

# ZBA21-0135 Respondent MIAMI SOFI BEST, LLC

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City of Miami Beach  
Board of Adjustment Hearing  
January 07, 2021

# Overview

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- Introduction to the Partners and CASA MARELA
- Issue on Appeal
- Reasons Why this Appeal Must Be Dismissed:
  - I. Untimely Appeal.
  - II. To get around untimeliness, Appellants attempt to appeal a City Attorney's Letter to Commission.
  - III. The types of approved minor renovations under this Permit are not appealable to the BOA.
  - IV. Even if Permit appealable, nothing for the BOA to reverse because the Planning Director properly issued the Permit. No separate application or hearing before the HPB was required.
- Appeal is pretext for an improper attack on legal apartment-hotel use

# The Partners

- Three-partner partnership based out of Mexico with 15 years of experience in the luxury hospitality business and other investment funds.
- Over 40 investors from Latin America and the U.S. invested in plan to open four luxury boutique projects in Miami Beach between 2022 and 2025.
- CASA MARELA at 310 Meridian is their first luxury apartment-hotel project in the City.
- Selected because small-scale project and already had approved permit for apartment-hotel use.





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## CASA MARELA

- Luxury apartment-hotel for the refined traveler.
- Lobby staffed and operational 24-hours a day, 7 days a week to ensure safety and tranquility for guests and neighbors alike.
- No pool, no outdoor entertainment, no outdoor bar counter, and no rooftop deck are offered.



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## CASA MARELA

- Only financially feasible option for Partners to rescue this otherwise dilapidated historic structure is to operate a luxury apartment-hotel.
- Partners hired local architects, contractors and interior designers to create a project that is compatible with the South of Fifth neighborhood and celebrates the structure's architectural legacy.

## Issue on Appeal

Did the Planning Director act properly in issuing an administrative COA for this Property?

YES.



# I. Untimely Appeal

- Pursuant to the Code, the deadline to file this Appeal was January 16, 2020.
- Sec. 118-9(b)(2)(A) of the Code provides that appeals of administrative decisions of the Planning Director must be submitted “on or before the 30<sup>th</sup> day after the date of publication.”
- “[T]he date of issuance of the building permit has always been used as the timeframe for which an appeal of an administrative decision can be filed.” (Alicia T. Hudak, City Manager in Commission Memo C4 T December 08, 2021).
- To hold otherwise would leave “thousands of building permits [issued] after administrative review” vulnerable during the entire period a building permit is open. (Tom Mooney, Planning Director in OIG Report No. 21-40).

# I. Untimely Appeal

- Appellants had actual notice that the Permit acted as an administrative COA:
  - Visible construction began in June 2021
  - Admitted actual notice in their July 26, 2021 letter to the City Manager:

We understand that your Staff maintains that the Planning Department reviewed the Project Plans and that the mere issuance of the Building Permit to the permit applicant served as a *de facto* COA.<sup>3</sup>



## II. To get around untimeliness, Appellants attempt to appeal a City Attorney's Letter to Commission

- Sec. 118-9(b)(1) gives the BOA general authority to hear administrative appeals of any “written planning order, requirements, decision or determination of the Planning Director.”
- But Appellants are challenging a City Attorney's letter providing legal advice to the City Commission, LTC 381-2021.
- Legal opinions of the City Attorney are not appealable to the BOA.

### III. The type of approved minor renovations under this Permit are not appealable to the BOA

- Further, this Appeal improperly challenges a Permit for renovations not appealable to the BOA. Sec. 118-563(e) allows appeals as follows:

May be appealed to BOA	May <u>not</u> be appealed to BOA
(d)(1) Ground level additions	(d)(2) Replacement of windows and doors*
(d)(3) Façade and building restorations	(d)(4) Minor alterations and demolitions to address ADA and other Code requirements*
	(d)(5) Minor alterations to rear and secondary façades for utilities, refuse disposal and storage

*\*Part of approved renovations under Permit*

## IV. Planning Director Properly Issued the Permit; No Separate Application was Required

Argument not raised in original Appeal.

- Separate application not required by Code.
- Section 118-562(b) applies only to HPB applications, not administrative level applications.
- Separate application forms for administrative COAs were duplicative of building permit applications and therefore eliminated in the early 2000s. Consolidating the forms ensured that Staff for both departments were reviewing the same application package making the review process more efficient and accurate.
- What is the harm in using one piece of paper instead of two? None.

## IV. Planning Director Properly Issued the Permit; No Hearing Before the HPB was required

- Section 118-563(d) mandates that all applications for COA involving minor repairs, demolitions, alterations and improvements (as further defined in this section) “shall be reviewed by the staff of the board.”

### “Minor” as defined in 118-563(d)

Ground level additions

Replacement of windows and doors

Façade and building restorations

Minor alterations and demolitions to address ADA and other Code requirements

Minor alterations to rear and secondary façades for utilities, refuse disposal and storage

- “The HPB’s jurisdiction is limited to the exterior components of the building or structure and public interior spaces, non-public spaces are not within the HPB’s jurisdiction.” “A change of use is not within the jurisdiction of the [HPB].” Staff Report at 4, 6.

## “The [Planning] Department issues thousands of building permits after administrative review” - Tom Mooney

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- Since the early 2000s all applicants seeking administrative level review have used the building permit application form.
- Deborah Tackett, the Historic Preservation and Architecture Officer, determines—dozens of times a week—whether administrative or board review is required.
- To have orderly and reasonable development, property owners must be able to rely on staff’s determination to finance and permit their projects.
- If this Permit is revisited on this basis, then thousands of other permits and other administrative approvals can be challenged, indefinitely.



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## Appeal is a pretext for an improper attack on a legal apartment-hotel use

Opponents have not and cannot articulate any actual injury stemming from the renovations approved by the Permit.

Opponents have admitted in writing that their real motive is to “putting an end to this project at 310 Meridian.”

# Improper attack on legal apartment-hotel use

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- The renovations approved by the Permit consist of: replacement of windows and doors, conversion of a window back to its historic condition as a door, and minor alterations to accommodate ADA-compliant doors and comply with apartment-hotel regulations.
- No one can credibly claim that the minor renovations approved by the Permit could impact quality of life.

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Respondent

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