

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Board of Adjustment

TO: Chairperson and Members
Board of Adjustment

DATE: November 1, 2024

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **ZBA22-0143: 153-157 Collins Avenue – Appeal of Administrative Determination Related to the Planning Director’s determination issued on November 15, 2022.**

125 Collins, LLC (the “Appellant”) has appealed an Administrative Determination of the Planning Director, dated and published on November 15, 2022,¹ regarding the determination that the property located at 153 Collins Avenue (the “Strip”) and the property located at 157 Collins Avenue constitute “one building site” and that to develop the Strip independently from 157 Collins Avenue, a lot split approval by the Planning Board would be required (altogether, the “Appeal”).

A. RECOMMENDATION AND SUMMARY OF PLANNING ANALYSIS

The Planning Director recommends that the Board of Adjustment **DENY** the Appeal, and **AFFIRM** the Planning Director’s determination that the property located at 153 Collins Avenue (referred to herein as the “Strip”) and the property located at 157 Collins Avenue (“157 Collins” or the “157 Collins Parcel”) constitute “one building site” and that to develop the Strip independently from 157 Collins Avenue, a lot split approval by the Planning Board would be required (the “Determination”).

As further detailed in this Staff Report and Recommendation, the Strip and the 157 Collins Parcel, together, constitute a single “building site” under Sections 114-1 and 118-321 of the Land Development Regulations, based on the approval, permitting, and construction of the following structures and/or improvements constructed on the two underlying lots:

1. The **grease trap** associated with Ted’s Hideaway, a restaurant and bar on the 157 Collins Parcel, is located in the Strip. Grease traps are required for restaurants pursuant to Chapter 24 of the Miami-Dade County Code.² Without a grease trap, the restaurant and bar could not lawfully operate. See Miami-Dade County Code Sec. 24-42.6. The grease trap is connected via underground plumbing to 157 Collins.

¹ On February 1, 2023, the City Commission adopted new Land Development Regulations as part of the Miami Beach Resiliency Code, which became effective on June 1, 2023. The Planning Director’s Determination was issued prior to the effective date of the Resiliency Code and, therefore, all references contained within this response cite to the prior Land Development Regulations, which were in effect through May 31, 2023.

² The term “grease trap” is also referred to in Chapter 24 of the Miami-Dade County Code as a “FOG control device,” and “FOG” is defined as “fats, oil, and grease” and “any substance such as vegetable or animal product used in, or a byproduct of, the cooking, food preparation, or cleaning process, that can cause or lead to corrosion, blockages, reduced flow, or interference with the sanitary sewer system when discharged alone or combined with other materials or waste.” See Miami-Dade County Code Sec. 24-42.6.

2. **Exterior access (which includes required egress for fire purposes)** to the foyer of the one-story addition along the south property line of the 157 Collins Parcel is only possible from the Strip.
3. The **trash room** for the structure(s) on 157 Collins is accessible only from the Strip via a roll-up gate.
4. **Gas meters and electrical service panels** for the structure(s) on 157 Collins encroach onto the Strip.

Notably, the grease trap, foyer (including required egress for fire purposes), and trash room were all constructed by the prior owner of the 157 Collins Parcel and the Strip when these properties were under common ownership.

B. LEGAL DESCRIPTION

153 Collins Avenue (the “Strip”)

North ½ of Lot 15 of Block 2 in the Ocean Beach Subdivision, according to the Plat thereof, as recorded in Plat Book 2, Page 38, of the Public Records of Miami-Dade County, Florida.

157 Collins Avenue (“157 Collins” or “157 Collins Parcel”)

Lot 16 of Block 2 in the Ocean Beach Subdivision, according to the Plat thereof, as recorded in Plat Book 2, Page 38, of the Public Records of Miami-Dade County, Florida.

C. BACKGROUND

The subject building site consists of two abutting lots on the east side of Collins Avenue, between 1st Street and 2nd Street. Both lots are zoned R-PS3 (Residential performance standard, medium-high density), and located in the Ocean Beach Historic District. A description and summary of each of the two lots that comprise the “building site” is as follows:



1. 153 Collins Avenue (the “Strip”), which is legally described as the North ½ of Lot 15 of Block 2 in the Ocean Beach Subdivision. Lawrence F. Kaine purchased the Strip in 1986. The current owner of the Strip, 125 Collins LLC, purchased the property from Patricia M. Kaine, as Trustee of the Lawrence F. Kaine Living Trust in 2022.
2. 157 Collins Avenue (“157 Collins”), which is legally described as Lot 16 of Block 2 in the Ocean Beach Subdivision. Lawrence F. Kaine purchased 157 Collins in 1983. In 2008, 157 Collins was sold to the current owner, 157 Collins Ave LLC.

NOTE: From 1986 to 2008, BOTH the Strip and 157 Collins Parcel were owned by Lawrence F. Kaine.

The Strip was initially developed in the 1920s with a one-story hotel building.³ According to City Building Department records, a permit was issued for the total demolition of this structure on May 21, 1971. Shortly thereafter, a permit to pave the lot and install a ten (10') foot driveway was issued.⁴

157 Collins was first developed in 1925 when a building permit was issued for the construction of a two-story commercial building.⁵ This building remains substantially intact and is occupied by two commercial operations at the ground level: (i). Big Pink Restaurant, located within the western portion of the building; and (ii). Ted's Hideaway, a restaurant/bar located within the eastern portion of the building.

On September 6, 1994, the City issued a building permit for “Renovations to Big Pink”.⁶ The approved plans include the construction of a one-story addition located along the south property line of the 157 Collins Parcel, immediately abutting the north property line of the Strip. As shown on Sheet A-1 the addition contains 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.

On February 10, 1998, the City issued a building permit for the buildout of Ted's Hideaway.⁷ Sheet P.1 of the approved plans includes the installation of a grease trap within the Strip and the permit plans clearly include, without ambiguity, BOTH the Strip and 157 Collins Parcel. Additionally, 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.

On October 17, 2012, the City issued a building permit (B1104174) for the expansion of an existing parking lot for the properties located at 125-151 Collins Avenue.⁸ Sheets 3 and 4 of the permit plans include the introduction of fencing and landscaping around the perimeter of the

³ 1929 Aerial Photograph, City of Miami Beach Public Works Department, is attached as **Exhibit A.**

⁴ City of Miami Beach Building Permit Card for 153 Collins Avenue, is attached as **Exhibit B.**

⁵ City of Miami Beach Building Permit Card for 157 Collins Avenue, is attached as **Exhibit C.**

⁶ Plans and drawing submitted under Building Permit No. B9400397, issued on September 6, 1994, and entitled “Renovations for Big Pink,” are attached as **Exhibit D.**

⁷ Plans and drawing submitted under Building Permit No. B9801070, issued on February 10, 1998, entitled “Interior Renovations for Ted's Hideaway,” are attached as **Exhibit E.**

⁸ Plans entitled “Kaine Parking” approved under Building Permit No. B1104174, are attached as **Exhibit F.**

expanded parking lot pursuant a Conditional Use Permit and variances approved in 2011.⁹ The approved fence and landscaping extend northward to the northern lot line of the south half of Lot 15, eliminating all access from the parking lot to the Strip.

On September 8, 2022, 157 Collins Avenue, LLC, owner of the 157 Collins Parcel, submitted a written request to the Planning Director for a formal determination pertaining to the subject building site.

On November 15, 2022, the Planning Director issued and published the Determination.

On December 13, 2022, Appellant 125 Collins, LLC, which is the owner of the parcel on which the Strip is located, filed this Appeal of the Determination. As an owner of property within 375 of the Property that is the subject of this appeal, Appellant has filed this Appeal as an “affected person” within the meaning of City Code Section 118-9(b)(2)(B)(iii).

D. JURISDICTION OF THE BOARD OF ADJUSTMENT

Pursuant to Article I, Section 2 of the City’s Related Special Acts, the Board of Adjustment has the exclusive jurisdiction to “hear and decide appeals from, and review, any order, requirements, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance of the City of Miami Beach.”

City Code Section 118-9(b)(1)(A) and (b)(2)(A) provide that “[a] petition for an administrative appeal, by an eligible party, as defined in this section, shall be submitted to the planning director” within “30 days from the publication of the determination on the city website”

The administrative determination of the Planning Director that is the subject of the Appeal was published on the City’s website on November 15, 2022. The subject Appeal, which was filed on December 13, 2022, pursuant to Section 118-9 was deemed timely.

E. QUESTION PRESENTED

Whether the Planning Director correctly concluded that the Strip and the 157 Collins Parcel constitute one building site.

F. STANDARD OF REVIEW AND VOTING REQUIREMENT

Pursuant to City Code Section 118-9(b)(2)(E), the standard of review for administrative appeals to the Board of Adjustment is “de novo,” and “the party appealing the administrative decision bears burden of going forward with evidence and of persuasion[,] . . . and to that end, the board shall have all the powers of the officer from whom the appeal is taken.”

An affirmative five-sevenths vote of the Board of Adjustment is required to reverse or modify a formal determination of the Planning Director. See Section 118-9(b)(4) of the City Code.

⁹ Conditional Use Permit approved under PB File No. 1495, is attached as **Exhibit G**; Board of Adjustment Final Order approved under ZBA File No. 3511, is attached as **Exhibit H**.

G. CODE PROVISIONS PERTAINING TO WHETHER ONE OR MORE PARCELS CONSTITUTE ONE BUILDING SITE, AND WHEN A LOT SPLIT IS REQUIRED

Definition of Building Site

Section 114-1 of the City Code defines a “building site” as follows:

“...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.” (Emphasis added).

Lot Split Requirements

In accordance with Section 118-321 of the City’s Land Development Regulations, (“LDRs”), a lot split is required as follows:

“.....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.” (Emphasis added).

H. STAFF ANALYSIS AND RESPONSE TO PETITION

1. **The off-site parking covenant, recorded against Appellant’s property to satisfy the parking requirement for the restaurant/nightclub at 136 Collins Avenue, is immaterial to whether 157 Collins and the Strip constitute “one building site.”**

The Appellant argues that the Strip was previously unified with a number of lots to the south for the purpose of providing parking facilities for an establishment located across the street at 136 Collins Avenue. See Parking Covenant, at Appellant’s Exhibit “B”. To be precise, the Parking Covenant, which was recorded in favor of the City on January 17, 1991, is intended to satisfy the parking requirement for a restaurant use at 136 Collins Ave., which was most recently the site of Story nightclub. ***Contrary to the Appellant’s position, the Parking Covenant does not create a unified development site, as defined in Section 118-5 of the LDRs.***¹⁰

Appellant asserts that the Planning Director’s Determination was based on the assumption that the Strip is not currently part of a unified development site or single building site with the properties to the immediate south. This assertion is incorrect. In fact, the Determination clearly states that

¹⁰ A unified development site is created when (i) development is proposed on “multiple lots, all lots touching and not separated by a lot under different ownership, or a public right-of-way”; (ii) the development complies with the requirements in Section 118-5 of the LDRs; and (iii) a unity of title or a covenant in lieu of unity of title is recorded. See City Code Section 118-5. These conditions have not been satisfied here.

it “**does not include or provide any conclusions regarding the properties to the immediate south of the Strip.**” (Emphasis added). Even assuming that the Parking Covenant operates to “unify” the Strip with the properties to the south as suggested by the Appellant, this sole fact on its own would not preclude the 157 Collins Parcel from being part of a larger building site that includes the Strip and the remainder of Appellant’s property, because there are no restrictions on lot aggregation in this part of the City. However, this question is outside the scope of the November 15, 2022 Determination, and no formal conclusion on this point has been reached.

As noted herein the Parking Covenant serves the purpose of providing required parking for a separate use across the street. Additionally, the parking spaces and related improvements, including fencing and landscaping, all of which are associated with the Parking Covenant, occur entirely within the lots to the south of the Strip.

The determination that the Strip and 157 Collins Parcel constitute one building site is based on City Building Department records, which clearly substantiate previously approved improvements to both the Strip and the 157 Collins Parcel that join the two properties.

Additionally, these improvements occurred when both the Strip and the 157 Collins Parcel were owned and controlled by the same person. Unity of ownership is not required to establish a single building site. However, in this case, the fact that both parcels were owned by the same individual when the relevant improvements were permitted evidences that the improvements operated as one building site during the time of their development. That operation remains unchanged despite the subsequent Warranty Deed conveying ownership of the Strip to Appellant.

The analysis in the Determination is limited to the Strip and the 157 Collins Parcel. Appellant introduces additional evidence that suggests that a larger building site may exist, composed of the 157 Collins Parcel, the Strip, and the lots to the south of the Strip. This exceeds the scope of the Determination, which concluded only that the Strip and 157 Collins comprise “one building site.” However, the Planning Director reserves the right, upon request of the property owner(s), to issue a future, separate determination pertaining to the boundaries and parcels that may compose a larger building site. Additionally, based upon the additional evidence provided by the Appellant, the required site plan approval for any future development application that includes the lots to the south of the Strip may be subject to site plan review as a unified building site that includes both the Strip and the 157 Collins.

2. A single building site may be determined to exist even where no Covenant in Lieu of Unity of Title or Unity of Title has been recorded.

The Appellant contends that because a covenant in lieu or unity of title was never effectuated, there is no easement and operating agreement in place between the 157 Parcel and the Strip, as would be required by a covenant in lieu of unity of title where there are multiple owners. This contention is wholly immaterial for the following reasons:

1. Pursuant to the definition of building site in Sec. 114-1 and the lot split requirements set forth in Sec. 118-321, a covenant in lieu of unity of title or unity of title is not required to establish the existence of a single building site.
2. During the time when the approved and permitted improvements that unified the Strip and the 157 Parcel occurred, both the Strip and the 157 Collins Parcel were owned and controlled by the same person. The owner of the parcels at that time did not need to record an instrument

setting forth operational conditions as both parcels were owned and controlled by the same individual.

3. **City's building permit records plainly demonstrate that the Strip contains "structures" and/or "improvements" that were "constructed" in connection with the 157 Collins Parcel; therefore, the Strip is part of the 157 Parcel building site.**

Section 114-1 of the Land Development Regulations of the City Code defines improvement and structure as follows:

"Improvement means any building, structure, fence, gate, wall, walkway, parking facility, light fixture, bench, fountain, sign, work of art, earthworks or other manmade object constituting a physical betterment of real property." (Emphasis added).

"Structure means anything constructed or erected, the use of which requires permanent location on the ground. Among other things, structures include buildings or any parts thereof, walls, fences, parking garages, parking lots, signs and screen enclosures." (Emphasis added).

Appellant argues that the grease trap is not an improvement as defined in the City's LDRs, and instead refers to it as a "device," which is the term used by the Miami-Dade County Division of Environmental Resources Management ("DERM"). As a threshold matter, for City zoning purposes, the operative definition of "improvement" is the definition in the City's LDRs.

Appellant's assertion that Section 118-321 of the City Code was misapplied as to the grease trap is wholly incorrect on its face, and contrary to the plain letter of the City Code. In this regard, the LDRs do not use the phrase "device" to describe what constitutes an improvement on land. The terminology and descriptions that may be used by a particular agency, such as DERM, do not always coincide with the terminology in the City's LDRs. As such, the grease trap that was approved, permitted, and installed in 1998, as well as all of the other modifications noted herein, clearly qualify as "improvements" under the definition in the City's LDRs.

Additionally, Appellant's assertion that the Strip does not contain any structures or improvements, as defined under the City LDRs, which were constructed in connection with the 157 Collins Parcel is incorrect and contradicted by City Building Department records. There are at least two (2) separate sets of "improvements," in 1994 and 1998, both of which were applicable to the Strip and 157 Collins Parcel. These approved permits clearly and unambiguously unified the Strip and 157 Collins Parcel pursuant to the City's LDRs.

On September 6, 1994, the City issued a building permit for "Renovations to Big Pink".¹¹ The approved plans include the construction of a one-story addition located along the south property line of the 157 Collins Parcel, immediately abutting the north property line of the Strip. As shown on Sheet A-1 of the approved and permitted plans, 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. In short, these areas could only be accessed via

¹¹ Building Permit plans B9400397 entitled "Renovations for Big Pink" are attached as **Exhibit D**.

the Strip, as contemplated at the time of approval and when the same individual (Lawrence F. Kaine) was the sole owner of BOTH the Strip and 157 Collins Parcel, thus meeting the criteria for improvements being constructed on one or more platted lots.

On February 10, 1998, the City issued a building permit for the buildout of Ted's Hideaway.¹² 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. The plans clearly show that the grease trap is connected via underground plumbing to the 157 Collins Parcel. These approved and permitted improvements occurred on both the Strip and 157 Collins, when the same individual (Lawrence F. Kaine) was the sole owner of BOTH parcels, thus meeting the criteria for improvements being constructed on one or more platted lots

In addition to the aforementioned improvements, gas meters and electrical service panels are shown encroaching into the Strip on a property survey submitted by the current owner of 157 Collins.¹³ The foyer (with its egress for fire purposes), trash room and grease trap structures noted above are also critical to the operation of the existing restaurant and bar located within the 157 Collins Parcel and can only be accessed from the Strip. For the restaurant and bar to function, access to the trash room and grease traps must be maintained. More importantly, any attempt to block or limit access to these areas of 157 Collins would constitute a serious and significant safety and sanitation hazard. Consequently, 157 Collins and the Strip, together, meet the definition noted above pertaining to a "building site" and therefore constitute one building site.

4. The construction of a fence around the Strip or along the north side of the Strip would either require a joint application by both property owners, or a lot split approval from the Planning Board.

First, the Determination does not exempt the construction of a fence around the Strip or along the north side of the Strip. In this regard, fencing is like any other improvement, and a fence around the Strip or along the north side of the Strip would either require an application signed by both property owners, or a lot split approval from the Planning Board. Also, to clarify a point raised in the Appellant's Petition, a standalone perimeter fence, on any property, would not be considered a "main permitted structure." Additionally, the November 17, 2022, determination of the Planning Director did not conclude that a lot split was the only option available to make improvements to the Strip. As the Strip and the 157 Collins parcel together constitute one building site, in accordance with Section 118-321 of the City LDRs, any modifications, improvements or development of the Strip, including, but not limited to, site improvements such as fencing, could be permitted via the following two options:

1. A joint application signed by both the owner of the Strip and the owner of the 157 Collins Parcel for permit approval; or
2. A joint application for lot split approval from the Planning Board.

¹² Building Permit plans B9801070 entitled "Interior Renovations for Ted's Hideaway" are attached as **Exhibit E**.

¹³ Property Survey dated 10-05-22 is attached as **Exhibit I**.

5. The Determination was properly issued at the request of an affected property owner.

The Appellant contends that the Determination should not have been issued, because the owner of the 157 Parcel does not have an ownership interest in the Strip. This contention ignores the plain fact that the 157 Parcel directly abuts and has physical connections to the Strip, giving rise to a single building site. As the owner of part of that single building site, the owner of the 157 Parcel was in fact eligible to request such determination.

SUMMARY / CONCLUSION

In summary, the previous owner of both the Strip and 157 Collins Parcel constructed improvements that unified these parcels as one “building site” pursuant to the City’s LDRs. The Appellant misreads clear, unambiguous, and longstanding City Code sections, and fails to state a basis to treat these properties as separate lots.

For the reasons stated in the Determination and this Staff Report, the appeal should be denied, and the Determination should be affirmed, in accordance with the following:

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 Land Development Regulations of the City Code.
2. Any modifications to, or development of the Strip, including but not limited to any new construction or other site improvements (e.g., fencing), shall require a joint application by both the owner of the Strip and the owner of 157 Collins for permit approval.
3. To develop the Strip independently from 157 Collins, including, but not limited to, the erection of a fence, lot split approval from the Planning Board shall be required. The request for lot split would require a joint application by both the owner of the Strip and the owner of 157 Collins.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Board of Adjustment **DENY** the Appeal and **AFFIRM** the Planning Director’s Determination.