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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.

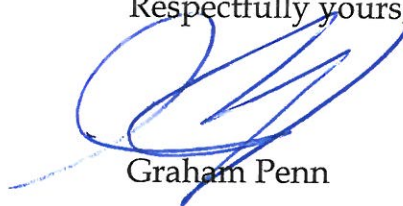
In order to maintain open space and neighborhood character, wherever there may exist a main permitted structure and any accessory/auxiliary building or structure including, but not limited to, swimming pools, tennis courts, walls, fences, or any other improvement that was heretofore constructed on property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

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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.