. Box 56-0126
Miami, FL 33256-0126 (305) 278-2494

FLOOD ZONE: AE		BASE: 8	
DATE: 10-05-22	SCALE: 1" = 20'	DWN. BY: N.M.	JOB NO. 22-0170A

Surveyor notes clearly show that preparation did not include any zoning, easements, or freedom from encumbrances.

Surveyor's Notes:

- All clearances and/or encroachments shown hereon are of apparent nature. Fence ownership by visual means. Legal ownership of fences not determined.
- Underground structures, if any, not located.
- Bearings, if shown, are based on assumed meridian or Plat of Record.
- Lands shown hereon were not abstracted for easements and/or right-of-ways of records.
- Legal description provided by client.
- This certification is only for land as described. It is not a certification of title, zoning, easements, or freedom from encumbrances. ABSTRACT NOT REVIEWED.
- There may be additional restrictions not shown on this survey that may be found in the public records of this county. ABSTRACT NOT REVIEWED.
- This BOUNDARY SURVEY has been prepared for the exclusive use of the entities named hereon. The Certificate does not extend to any unnamed party.
- This survey was based on the monuments found on the field.

ARTICLE VII. - DIVISION OF LAND/LOT SPLIT

Sec. 118-321. - Purpose, standards and procedure

...wherever there may exist a main permitted structure and any accessory/auxiliary building or structure including, but not limited to, swimming pools, tennis courts, walls, fences, or any other improvement that was heretofore constructed on property containing one or more platted lots or portions thereof, such lots shall thereafter constitute only one building site and no permit shall be issued for the construction of more than one main permitted structure on the site unless the site is approved for the division or lot split by the planning board.

City states in Determination:

“As noted above, the Strip and 157 Collins together constitute one building site. As such, any modifications to, or development of the Strip, including, but not limited to, site improvements (e.g., fencing), as well as new construction, would require a joint application by both the owner of the Strip and the owner of 157 Collins for permit approval. Additionally, the separation of the Strip from 157 Collins would require lot split approval from the Planning Board.”

Planning Director did NOT consider:

- Ownership at time of request for Determination.
- The Strip was not subject to the 1990's building permits for the 157 Parcel.
- The Board of Adjustment zoning approvals received in 1990.
- Where a building site includes multiple lots, a unity of control covenant is required contemporaneous with building permitting and before a building site can be created.
- Covenant Running With the Land recorded in 1991.
- Private agreements between the Parties.
- The rights of all property owners within the City.



2nd Street

157 Collins Parcel

The Strip

Property owned by
125 Collins LLC

Collins Avenue

125 Collins LLC is owner of the Strip.

- **At no time** was Property Owner notified of an application for Determination prior to the Determination being issued.
- **No notice** was received at time of application nor prior to issuance of Determination.

The Strip is part of a separate platted lot under separate ownership, and authority was never granted to either the City or the 157 Parcel owner that would allow it to be considered a part of the 157 Parcel or for the City to issue the Determination.

**Previously, the
Planning
Director denied
a request for
Determination
for an applicant
who was not the
property owner.**

From: Mooney, Thomas
Sent: Wednesday, May 3, 2023 18:08
To: acimo@smgqlaw.com
Cc: jfernandez@mgqlaw.com; Belu h, Michael MichaelBelu_h@miamibeachfl.gov; Madan, Rogelio RogelioMadan@miamibeachfl.gov; Kallergis, Nick NickKallergis@miamibeachfl.gov
Subject: RE: Request for Planning Determination - [REDACTED] Holdings LLC
Importance: High

Good Afternoon Alexandra

I have discussed your request (attached) for an administrative determination regarding the property at [REDACTED] with the City Attorney's office; Nick Kallergis, Deputy City Attorney, is copied. Since your client does not own the parcel at [REDACTED] I cannot provide an administrative determination for this property.

Notwithstanding, as noted in the attached May 3, 2023 correspondence, we have advised the property owner at [REDACTED] that the existing tennis court is non-conforming and cannot, under the current regulations of the City Code, be used. We have also advised Code Compliance.

Please let me know if you have any additional questions.

Thank you, Tom

Thomas R Mooney AICP
Planning Director
Planning Department
1700 Convention Center Drive – 2nd Floor, Miami Beach, FL 33139
Tel: 305-673-7000 x6191 / tmooney@miamibeachfl.gov

The City has stated that they relied ONLY on the permits for Big Pink and Ted's Hideaway.

These permits did not include the Strip.

None of the permit records state that the Strip was meant to be part of those permits.

The permits are defective. They should never have allowed encroachments onto the Strip without the Strip Owner's consent.

The City cannot consider only the 157 Parcel's building permit and land use approval history. It must also consider the Strip's.

The Strip is clearly already part of a “building site” and “unified development site”.

No permit has ever been issued for 153 Collins, the Strip.

The Strip is subject to a zoning covenant recorded in connection with approval of **three** Board of Adjustment (“BOA”) applications for variances to permit the development of a proposed parking facility.

- **File No. 2081-B** recorded in Official Records Book 14864 at Page 722 of the Public Records of Miami-Dade County, Florida
- **File No. 2082-B** recorded in Official Records Book 14864 at Page 719 of the Public Records of Miami-Dade County, Florida.
- **File No. 2083-B** recorded in Official Records Book 14864 at Page 716 of the Public Records of Miami-Dade County, Florida.

Board of Adjustment File No. 2083-B describes the legal description for the Strip.

OFF. REC. 1486470 716

**BEFORE THE BOARD OF ADJUSTMENT
OF THE CITY OF MIAMI BEACH, FLORIDA**

IN RE:

**The application of
LAWRENCE F. KAINÉ
153 COLLINS AVENUE
NORTH 1/2 OF LOT 15; BLOCK 2;
OCEAN BEACH SUBDIVISION; PB 2/38**

**FILE NO. 2083-B
MEETING DATE: NOVEMBER 2, 1990**

**The Strip's
property
description**



Those BOA orders require as a condition that the lots (which include the Strip) “shall be combined ... through a covenant running with the land.”

3. The lots associated with File Nos. 2081, 2082 and 2083 shall be combined with the restaurant property located at 136 Collins Avenue through a covenant running with the land to insure that parking is provided for the commercial use of that property. All terms and conditions of this Agreement shall be approved by the City.

There is no unity of control covenant binding the 157 Parcel with the Strip as a unified development site.

- At no time was any instrument to unify the Strip with the 157 Parcel recorded.
- The Code requires that a unified development site must first be effectuated by covenant before development can occur.

Sec. 118-5. - Unity of title; covenant in lieu thereof

The term "unified development site" shall be defined as a site where a development is proposed and consists of multiple lots, all lots touching and not separated by a lot under different ownership, or a public right-of-way.

All applications for building permits where buildings and/or improvements are proposed for a single lot, or where building(s) are proposed for a unified development site, shall be accompanied by one of the following documents:

- (1) *Unity of title.*
- (2) *Covenant in lieu of unity of title.*

But there is in fact, a unity of control covenant binding the Strip with another development site.

Property description in Covenant recorded in Miami-Dade County Public Records at Official Records Book 14864, Page 725 include the Strip

1991 JAN 17 PM 4:14

91R018864

OFF. REC. 14864 PG 725

LAWRENCE F. KAINE
ATTORNEY AT LAW
305 S.W. 15TH AV.
MIAMI, FLORIDA 33135

COVENANT RUNNING WITH LAND

WHEREAS, the undersigned is the owner ("Owner") of the following property located in Miami Beach, Dade County, Florida described as follows:

The Strip's
property
description



North 1/2 of Lot 15, Block 2, OCEAN BEACH SUBDIVISION, as recorded in Plat Book 2, at Page 38, of the Public Records of Dade County, Florida (the "Property"), and

Lots 12 and South 1/2 of Lot 13, Block 2, OCEAN BEACH SUBDIVISION, as recorded in Plat Book 2, at Page 38, of the Public Records of Dade County, Florida (the "Property"), and

Lot 14, Block 2, OCEAN BEACH SUBDIVISION, as recorded in Plat Book 2, at Page 38, of the Public Records of Dade County, Florida (the "Property"); and

The Covenant contains that same unification language required by the Board of Adjustment Board Order.

NOW, THEREFORE, in consideration of the issuance of the Variances and for other good valuable considerations, the undersigned hereby agrees to restrict the use of the Property in the following manner:

1. That the Property shall be considered as one plot and parcel of land and that no portion of said plot and parcel of land shall be sold, transferred, conveyed, devised, assigned or encumbered by mortgage or otherwise, separately, (except in its entirety as one plot or parcel of land) (except for use as parking for a restaurant use at 136 Collins Avenue (the "Restaurant").

The City's refusal to meaningfully consider evidence demonstrating that the Strip is already part of a separate development and building site is not only improper from an evidentiary perspective, but is also disingenuous.

The Determination states on its face that such evidence (or presumed lack thereof) was a central rationale for the Determination, as follows:

“As more specifically noted herein, it appears that the Strip is not currently part of a unified development site or single building site with properties to the south.” [Determination at 1-2].

The City must consider the private agreements between the parties.

Sec. 114-2. - Interpretation, purpose and conflict.

(b) In interpreting and applying the provisions of the land development regulations, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. **It is not intended by these land development regulations to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, or to repeal any provisions of the City Code.**

Where the regulations imposed by these land development regulations are more restrictive than those imposed by any other ordinances, rules, regulations, easements, covenants or agreements, then these land development regulations shall supersede them; however, when any of the above are more restrictive than this subpart, then the more restrictive provision shall govern to the extent necessary to give effect to its provisions. When there are different regulations, one general and one more specific, both of which may apply to a given subject, the more specific one shall govern, regardless of whether it be part of the City Code or this subpart and regardless of the date of enactment.

E.) Seller agrees to waive and not accept rent for the months of May and June, 2008, if Buyer will replace the roof and pay for said repairs.

F.) The parties acknowledge and agree that the seller may effectuate a 1031 like kind exchange with respect to this transaction. The parties agree to cooperate with each other in effectuating any such exchange.

The 157 Parcel owner signed an agreement when it purchased the 157 Parcel **expressly acknowledging** that the sale of the property did not include any right, easement, or license to use the Strip.

Lawrence D. Kania
Larry

157 Collins Ave, LLC
by: [Signature]
[Signature]

This sale does not include the N $\frac{1}{2}$ of Lot 15 nor does it include a right, easement, or license to use the N $\frac{1}{2}$ of Lot 15 for any purpose without the seller's written permission.

[Signature]
Cheryl Barr WITNESS
STATE OF FLORIDA
COUNTY OF MIAMI DADE

[Signature]
ELISA GOUB WITNESS

SUBSCRIBED AND SWORN TO BEFORE ME THIS 21ST DAY OF APRIL, 2008

[Signature]
NOTARY
JHAVYNIA CUSTIAQUIO
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # DD369350
EXPIRES 11/4/2008
BONDED THRU 1-888-NOTARY1

On August 18, 2022, the representative for the Strip owner acknowledged the 157 Parcel owner's request to terminate the lease for the Strip

The lease enabled my restaurant to keep a large trash compactor/dumpster and storage facility.... Several years ago, I relocated the dumpsters and storage facility onto Big Pinks property.

For these reasons, I wish to terminate the lease...

From: Myles Chefetz <myles@mylesrestaurantgroup.com>
Sent: Wednesday, August 17, 2022 3:15 PM
To: Brenden D. Soucy
Cc: mylesalan@aol.com; Stuart Grossman
Subject: Re: Assignment of 153 Collins Ave Lease
Attachments: image001.gif; image001.gif; Notice of Lease Assignment - 157 Collins Ave LLC.pdf

Brenden

Thanks for your email. I should have the new certificate naming 125 Collins, llc as additional insured by tomorrow. Stuart thank you for your August 12, 2022 letter.

The recent property acquisition by your client 125 Collins, LLC brought the 2016 lease with Larry Kaine to my attention. The lease enabled my restaurant Big Pink to keep a large trash compactor/dumpster and storage facility on Larry's property. Several years ago, I relocated the dumpsters and storage facility onto Big Pinks property. However, the lease was effectively on "auto-pay" and dozens of monthly payments continued to be paid nonetheless.

For these reasons, I wish to terminate the lease. I understand there's a 60 day notice period so of course I will continue to make payments per your letter for September 2022 and October 2022. Additionally, there is a security deposit in the sum of \$5250 paid in connection with the lease. I will just set that off against October rent to keep things simple.

As an aside, I am very excited to hear of your client's development plans. Perhaps you could put me in contact with the principals of the company. I am not only a neighboring property owner, but also am a significant stakeholder in the south of fifth neighborhood. I believe that with my contacts at the City of Miami Beach and beyond, I can help them very much by advocating support for their plans. I can be reached at 3052192909. I look forward to hearing from them.

Sincerely
Myles Chefetz
157 Collins Ave, LLC

The Determination is not a legal enforcement action, but rather an illegal advisory opinion.

Planning Director **cannot** issue advisory opinions or unilaterally adjudicate property rights of an individual property owner. There has been no:

- Enforcement violation on the property.
- Land development application.
- Request from property owner.

The City of Miami Beach and the Planning Director has effectively **STOLEN** the rights from the property owner.

The Result of the Determination is unjust:

No further development is possible without the property owner obtaining authorization in the form of a joint application with the 157 parcel owner.

125 Collins LLC will need to request permission from another property owner to develop their **OWN** property.

The City refused to consider substantial evidence mentioned by the Code that is required. Only relied on two sections of the Code referencing a “Building Site” and requirements for a “Lot Split”.

The City has refused to recognize ownership, property rights, and due process for the Strip.

This Determination has created an extremely dangerous precedent that threatens the rights of **ALL** property owners within the City of Miami Beach.

We urge you to approve this appeal and deny the Planning Director's determination that the property located at 153 & 157 Collins Avenue.

Thank you.







