	City of Coral Gables **Planning and Zoning Staff Recommendation**
Applicant:	**City of Coral Gables**
Application:	**Zoning Code Text Amendments - Article 3, "Development Review"**
Public Hearing - Dates/Time/ Location:	**Planning and Zoning Board** **March 12, 2014, 6:00 – 9:00 p.m.,** **City Commission Chambers, City Hall,** **405 Biltmore Way, Coral Gables, Florida, 33134**

Application Request.

The City of Coral Gables is requesting review and consideration of the following:

An Ordinance of the City Commission of Coral Gables, Florida providing for a text amendment to Article III "Development Review" of the City of Coral Gables Official Zoning Code to modify existing procedures and create new procedures to resolve disputes and provide relief from the application of the Zoning Code; providing for severability, repealer, codification, and an effective date.

Background Information.

The proposed ordinance provides additional mechanisms by which City Staff, and ultimately the City Commission, can facilitate the settlement of legitimate disputes and lawsuits involving the City that impact zoning and land use matters. These mechanisms include a new procedure that will allow the City to provide relief from portions of the Zoning Code in order to comply with federal and state law, or to avoid a violation of federal and state law. There are numerous federal and state statutes, such as the Civil Rights Act of 1964 and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") that may require or support the City providing this relief in order to ensure these provisions are followed and that the City acts consistently with the supremacy of certain federal and state laws.

The proposed ordinance also seeks to amend a procedure that currently exists in the Zoning Code, which addresses dispute resolution agreements that are used to remedy a claim that private property rights have been inordinately burdened by government action. The amendment will allow the City to invoke the procedure for consideration of a settlement or consent order where a party is agreeing to bear the burden of a government use for the benefit of the public, but would like relief from portions of the Zoning Code in order to mitigate this burden. The amendment also emphasizes that these provisions do not subject the City to the regulations of the Zoning Code for government buildings with a government use, while recognizing that the mechanism can be used for mixed government and private uses (although the portion of the project that is the City's continues not to be subject to the Zoning Code). Finally, the

Commission is provided with additional remedies for resolving disputes subject to settlement under this Division (i.e transfer of development rights).

Proposed Zoning Code Amendments.

Draft Ordinance in ~~strike-through~~/underline format showing the proposed amendments is provided as Attachment A.

The City Attorney's Office will present the proposed amendments to the Planning and Zoning Board and will secure input and testimony.

Public Hearing Timetable.

Consideration of the proposed Zoning Code amendments by the City Commission has been tentatively scheduled for Tuesday, April 8, 2014.

Public Notification.

The following has been completed to provide notice of the request:

Public Notice

Type	Date
Legal advertisement	02.27.14
Posted agenda on City web page/City Hall	03.07.14
Posted Staff report on City web page	03.07.14

Staff Recommendation.

The Planning Division in association with the City Attorney's Office recommends approval of the following:

An Ordinance of the City Commission of Coral Gables, Florida providing for a text amendment to Article III "Development Review" of the City of Coral Gables Official Zoning Code to modify existing procedures and create new procedures to resolve disputes and provide relief from the application of the Zoning Code; providing for severability, repealer, codification, and an effective date.

Attachments.

A. Draft Ordinance in ~~strike-through~~/underline format.

Please visit the City's webpage at www.coralgables.com to view all Application materials, notices, applicable public comments, minutes, etc. The complete Application and all background information also is on file and available for examination during business hours at the Planning and Zoning Division, 427 Biltmore Way, Suite 201, Coral Gables, Florida, 33134.

Respectfully submitted,

Ramon Trias
Director of Planning and Zoning
City of Coral Gables, Florida

Attachment A

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA PROVIDING FOR A TEXT AMENDMENT TO ARTICLE III "DEVELOPMENT REVIEW" OF THE CITY OF CORAL GABLES OFFICIAL ZONING CODE TO MODIFY EXISTING PROCEDURES AND CREATE NEW PROCEDURES TO RESOLVE DISPUTES AND PROVIDE RELIEF FROM THE APPLICATION OF THE ZONING CODE; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, City Staff is requesting a Zoning Code text amendment to Article III "Development Review" of the Zoning Code to modify existing procedures and create new procedures to resolve disputes and provide relief from the application of the Zoning Code; and

WHEREAS, the City's application of its zoning and land development regulations and related rules, policies, and practices is governed by constantly-evolving case law decisions addressing the rights of applicants and affected parties under the Civil Rights Act of 1964, the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the First, Fifth, and Fourteenth Amendments to the U.S. Constitution, the Fair Housing Act, the Americans with Disabilities Act, and other applicable state and federal laws; and

WHEREAS, the City Commission seeks to adopt a zoning relief procedure in order to provide the City with the opportunity to resolve claims related to possible violations of federal and state law and to avoid or settle costly litigation; and

WHEREAS, the codification of a zoning relief procedure will permit qualifying individuals or entities to request, and, where appropriate based on the facts and law, to receive relief from the Zoning Code and all related rules, policies, practices and services in accordance with state and federal law; and

WHEREAS, the zoning relief procedure is consistent with applicable case law and the legislative history of the subject laws and legal precedent, which encourage local governments to provide an accommodation procedure for claimants, and require claimants to exhaust administrative remedies prior to filing suit; and

WHEREAS, the City Commission determines that the adoption of this Ordinance is in the best interests of the health, safety and welfare of its residents and citizens;

WHEREAS, after notice being duly published, a public hearing was held before the Planning and Zoning Board on _____, 2014, at which hearing all interested persons were afforded the opportunity to be heard; and,

WHEREAS, at the _____, 2014 Planning and Zoning Board meeting, the Board recommended (approval/denial) (vote: __-__) of the text amendment; and,

WHEREAS, after notice duly published, a public hearing for First Reading was held before the City Commission on _____, 2014 at which hearing all interested parties were afforded the opportunity to be heard; and

WHEREAS, the City Commission was presented with a text amendment to the Zoning Code, and after due consideration and discussion, (approved/denied) the amendment on First Reading (vote:__-__).

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:

SECTION 1. The foregoing 'WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. The Official Zoning Code of the City of Coral Gables is hereby amended as follows (changes in ~~strike-through~~ / underline format):

ARTICLE III. DEVELOPMENT REVIEW.

Division 17. Protection of Landowners' Rights; Relief from Inordinate Burdens

Section 3-1701. Purpose and applicability.

It is the purpose of this Division to provide a process for applicants to notify the City of potential litigation and invoke the exercise of the City's authority and discretion pursuant to Article VIII, Sections 2(b) and 6(e) of the Florida Constitution, Section 70.001 of the Florida Statutes, Section~~s 5.01 and 5.02~~6.02 of the Charter of Miami-Dade County, Article 1, Section ~~8~~7 of the Charter of the City of Coral Gables, and Objectives ADM-1.2, and P~~p~~olicies ADM-1.1.2 and FLU-1.1.9 of the City of Coral Gables Comprehensive Plan, to avoid expensive, uncertain, unnecessary, and protracted litigation regarding the application of these land development regulations to individual properties. The City may grant relief pursuant to this Division ~~only~~ when it is demonstrated that the applicant for said relief has been unfairly, disproportionately ~~and~~ or inordinately burdened by a final order of the City that either denied development approval to the applicant or imposed one (1) or more conditions of approval on the applicant. The process may also be initiated by the City to settle litigation in order to avoid unfairly, disproportionately, or inordinately burdening a party to that litigation, such as to mitigate the burden where a party to a settlement agrees in the settlement to bear a disproportionate burden of a government use that benefits the public. This Division does not apply to matters that arise from the application of the Florida Building Code.

Section 3-1702. Application.

A. All requests for relief pursuant to this Division shall be made in writing upon an application form approved by the City, and shall be accompanied by applicable fees. All such applications shall be filed with the City Manager's office.

B. Applications pursuant to this Division shall be filed no later than fifteen (15) days from the date a final order is rendered which the applicant alleges unfairly, disproportionately, and inordinately burdens its real property. City staff may initiate this procedure and file an application at any time in order to settle a pending dispute or litigation, as well as a pending matter before a federal or state administrative agency.

Section 3-1703. Guidelines.

A. If the City Commission finds that an applicant has demonstrated that it has suffered an unfair, disproportionate ~~and~~ or inordinate burden as a result of the application of these regulations to its property, the City Commission may grant appropriate relief. Likewise, if the City demonstrates that a settlement would avoid, mitigate, or remedy an unfair, disproportionate, or inordinate burden to a property owner, the City Commission may grant appropriate relief. Proposed terms may include, but are not limited to:

1. Relief from the application of particular provisions of these regulations.
2. The transfer of developmental rights from one (1) parcel to another within the City.
3. Approval of the original application with conditions; or modifications to any previously imposed conditions of approval.
4. Any of the remedies listed in section 70.001(4)(c) of the Florida Statutes

B. The decision to grant relief ~~to an applicant~~ pursuant to this Division rests in the sound discretion of the City Commission in the exercise of its inherent sovereign powers to settle legitimate disputes. The policy of the City is to fashion a proposal for resolving the dispute based on a considered balance of the following factors:

1. The degree of burden suffered by the applicant or property owner.
2. The nature and significance of the public interest that is served by the application of the regulation to the ~~applicant's~~ property.
3. The likelihood of litigation, and its likely cost, the City's potential exposure, the uncertainty of outcome, the timetable for resolving the issues, and whether there is a perceived need for a judicial determination of the issues raised by the application.

C. In general, it is the policy of the City to resolve disputes in a manner that does not require significant financial expenditures by the City.

D. All relief granted pursuant to this Division shall be consistent with the City of Coral Gables Comprehensive Plan and shall not violate any controlling federal law, state statute, or Miami-Dade County ordinance.

E. All relief granted pursuant to this Division is conditioned upon the execution of a release of all claims that may arise from or relate to the application of the land development regulations that allegedly created the unfair, disproportionate ~~and~~ or inordinate burden. The release of claims shall be in a form that is acceptable to the City Attorney and shall be recorded at the applicant's expense.

Section 3-1704. Staff review, report and recommendation.

A. Within five (5) days of receipt of an application pursuant to this Division, the City shall review the application to determine whether it is complete.

B. Within seven (7) days of receipt of a complete application, City Staff shall deliver the complete application to the City Manager, with copies to the ~~Planning Department, Building and Zoning Department~~, Development Services Department, Historic Resources Department, City Attorney, and any other department as directed by the City Manager.

C. The City Manager shall direct the departments to provide a joint evaluation of the merits of the application, which shall include:

1. The principal purpose or purposes for the regulation that was applied to the applicant's property, or the property that is the subject of a settlement. These purposes may include, but are not limited to:

a. To address specific, identified public health and safety concerns;
b. To protect or enhance community character;
c. To protect archaeological or historic resources;
d. To protect environmental resources (water supply, listed species, air quality); and
e. To comply with state infrastructure concurrency mandates.

2. The recommendation of the City departments with regard to whether the applicant has been unfairly, disproportionately ~~and~~ or inordinately burdened by the application of these land development regulations that is the subject of the application or settlement, in light of the purposes for which the regulations that created the alleged burden are intended to serve, and the burden (or potential burden) carried by other property owners who are similarly situated, if any.

D. Within forty-five (45) days of receipt of a complete application pursuant to this Division, the City Manager shall provide the City Commission with a report and recommendation on the application or settlement and a proposed dispute resolution agreement, and shall place the matter on the agenda of the City Commission.

Section 3-1705. City Commission review and decision; Execution of Dispute Resolution Agreement.

A. The City Commission shall review the application or proposed settlement at a public hearing (noticed in accordance with the provisions of Article 3, Division 3), and shall decide whether to make an offer to resolve the dispute with the applicant, or to approve a settlement proposed by the City, which shall be in the form of a dispute resolution agreement. The hearing is not quasi-judicial, and is not subject to rules of quasi-judicial procedures.

B. The City Commission may approve, approve with conditions, or reject the proposed dispute resolution agreement. If the City Commission requires modifications to the proposed dispute resolution agreement, the City Manager shall cause a new proposed dispute resolution agreement to be drafted within fourteen (14) days.

C. When the City Commission has approved a proposed dispute resolution agreement or approved a proposed dispute resolution agreement with conditions, the City Manager is authorized to execute said dispute resolution agreement (as modified, if applicable).

D. Once executed by the City Manager, the dispute resolution agreement shall be placed on the next available consent agenda of the City Commission for ratification. The item shall not be pulled from the consent agenda except by supermajority vote of the entire membership of the City Commission.

Section 3-1706. Effect of Dispute Resolution Agreement.

A. Dispute resolution agreements that are executed pursuant to this Division shall not be effective until the later of:

1. The date executed by the applicant or other parties to the settlement;
2. The date ratified by the City Commission; or
3. Such other date that is set by the parties to the agreement.

B. When relief is provided in a dispute resolution agreement pursuant to this Division, no further procedures are necessary to give effect to said relief unless:

1. The further procedures are specifically required by the dispute resolution agreement; or
2. The City agreed to consider a zoning district boundary change or text amendment to these land development regulations.

C. Dispute resolution agreements that are executed pursuant to this Division shall run with the land.

Section 3-1707. Recording of Dispute Resolution Agreement.

All dispute resolution agreements that are executed pursuant to this Division shall be recorded in the public records of Miami-Dade County, Florida. If the agreement is silent with regard to who bears the cost of recording, the cost shall be borne by the applicant.

DIVISION 18. ZONING RELIEF PROCEDURE

Sec. 3-1801. Zoning relief procedure.

(a) *Purpose and applicability.* In order to address or avoid possible or alleged violations of federal and state laws, and in order to avoid or settle costly litigation or administrative proceedings, which is in the public interest, zoning relief may be granted pursuant to this Division.

(b) *Application.* A person or entity shall request relief under this Division prior to filing a lawsuit, or while a lawsuit is pending, by completing and submitting a zoning relief request form, which is available from the City's Development Services Department. The form shall contain such questions and requests for information as are necessary for evaluating the relief requested. Alternatively, the City may initiate a request for zoning relief in order to approve a settlement agreement or consent order that resolves pending litigation or matters before a federal or state administrative agency, relating to alleged violations of federal or state law.

(c) *Notice.* The City shall display a notice of the request for zoning relief on the City's public notice bulletin board and shall maintain copies available for review in the Development Services Department and the City Clerk's Office. The notice shall advise the public that a request for zoning relief under federal or state law is pending. The location, date and time of the applicable public hearing shall be included in the notice. A notification containing this information shall also be mailed by the City Clerk at least fifteen (15) days prior to the public hearing to the property owners of record, as well as property owners within a radius of one thousand (1,000) feet of the property described in the request, if the request is site-specific.

(d) *Application and hearing.* The City Commission shall have the authority to consider and act on requests for zoning relief submitted to the Development Services Department. A public hearing shall be held by the City Commission on the request for relief within forty-five (45) days of receipt by the City of a completed application, unless the applicant agrees in writing to extension of the hearing date. A final written determination shall be issued by resolution of the City Commission no later than thirty (30) days after the conclusion of the public hearing. The final written determination may: (i) grant the relief requested, (ii) grant a portion of the request and deny a portion of the request, or impose conditions upon the grant of the request, or (iii) deny the request. Any determination shall be final, in writing, and shall state the reasons for the decision. The final written determination shall be sent to the applicant by certified mail, return receipt requested.

(e) *Additional information.* If necessary, prior to the public hearing, the City may request additional information from the applicant, specifying in sufficient detail what information is required. In the event a request for additional information is made to the applicant by the City, the hearing shall be conducted within thirty (30) days after the applicant's provision of the additional information requested. The applicant shall have fifteen (15) days after the date the information is requested to provide the additional information. If the applicant fails to timely respond with the requested additional information, the City shall notify the applicant and proceed with scheduling a public hearing; however, the applicant and the City may extend the time period for conducting the hearing by mutual agreement. The City Commission will issue its final written determination regarding the relief requested as required in subsection (d) of this section, based on the information in the City's possession at the time of the public hearing.

(f) *Criteria.* In determining whether the zoning relief request shall be granted or denied, the applicant shall be required to establish:

(1) The applicant is a potential claimant under federal or state law, including applicable legal precedent, or the City is seeking to settle or resolve a dispute or litigation in order to avoid the violation of federal or state law, including applicable legal precedent, or to resolve an administrative proceeding with a federal or state agency; and
(2) The applicant believes in good faith that the City, through implementation of its Code, has violated federal or state law, for the reasons stated in the zoning relief request, or the City believes it is in the public interest to resolve a matter in order to avoid the alleged violation of federal or state law; and
(3) The applicant satisfies the standard for relief set forth in the applicable federal or state statute(s) or legal precedent interpreting the applicable statute(s) or Constitution, or the City determines that a settlement will allow it to avoid the violation of federal or state law, or resolve a pending administrative proceeding with a federal or state agency.

(g) *Exhaustion not required.* Completion of the zoning relief procedures shall be a supplement to any other pre-litigation dispute resolution processes available by law to the City or the applicant. These other remedies need not be exhausted in order for the zoning relief procedures to be invoked.

(h) *Effect while pending.* While an application for zoning relief or appeal of a determination of same is pending before the City, the City will not enforce the Code, rules, policies, and procedures which are the subject of the request against the applicant, except that the City may seek relief through the code enforcement procedures of Article VI. "Code Enforcement" of Chapter 101 "Administration and Enforcement" of the City Code of Ordinances, through Article 7 "Violations, Enforcement And Penalties" of the Zoning Code, or through injunctive relief if an imminent threat to the health, safety and welfare of the public is present.

(i) *Additional provisions for zoning relief.* The following provisions shall be applicable:

(1) The City shall display a notice in its public notice bulletin board and on its website advising the public of this zoning relief procedure and that applications for zoning relief may be obtained from the Development Services Department.
(2) An applicant may apply for zoning relief on his or her own behalf, or may be represented at all stages by a representative designated by the applicant.
(3) This Division does not subject City property with a government use to the Zoning Code. This Division can be used to provide zoning relief where a proposed use of a property has a combined government and private use; although the government use portion (including where that portion is owned by the City as a condominium) continues to not be subject to regulation under the Zoning Code.
(4) In providing relief under this Division, in addition to the authority and remedies provided above, the City may also allow the transfer of development rights from one parcel to another within the City, as well as any of the other remedies provided in section 70.001(4)(c) of the Florida Statutes.
(5) This Division may be used in conjunction with Division 17.
(6) The City shall provide such assistance and accommodation as is required pursuant to federal and state law, in connection with a disabled person's request for zoning relief, including, without limitation, assistance with reading application questions, responding to questions, completing the form, filing an appeal, and appearing at a hearing, etc., to ensure that the process is accessible.

Division ~~18~~19. Protection of Landowners' Rights; Vested Rights Determinations.

(and renumbering the rest)

SECTION 3. All ordinances or parts of ordinances that are inconsistent or in conflict with the provisions of this Ordinance are repealed.

SECTION 4. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 5. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of Ordinance No. 2007-01 as amended and known as the "Zoning Code" of the City of Coral Gables, Florida, which provisions may be renumbered or re-lettered and that the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention.

SECTION 6. If the Official Zoning Code of the City of Coral Gables Tables of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

SECTION 7. This Ordinance shall become effective _____, 2014.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D. 2014.

APPROVED:

JIM CASON
MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY