

HPB
7642

MIAMI BEACH

PLANNING DEPARTMENT, 1700 CONVENTION CENTER DRIVE, 2ND FLOOR
MIAMI BEACH, FLORIDA 33139, WWW.MIAMIBEACHFL.GOV
305-673-7550

LAND USE BOARD HEARING APPLICATION

THE FOLLOWING APPLICATION IS SUBMITTED FOR REVIEW AND CONSIDERATION OF THE PROJECT DESCRIBED HEREIN BY THE LAND USE BOARD SELECTED BELOW. A SEPARATE APPLICATION MUST BE COMPLETED FOR EACH BOARD REVIEWING THE PROPOSED PROJECT.

- ☐ BOARD OF ADJUSTMENT
 - ☐ VARIANCE FROM A PROVISION OF THE LAND DEVELOPMENT REGULATIONS
 - ☐ APPEAL OF AN ADMINISTRATIVE DECISION
- ☐ DESIGN REVIEW BOARD
 - ☐ DESIGN REVIEW APPROVAL
 - ☐ VARIANCE RELATED TO PROJECT BEING CONSIDERED OR APPROVED BY DRB.
- ☐ HISTORIC PRESERVATION BOARD
 - ☐ CERTIFICATE OF APPROPRIATENESS FOR DESIGN
 - ☐ CERTIFICATE OF APPROPRIATENESS TO DEMOLISH A STRUCTURE
 - ☐ HISTORIC DISTRICT / SITE DESIGNATION
 - ☐ VARIANCE RELATED TO PROJECT BEING CONSIDERED OR APPROVED BY HPB.
- ☐ PLANNING BOARD
 - ☐ CONDITIONAL USE PERMIT
 - ☐ LOT SPLIT APPROVAL
 - ☐ AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS OR ZONING MAP
 - ☐ AMENDMENT TO THE COMPREHENSIVE PLAN OR FUTURE LAND USE MAP
- ☐ FLOOD PLAIN MANAGEMENT BOARD
 - ☐ FLOOD PLAIN WAIVER
- ☒ OTHER Appeal of an administrative decision to the Historic Preservation Board.

SUBJECT PROPERTY ADDRESS: 157 Collins Avenue

LEGAL DESCRIPTION: PLEASE ATTACH LEGAL DESCRIPTION AS "EXHIBIT A"

FOLIO NUMBER (S) 02-4203-003-0300

1. APPLICANT: ☒ OWNER OF THE SUBJECT PROPERTY ☐ TENANT ☐ ARCHITECT ☐ LANDSCAPE ARCHITECT
☐ ENGINEER ☐ CONTRACTOR ☐ OTHER _____

NAME 157 Collins Avenue, LLC
ADDRESS 157 Collins Avenue, Miami Beach, FL 33139
BUSINESS PHONE _____ CELL PHONE (305) 219-2909
E-MAIL ADDRESS _____

OWNER IF DIFFERENT THAN APPLICANT:

NAME _____
ADDRESS _____
BUSINESS PHONE _____ CELL PHONE _____
E-MAIL ADDRESS _____

2. AUTHORIZED REPRESENTATIVE(S):

☒ ATTORNEY:

NAME Graham Penn & Michael W. Larkin, Bercow Radell & Fernandez, PLLC.
ADDRESS 200 S. Biscayne Blvd, Suite 850, Miami, FL 33131
BUSINESS PHONE (305) 374-5300 CELL PHONE _____
E-MAIL ADDRESS gpenn@brzoninglaw.com mlarkin@brzoninglaw.com

☐ AGENT:

NAME _____
ADDRESS _____
BUSINESS PHONE _____ CELL PHONE _____
E-MAIL ADDRESS _____

☐ CONTACT:

NAME _____
ADDRESS _____
BUSINESS PHONE _____ CELL PHONE _____
E-MAIL ADDRESS _____

3. PARTY RESPONSIBLE FOR PROJECT DESIGN:

☐ ARCHITECT ☐ LANDSCAPE ARCHITECT ☐ ENGINEER ☐ CONTRACTOR ☐ OTHER: _____

NAME _____
ADDRESS _____
BUSINESS PHONE _____ CELL PHONE _____
E-MAIL ADDRESS _____

FILE NO. _____

4. SUMMARY OF APPLICATION – PROVIDE BRIEF SCOPE OF PROJECT:

An appeal to the HPB of an administrative decision in connection with
 building permit B1602250.

- 4A. IS THERE AN EXISTING BUILDING(S) ON THE SITE ☐ YES ☐ NO
- 4B. DOES THE PROJECT INCLUDE INTERIOR OR EXTERIOR DEMOLITION ☐ YES ☐ NO
- 4C. PROVIDE THE TOTAL FLOOR AREA OF THE NEW BUILDING (IF APPLICABLE) _____ SQ. FT.
- 4D. PROVIDE THE TOTAL GROSS FLOOR AREA OF THE NEW BUILDING (INCLUDING REQUIRED PARKING AND ALL
 USEABLE FLOOR SPACE). _____ SQ. FT.
-

5. APPLICATION FEE (TO BE COMPLETED BY PLANNING STAFF) \$ _____

- A SEPARATE DISCLOSURE OF INTEREST FORM MUST BE SUBMITTED WITH THIS APPLICATION IF THE APPLICANT OR OWNER IS A CORPORATION, PARTNERSHIP, LIMITED PARTNERSHIP OR TRUSTEE.
 - ALL APPLICABLE AFFIDAVITS MUST BE COMPLETED AND THE PROPERTY OWNER MUST COMPLETE AND SIGN THE "POWER OF ATTORNEY" PORTION OF THE AFFIDAVIT IF THEY WILL NOT BE PRESENT AT THE HEARING, OR IF OTHER PERSONS ARE SPEAKING ON THEIR BEHALF.
 - TO REQUEST THIS MATERIAL IN ALTERNATE FORMAT, SIGN LANGUAGE INTERPRETER (FIVE-DAY NOTICE IS REQUIRED), INFORMATION ON ACCESS FOR PERSONS WITH DISABILITIES, AND ACCOMMODATION TO REVIEW ANY DOCUMENT OR PARTICIPATE IN ANY CITY-SPONSORED PROCEEDINGS, CALL 305.604.2489 AND SELECT (1) FOR ENGLISH OR (2) FOR SPANISH, THEN OPTION 6; TTY USERS MAY CALL VIA 711 (FLORIDA RELAY SERVICE).
-

PLEASE READ THE FOLLOWING AND ACKNOWLEDGE BELOW:

- APPLICATIONS FOR ANY BOARD HEARING(S) WILL NOT BE ACCEPTED WITHOUT PAYMENT OF THE REQUIRED FEE. ALL CHECKS ARE TO BE MADE PAYABLE TO THE "CITY OF MIAMI BEACH".
- PUBLIC RECORDS NOTICE – ALL DOCUMENTATION, SUBMITTED FOR THIS APPLICATION IS CONSIDERED A PUBLIC RECORD SUBJECT TO CHAPTER 119 OF THE FLORIDA STATUTES AND SHALL BE DISCLOSED UPON REQUEST.
- IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 2-482 OF THE CODE OF THE CITY OF MIAMI BEACH, ANY INDIVIDUAL OR GROUP THAT WILL BE COMPENSATED TO SPEAK OR REFRAIN FROM SPEAKING IN FAVOR OR AGAINST A PROJECT BEING PRESENTED BEFORE ANY OF THE CITY'S LAND USE BOARDS, SHALL FULLY DISCLOSE, PRIOR TO THE PUBLIC HEARING, THAT THEY HAVE BEEN, OR WILL BE COMPENSATED. SUCH PARTIES INCLUDE: ARCHITECTS, LANDSCAPE ARCHITECTS, ENGINEERS, CONTRACTORS, OR OTHER PERSONS RESPONSIBLE FOR PROJECT DESIGN, AS WELL AS AUTHORIZED REPRESENTATIVES ATTORNEYS OR AGENTS AND CONTACT PERSONS WHO ARE REPRESENTING OR APPEARING ON BEHALF OF A THIRD PARTY; SUCH INDIVIDUALS MUST REGISTER WITH THE CITY CLERK PRIOR TO THE HEARING.

FILE NO. _____

- IN ACCORDANCE WITH SEC.118-31. - DISCLOSURE REQUIREMENT. EACH PERSON OR ENTITY REQUESTING APPROVAL, RELIEF OR OTHER ACTION FROM THE PLANNING BOARD, DESIGN REVIEW BOARD, HISTORIC PRESERVATION BOARD (INCLUDING THE JOINT DESIGN REVIEW BOARD/HISTORIC PRESERVATION BOARD), OR THE BOARD OF ADJUSTMENT SHALL DISCLOSE, AT THE COMMENCEMENT (OR CONTINUANCE) OF THE PUBLIC HEARING(S), ANY CONSIDERATION PROVIDED OR COMMITTED, DIRECTLY OR ON ITS BEHALF, FOR AN AGREEMENT TO SUPPORT OR WITHHOLD OBJECTION TO THE REQUESTED APPROVAL, RELIEF OR ACTION, EXCLUDING FROM THIS REQUIREMENT CONSIDERATION FOR LEGAL OR DESIGN PROFESSIONAL SERVICES RENDERED OR TO BE RENDERED. THE DISCLOSURE SHALL: (i) BE IN WRITING, (ii) INDICATE TO WHOM THE CONSIDERATION HAS BEEN PROVIDED OR COMMITTED, (iii) GENERALLY DESCRIBE THE NATURE OF THE CONSIDERATION, AND (iv) BE READ INTO THE RECORD BY THE REQUESTING PERSON OR ENTITY PRIOR TO SUBMISSION TO THE SECRETARY/CLERK OF THE RESPECTIVE BOARD. UPON DETERMINATION BY THE APPLICABLE BOARD THAT THE FOREGOING DISCLOSURE REQUIREMENT WAS NOT TIMELY SATISFIED BY THE PERSON OR ENTITY REQUESTING APPROVAL, RELIEF OR OTHER ACTION AS PROVIDED ABOVE, THEN (i) THE APPLICATION OR ORDER, AS APPLICABLE, SHALL IMMEDIATELY BE DEEMED NULL AND VOID WITHOUT FURTHER FORCE OR EFFECT, AND (ii) NO APPLICATION FROM SAID PERSON OR ENTITY FOR THE SUBJECT PROPERTY SHALL BE REVIEWED OR CONSIDERED BY THE APPLICABLE BOARD(S) UNTIL EXPIRATION OF A PERIOD OF ONE YEAR AFTER THE NULLIFICATION OF THE APPLICATION OR ORDER. IT SHALL BE UNLAWFUL TO EMPLOY ANY DEVICE, SCHEME OR ARTIFICE TO CIRCUMVENT THE DISCLOSURE REQUIREMENTS OF THIS SECTION AND SUCH CIRCUMVENTION SHALL BE DEEMED A VIOLATION OF THE DISCLOSURE REQUIREMENTS OF THIS SECTION.
- WHEN THE APPLICABLE BOARD REACHES A DECISION A FINAL ORDER WILL BE ISSUED STATING THE BOARD'S DECISION AND ANY CONDITIONS IMPOSED THEREIN. THE FINAL ORDER WILL BE RECORDED WITH THE MIAMI-DADE CLERK OF COURTS. THE ORIGINAL BOARD ORDER SHALL REMAIN ON FILE WITH THE CITY OF MIAMI BEACH PLANNING DEPARTMENT. UNDER NO CIRCUMSTANCES WILL A BUILDING PERMIT BE ISSUED BY THE CITY OF MIAMI BEACH WITHOUT A COPY OF THE RECORDED FINAL ORDER BEING INCLUDED AND MADE A PART OF THE PLANS SUBMITTED FOR A BUILDING PERMIT.

THE AFOREMENTIONED IS ACKNOWLEDGED BY: ☒ OWNER OF THE SUBJECT PROPERTY
☐ AUTHORIZED REPRESENTATIVE

SIGNATURE: _____

PRINT NAME: Myles Chefetz on behalf of 157 Collins Avenue, LLC

FILE NO. _____

OWNER AFFIDAVIT FOR INDIVIDUAL OWNER

STATE OF
COUNTY OF

I, N/A, being first duly sworn, depose and certify as follows: (1) I am the owner of the property that is the subject of this application. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (3) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (4) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (5) I am responsible for removing this notice after the date of the hearing.

Sworn to and subscribed before me this 14 day of APRIL, 2014. The foregoing instrument was acknowledged before me by _____, who has produced _____ as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

My Commission Expires:



SIGNATURE

NOTARY PUBLIC
JENNIFER ZONIN
PRINT NAME

ALTERNATE OWNER AFFIDAVIT FOR
CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY
(Circle one)

STATE OF Florida
COUNTY OF Miami-Dade

I, _____, being duly sworn, depose and certify as follows: (1) I am the Managing Member (print title) of 157 Collins Avenue, LLC (print name of corporate entity). (2) I am authorized to file this application on behalf of such entity. (3) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (4) The corporate entity named herein is the owner or tenant of the property that is the subject of this application. (5) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (6) I also hereby authorize the City of Miami Beach to enter the subject property for the sole purpose of posting a Notice of Public Hearing on the property, as required by law. (7) I am responsible for removing this notice after the date of the hearing.

SIGNATURE

Sworn to and subscribed before me this _____ day of _____, 20____. The foregoing instrument was acknowledged before me by _____ of _____, on behalf of such entity, who has produced _____ as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP:

My Commission Expires:

NOTARY PUBLIC

PRINT NAME

FILE NO. _____

POWER OF ATTORNEY AFFIDAVIT

STATE OF Florida
COUNTY OF Miami-Dade

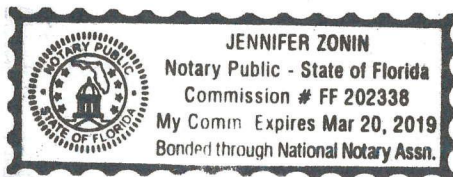
I, Myles Chefetz, being duly sworn and deposed, certify as follows: (1) I am the owner or representative of the owner of the real property that is the subject of this application. (2) I hereby authorize Graham Penn & Michael W. Larkin to be my representative before the HPB Board. (3) I also hereby authorize the City of Miami Beach to enter the subject property for the sole purpose of posting a Notice of Public Hearing on the property, as required by law. (4) I am responsible for removing this notice after the date of the hearing.

Myles Chefetz
PRINT NAME (and Title, if applicable)

[Signature]
SIGNATURE

Sworn to and subscribed before me this 14 day of APRIL, 2016. The foregoing instrument was acknowledged before me by _____ of _____ who has produced as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP



My Commission Expires

Jennifer Zonin
NOTARY PUBLIC
JENNIFER ZONIN
PRINT NAME

CONTRACT FOR PURCHASE

If the applicant is not the owner of the property, but the applicant is a party to a contract to purchase the property, whether or not such contract is contingent on this application, the applicant shall list the names of the contract purchasers below, including any and all principal officers, stockholders, beneficiaries, or partners. If any of the contract purchasers are corporations, partnerships, limited liability companies, trusts, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity. If any contingency clause or contract terms involve additional individuals, corporations, partnerships, limited liability companies, trusts, or other corporate entities, list all individuals and/or corporate entities.*

NAME	DATE OF CONTRACT
NAME, ADDRESS, AND OFFICE	% OF STOCK
_____	_____
_____	_____
_____	_____
_____	_____

In the event of any changes of ownership or changes in contracts for purchase, subsequent to the date that this application is filed, but prior to the date of a final public hearing, the applicant shall file a supplemental disclosure of interest.

FILE NO. _____

CITY OF MIAMI BEACH
DEVELOPMENT REVIEW BOARD APPLICATION

DISCLOSURE OF INTEREST

1. CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY

If the property that is the subject of the application is owned or leased by a corporation, partnership, or limited liability company, list ALL of the owners, shareholders, partners, managers, and/or members, and the percentage of ownership held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.*

157 Collins Avenue, LLC

NAME OF CORPORATE ENTITY

NAME AND ADDRESS

% OF OWNERSHIP

Myles Chefetz

100%

157 Collins Avenue

Miami Beach, FL 33139

NAME OF CORPORATE ENTITY

NAME AND ADDRESS

% OF OWNERSHIP

IF THERE ARE ADDITIONAL CORPORATE OWNERS, LIST ALL SUCH OWNERS, INCLUDING CORPORATE NAMES AND THE NAME, ADDRESS, AND PERCENTAGE OF OWNERSHIP OF EACH ADDITIONAL OWNER, ON A SEPARATE PAGE.

NOTE: Notarized signature required on page 9

FILE NO. _____

CITY OF MIAMI BEACH
DEVELOPMENT REVIEW BOARD APPLICATION
DISCLOSURE OF INTEREST

2. TRUSTEE

If the property that is the subject of this application is owned or leased by a trust, list any and all trustees and beneficiaries of the trust, and the percentage of interest held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships, or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.*

TRUST NAME

NAME AND ADDRESS

% INTEREST

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

NOTE: Notarized signature required on page 9

FILE NO. _____

3. COMPENSATED LOBBYIST:

Pursuant to Section 2-482 of the Miami Beach City Code, all lobbyists shall, before engaging in any lobbying activities, register with the City Clerk. Please list below any and all persons or entities retained by the applicant to lobby City staff or any of the City's land development boards in support of this application.

	NAME	ADDRESS	PHONE #
a.	Graham Penn	200 S. Biscayne Blvd, Suite 850	(305) 374-5300
b.	Michael W. Larkin	200 S. Biscayne Blvd, Suite 850	(305) 374-5300
c.			

Additional names can be placed on a separate page attached to this form.

*Disclosure shall not be required of any entity, the equity interests in which are regularly traded on an established securities market in the United States or other country, or of any entity, the ownership interests of which are held in a limited partnership or other entity, consisting of more than 5,000 separate interests, where no one person or entity holds more than a total of 5% of the ownership interests in the entity.

APPLICANT HEREBY ACKNOWLEDGES AND AGREES THAT (1) ANY APPROVAL GRANTED BY A LAND DEVELOPMENT BOARD OF THE CITY SHALL BE SUBJECT TO ANY AND ALL CONDITIONS IMPOSED BY SUCH BOARD AND BY ANY OTHER BOARD HAVING JURISDICTION, AND (2) APPLICANT'S PROJECT SHALL COMPLY WITH THE CODE OF THE CITY OF MIAMI BEACH AND ALL OTHER APPLICABLE CITY, STATE, AND FEDERAL LAWS.

APPLICANT AFFIDAVIT

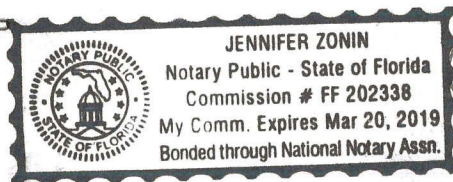
STATE OF Florida
COUNTY OF Miami-Dade

I, Myles Chefetz, being first duly sworn, depose and certify as follows: (1) I am the applicant, or the representative of the applicant. (2) This application and all information submitted in support of this application, including disclosures, sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief.


SIGNATURE

Sworn to and subscribed before me this 14 day of APRIL, 20 16. The foregoing instrument was acknowledged before me by, who has produced as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP



My Commission Expires:


NOTARY PUBLIC

JENNIFER ZONIN
PRINT NAME

FILE NO. _____

EXHIBIT A

LEGAL DESCRIPTION

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



BERCOW RADELL & FERNANDEZ
ZONING, LAND USE AND ENVIRONMENTAL LAW

HPB-764R

DIRECT LINE: (305) 377-6229
E-Mail: GPenn@BRZoningLaw.com

VIA HAND DELIVERY

April 22, 2016

Thomas Mooney, Planning Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Letter in Support of an Appeal of an Administrative Decision on behalf of
157 Collins Avenue, LLC (Building Permit 1602250)

Dear Tom:

As you are aware, this firm represents 157 Collins Avenue (the "Appellant"), the owner of the property approximately located at 157 Collins Avenue (the "Commercial Property"). This correspondence shall serve as the Appellant's letter requesting appeal to the Historic Preservation Board (HPB) of an administrative decision regarding property subject to the Certificate of Appropriateness procedure.

Commercial Property. The Commercial Property is identified by Miami-Dade County Tax Folio No. 02-4203-003-0300 and is legally described as Lot 16 of Block 2 in Ocean Beach Subdivision. The Commercial Property is improved with a 2-story building that was constructed in 1925 and fronts on Collins Avenue. Built by J.G. Leinecker, the Commercial Property is individually listed in the City of Miami Beach ("City") Historic Properties Database as a contributing building in the Ocean Beach Local Historic District. The site has been in continuous use for commercial purposes since the time of the building's construction and now serves as the home of the "Big Pink" restaurant and "Ted's Hideaway" lounge.

The uses on the site have long been served by a 25' wide strip of land which abuts the Commercial Property and serves as an accessory alleyway behind the

restaurant (hereinafter referred to as the "Strip"). Identified by Miami-Dade County Tax Folio No. 02-4203-003-0290 and legally described as the North ½ of Lot 15 of Block 2 in Ocean Beach Subdivision, the Strip has been developed for decades with "back of house" facilities for the Commercial Property. Prior to that point, the Strip, along with the south half of Lot 15, had been developed with a 2,500 square foot building that was demolished and replaced with a paved lot in 1971.

Ownership of Sites. The ownership of both sites over the last several decades reflects their joint use. The current owner of the Strip, Lawrence Kaine, purchased the Commercial Property in 1983. He then purchased the Strip in 1986. During Mr. Kaine's ownership of the combined parcels, significant utilities and services for the Commercial Property were installed and maintained on the Strip. For example, electrical utilities on the Commercial Property were allowed to encroach into the Strip and grease traps were installed.

Since 1996, the Applicant has operated a restaurant on the Commercial Property. Initially, the Appellant leased the Commercial Property from Mr. Kaine. The Appellant purchased title to the Commercial Property in 2008 and had a lease with Mr. Kaine for the Strip since that point.

Exclusion of Strip from Other Development. It has been clear for quite some time that Mr. Kaine has had no intention to assemble the Strip with any other land. Mr. Kaine has owned the adjacent properties, Lots 12, 13, 14, and the south ½ of Lot 15, since 1986 and never sought to join them with the Strip. To the contrary, Mr. Kaine sought and obtained Conditional Use Approval to allow the operation of a parking lot on those neighboring lots and that site is now developed with the approved lot (the "Parking Lot"). Pursuant to the conditions of the recorded order for Planning Board File No. 1495, dense landscape screening and a fence has been installed along the perimeter boundary of the Parking Lot, including the property line between the Strip and the Parking Lot.

Unified Building Site. The Strip serves as a means of ingress and egress, and contains several encroaching utility, mechanical, and electrical improvements that serve and support the restaurant and lounge operations. Accordingly, when viewed together, the Commercial Property and the Strip satisfy the Code's definition for a "building site," which is defined in Section 114-1 as:

"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."

In March 2016, the City administratively approved Building Permit No. B1602250, thereby permitting the Mr. Kaine to enclose the Collins Avenue and Ocean Court frontages of the Strip with an aluminum fence measuring 5' high and 50' long. Mr. Kaine's enclosure of the Strip with a fence will have the resulting effect of eliminating the Appellant's access from the street to the accessory utility improvements and rear building entrances which have served the restaurant and lounge for decades. Of course, removing this access has several significant implications, including removing a fire accessway.

Certificate of Appropriateness Procedure. Pursuant to Sections 118-102 and 118-103 of the Code, as a contributing site within a local historic district, any development or alteration on the Commercial Property falls within the purview of the HPB. Thus, the Certificate of Appropriateness review process applies to any alteration or modification of the Commercial Property. These two terms are explicitly defined in Section 118-503(a) as "any change affecting the external appearance of...a structure or other features of the site including but not limited to landscaping and relationship to other structures..." It is necessary to evaluate the proposed fence under the criteria because it is an architectural element on the exterior of the historic building that will serve as both a screening device and physical barrier limiting access to an integral portion of the building site. This important area provides open space, serves as a walkway and means of ingress and egress into the restaurant, and contains essential drainage facilities, utility services, and mechanical devices that are indispensable to the operation of the business.

As such, the proposed fence's enclosure of an important service area on the Commercial Property is not consistent with several of the Certificate of Appropriateness criteria as listed in Section 118-564(3). These include: designing access on the site with little interference to pedestrian movement and permitting pedestrians a safe ingress and egress to the site; designing and locating additions to the site in a manner which is sensitive to and compatible with the existing improvements; ensuring landscape and paving materials maintain an adequate relation with and enhancement of the overall site plan design; and incorporating sufficient transparency at the ground level portions of the site that front a street or sidewalk in order to achieve pedestrian compatibility.

Illegal Division of Land. Not only does the proposed fence's visibility from the public right-of-way adversely affect historic preservation standards, but its erection along the property line appears to sever the Strip from the Commercial Property and creates an entirely separate building site.

Standing alone, the Strip has a lot width of only 25'-0" and a length of 130'-0". Within the R-PS3 Zoning District, the minimum lot width permitted is 50 feet and the minimum lot size is 5,750 square feet. By creating a standalone lot that serves neither the Commercial Property nor the Parking Lot, Mr. Kaine has developed a site that fails to conform to Code requirements. Thus, the fence enclosure around the Strip amounts to a division of land in contravention of Section 118-321 of the Code.¹

The Code's lot split regulations, Chapter 118, Article VII, have the specific purpose of maintaining open space and neighborhood character. Mr. Kaine's fence project fails a majority of the regulations' criteria that are used to evaluate the appropriateness of a proposed division of land. These standards include: whether the lot created would be divided in such a manner that it complies with the LDR regulations; whether the building site created would be equal to or larger than the majority of the existing building sites, or the most common existing lot size, and of the same character as the surrounding area; whether the scale of any proposed new construction is compatible with the as-built character of the surrounding area, or creates adverse impacts on the surrounding area; whether the building site created would be free of encroachments from abutting buildable sites; and whether the proposed lot split adversely affects architecturally significant or historic properties.

The erection of a fence around the Strip effectively creates a small island inconsistent with the size of all other lots on the same block. It will also, for the first time ever, entirely prevent the Appellant from accessing the rear elevation of the

¹ Sec. 118-321. - Purpose, standards and procedure.

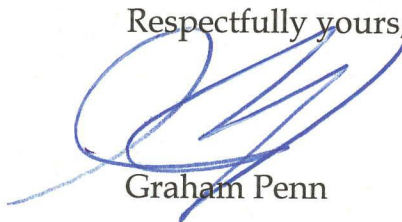
In order to maintain open space and neighborhood character, wherever there may exist a main permitted structure and any accessory/auxiliary building or structure including, but not limited to, swimming pools, tennis courts, walls, fences, or any other improvement that was heretofore constructed on property 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.

Thomas Mooney, Planning Director
April 22, 2016

Commercial Property, including buildings, doorways and the physical improvements that service the historic building. Irrespective of the infringement upon the Appellant's property rights, erection of a fence is not compatible with the prevailing character of the block and adds visual clutter to the Collins Avenue frontage.

The Code holds that no building permit shall be issued for any construction, alteration, or use that is not in conformity with the provisions of the LDRs. In light of the foregoing, the Appellant respectfully requests that the HPB reverse the administrative decision to grant approval of Building Permit No. B1602250. Mr. Kaine will need to legally subdivide the Commercial Property and the Strip before commencing to perform any development that is inconsistent with the use of the unified development site.

Respectfully yours,



Graham Penn

cc: Debbie Tackett
Myles Chefetz
Michael Larkin, Esq.