CAO 2013-033

To: Martha Salazar-Blanco

From: Craig E. Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Coral Gables MFSA Standards

Date: August 06, 2013

You have inquired about the interpretation of the above-referenced sections of Code as they apply to the height of development at the property at lots 29-41 of Block 10, 717 through 741 Valencia Avenue. I have attached the relevant sections of the Code, referenced above, and a zoning verification letter that the City previously issued for this property in 2007. The relevant provisions have not been revised since the 20071etter was issued, so the same regulations are being interpreted. Please note, this opinion and interpretation is being provided by the City Attorney pursuant to the authority granted in sections 2-201(e)(1) and (8) of the City Code, which is also consistent with the City Attorney's authority under section 2-702 of the Zoning Code.

The 2007 letter clearly opines that Section 4-104.D.8.a. governs, and the site specific regulations therefore determine the permissible height on the property. The 2007 letter states that: "As a point of clarification Sections 4-104D.8.b. through g. of the "Zoning Code" provides for the permitted height of properties that do not have Site Specific Zoning Regulations in the MFSA Zoning District." You have inquired whether this is a correct interpretation of the Code, or whether the proper interpretation is to apply the strictest of the applicable height limits listed in Section 4-104.0.8.

I have reviewed Section 4-104 in its entirety, Section A-12 of the site specific regulations (the section applicable to these lots), and Section 1-108C (relating to Site Specific regulations), all in the City Zoning Code, and conferred with outside counsel (who conferred with the attorney who drafted the regulations at issue for the City). It is my opinion that the Site Specific regulations govern over more general regulations. This basic principle, that the specific takes precedence over the general, is followed by appellate courts, including the Florida Supreme Court. See, e.g., Mendenhall v. State of Florida, 48 So. 3d 740, 748 (Fla. 2010}; see also Palm Harbor Special Control District v. Kelly, 500 So. 2d 1382, 1385-86 (Fla. 2d DCA 1987). Thus, the specific parts of the law control the more general provisions. Here, the site specific regulations for this property take precedence because they specifically reference this property by lot and block number.

You have also asked whether section 1-109(E) --which provides a rule of construction that in the event of a conflict between provisions in the Zoning Code, the more restrictive provision applies - would change this analysis. It is my opinion that this section does not change the analysis. As an initial matter, section 4-104, which specifically addresses the MFSA District, states in the performance standards (section 4-104(D)) that the site specific standard applies, and then emphasizes that the site specific applies again when expressly addressing height (section 4-104.D.8.a). In such circumstances, there is no need to address section 1-109(E), as there is no conflict present here, since the MFSA standard itself states on its face that the site specific standard will apply. In other words, the plain meaning of section 4- 104 governs, which specifically addresses and resolves the situation at issue, so there is no need to resort to a more general rule of construction. In addition, I would also note that Section 1-lOS(C), which directly addresses the application of site specific standards, indicates that the site specifics control over other provisions in the Zoning Code (with a limited exception that is not applicable to the issue we are discussing). This rule also supports application of the site specifics here.

Finally, please consider that any other interpretation would negate the inclusion of the site specific regulations in subsection 4·104.D.8.a. There is another basic rule of construction that every word in a legislative enactment should be given meaning, if at all possible. This rule ensures that legislative intent is followed. Here, I believe this rule supports applying the site specific regulations as well, as referenced in 8.a.

For these reasons, my conclusion (and that of the other attorneys consulted) is that the 2007 letter is correct, and the height of development on the property is governed by the site specific regulations. Please advise if you have any questions or need further assistance with this matter.

Osle, Zilma

From: Leen, Craig
Sent: Tuesday, August 06, 2013 3:37 PM
To: Hernandez, Cristina; Osle, Zilma
Cc: Thornton Richard, Bridgette; Figueroa, Yaneris; Franqui, Susan
Subject: FW: City Attorney Opinion - Coral Gables MFSA standards Section 4-104 and Site Specifics Section A-13
Attachments: Zoning.Letter.715-741 Valencia.5.18.07.pdf; Zoning Code, Section 4-104 and Appx. A, Section A-12.pdf

Please place in the Opinion Folder.

Craig E. Leen
City Attorney

From: Leen, Craig
Sent: Tuesday, August 06, 2013 3:13 PM
To: Salazar-Blanco, Martha
Cc: Tompkins, Jane; Trias, Ramon; Thornton Richard, Bridgette; 'Susan L. Trevarthen'
Subject: City Attorney Opinion - Coral Gables MFSA standards Section 4-104 and Site Specifics Section A-13

Ms. Salazar-Blanco,

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The 2007 letter clearly opines that Section 4-104.D.8.a. governs, and the site specific regulations therefore determine the permissible height on the property. The 2007 letter states that: "As a point of clarification Sections 4-104D.8.b. through g. of the "Zoning Code" provides for the permitted height of properties that do not have Site Specific Zoning Regulations in the MFSA Zoning District." You have inquired whether this is a correct interpretation of the Code, or whether the proper interpretation is to apply the strictest of the applicable height limits listed in Section 4-104.D.8.

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then emphasizes that the site specific applies again when expressly addressing height (section 4-104.D.8.a). In such circumstances, there is no need to address section 1-109(E), as there is no conflict present here, since the MFSA standard itself states on its face that the site specific standard will apply. In other words, the plain meaning of section 4-104 governs, which specifically addresses and resolves the situation at issue, so there is no need to resort to a more general rule of construction. In addition, I would also note that Section 1-108(C), which directly addresses the application of site specific standards, indicates that the site specifics control over other provisions in the Zoning Code (with a limited exception that is not applicable to the issue we are discussing). This rule also supports application of the site specifics here.

Finally, please consider that any other interpretation would negate the inclusion of the site specific regulations in subsection 4-104.D.8.a. There is another basic rule of construction that every word in a legislative enactment should be given meaning, if at all possible. This rule ensures that legislative intent is followed. Here, I believe this rule supports applying the site specific regulations as well, as referenced in 8.a.

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Sincerely,

Craig E. Leen
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