



To: Ramon Trias; Mario Garcia-Serra

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

RE: Legal Opinion Regarding Zoning Code Of Existing Biltmore Hotel Structure

Date: October 23, 2014

This confirms my opinion and interpretation pursuant to section 2-20l(e)(l) and (8) of the City Code and section 2-702 of the Zoning Code that the existing Biltmore Hotel structure and uses are legally conforming as a special use consistent with the analysis expressed in your letter (which reflects what Ramon and I discussed with you at our meeting). By copy of this email, I am asking the Assistant City Attorney to place this opinion and interpretation in a formal memorandum for my signature. Please note, however, that this opinion and interpretation is effective through issuance of this email.

Parramore, Carol

From: Leen, Craig
Sent: Thursday, October 23, 2014 2:09 PM
To: Parramore, Carol
Subject: Fwd: Biltmore Hotel / Request for Determination Regarding Legal Conforming Status of Existing Uses and Structures
Attachments: Biltmore Hotel_ letter to Craig Leen.pdf; ATT00001.htm; image001.png; ATT00002.htm

Please place in opinion folder along with the attachment.

Sent from my iPhone

Begin forwarded message:

From: "Leen, Craig" <cleen@coralgables.com>
To: "Trias, Ramon" <rtrias@coralgables.com>, "'Garcia-Serra, Mario'" <MGarcia-Serra@gunster.com>
Cc: "Thornton, Bridgette" <bthornton@coralgables.com>, "Figueroa, Yaneris" <yfigueroa@coralgables.com>
Subject: RE: Biltmore Hotel / Request for Determination Regarding Legal Conforming Status of Existing Uses and Structures

Mario,

This email confirms my opinion and interpretation pursuant to section 2-201(e)(1) and (8) of the City Code and section 2-702 of the Zoning Code that the existing Biltmore Hotel structure and uses are legally conforming as a special use consistent with the analysis expressed in your letter (which reflects what Ramon and I discussed with you at our meeting). By copy of this email, I am asking the Assistant City Attorney to place this opinion and interpretation in a formal memorandum for my signature. Please note, however, that this opinion and interpretation is effective through issuance of this email.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com<<mailto:cleen@coralgables.com>>

From: Trias, Ramon
Sent: Thursday, October 23, 2014 1:08 PM
To: Leen, Craig; 'Garcia-Serra, Mario'
Cc: Thornton, Bridgette; Figueroa, Yaneris
Subject: RE: Biltmore Hotel / Request for Determination Regarding Legal Conforming Status of Existing Uses and Structures

Craig:

I agree, and please issue a letter when you are able. Thank you.

Ramon

From: Leen, Craig
Sent: Thursday, October 23, 2014 1:05 PM
To: 'Garcia-Serra, Mario'; Trias, Ramon
Cc: Thornton, Bridgette; Figueroa, Yaneris
Subject: RE: Biltmore Hotel / Request for Determination Regarding Legal Conforming Status of Existing Uses and Structures
Importance: High

Mario, it was good meeting with you and Ramon to discuss the issues regarding the Biltmore zoning. Yes, this confirms that I agree with the analysis in the attached letter, and that it reflects what we discussed. I am copying Ramon to see if he has any issues with the attached letter. If Ramon agrees as well, I plan to issue a more formal document adopting it as a City Attorney interpretation under section 2-201(e)(8) of the City Code and section 2-702 of the Zoning Code.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
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Fax: (305) 460-5264
Email: cleen@coralgables.com<<mailto:cleen@coralgables.com>>

From: Garcia-Serra, Mario [<mailto:MGarcia-Serra@gunster.com>]
Sent: Thursday, October 23, 2014 12:23 PM
To: Leen, Craig
Cc: Thornton, Bridgette; Figueroa, Yaneris
Subject: FW: Biltmore Hotel / Request for Determination Regarding Legal Conformnig Status of Existing Uses and Structures

Craig,

By when do you think that you can send me a response to the attached request?

Best regards,

Mario

[<http://gunsternet/myBizCardSignature/images/glogoflbiz.png>]
Mario Garcia-Serra | Shareholder
600 Brickell Avenue

Brickell World Plaza
Suite 3500
Miami, Florida 33131

P 305-376-6061 F 786-425-4104
[gunster.com](http://www.gunster.com)<<http://www.gunster.com/>>

From: Garcia-Serra, Mario
Sent: Wednesday, October 08, 2014 11:26 AM
To: Leen, Craig
Cc: 'Thornton, Bridgette'; Figueroa, Yaneris; 'robertbkay@gmail.com'; Gene Prescott; Bob Butler
Subject: Biltmore Hotel / Request for Determination Regarding Legal Conformnig Status of Existing Uses and Structures

Dear Craig,

As we discussed last week, please see my attached letter regarding the above referenced request.

Best regards,

Mario

[\[http://gunsternet/myBizCardSignature/images/glogofbiz.png\]](http://gunsternet/myBizCardSignature/images/glogofbiz.png)

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From: Valido, Ada [<mailto:avalido@gunster.com>]
Sent: Wednesday, October 08, 2014 9:55 AM
To: Valido, Ada; Garcia-Serra, Mario
Subject: Your Scan File Is Attached

Your Scan File Is Attached

October 8, 2014

VIA ELECTRONIC MAIL

Mr. Craig E. Leen, Esq.
City Attorney
City Attorney's Office
405 Biltmore Way, 2nd Floor
Coral Gables, Florida 33134

**Re: Biltmore Hotel / 1200 Anastasia Avenue / Request for Determination of Legal
Conforming Status of Use and Structure**

Dear Mr. Leen:

As we have previously discussed, the Biltmore Hotel property located at 1200 Anastasia Avenue ("the Property") is currently zoned Special Use ("S") district and is designated Commercial High-Rise on the Future Land Use Map of the Coral Gables Comprehensive Plan. The S zoning district does not permit hotel use. However, historically, the Property's use as a hotel was permitted. Ordinance No. 2384, adopted in August 1981, amended the then existing S district zoning for the Property so as to permit hotel use. In July of 1985, Ordinance No. 2572, amended the Property's S zoning so as to permit the following additional uses: health club; private business club; commercial offices; parking structures; assembly uses; restaurant; and cultural, civic recreational, educational and related community institutional uses. Both of these Ordinances are attached as Exhibit "A" to this letter.

Section 1-108(F) of the Coral Gables Zoning Code, a copy of which is attached as Exhibit "B," provides that "all special uses approved prior to the adoption of these regulations, and any conditions attached thereto, shall remain in full force and effect, and the recipient of the approved special use may proceed to develop the property in accordance with the previous approval and shall hereafter be deemed to be a Special Use District." Please note that the ordinances referred to above were approved prior to the adoption of the present day Zoning Code in October of 2007.

Accordingly, it is our position that the existing Biltmore Hotel structure and uses are fully vested as legal and conforming uses pursuant to Section 1-108(F) of the Zoning Code and the previously approved Ordinances Nos. 2384 and 2572. We would ask that you confirm in writing that the existing Biltmore Hotel structures and uses (including the hotel; health club; private business club; commercial offices; parking structures; assembly uses; restaurant; and cultural, civic recreational, educational and related community institutional uses) are fully vested legal

Mr. Craig E. Leen, Esq.
October 8, 2014
Page 2

and conforming uses and structures pursuant to the Code section and previously approved Ordinances cited above. If you have any questions regarding this request, please contact me at 305-376-6061 or mgarcia-serra@gunster.com. Thank you for your attention to this matter.

Sincerely,



Mario Garcia-Serra

MIA_ACTIVE 4247245.1

Exhibit A

ORDINANCE NO. 2304

AN ORDINANCE AMENDING ORDINANCE NO. 1525, AS AMENDED AND KNOWN AS THE "ZONING CODE", BY DEALING WITH A CHANGE IN THE EXISTING "S" USE ZONING ON 5.49 ACRES OF BILTMORE COMPLEX PROPERTY WHICH IS LOCATED AT 1200 AVENUE ANASTASIA ADJACENT TO THE BILTMORE GOLF COURSE IN COUNTRY CLUB SECTION PART 1, PLAT BOOK 8, PAGE 108, AND COUNTRY CLUB SECTION PART 4, PLAT BOOK 10, PAGE 57, AS SET FORTH AND DELINEATED AS TRACT "A" ON THE BILTMORE COMPLEX PROPOSED LAND RE-USE PLAN, PREPARED BY THE DEPARTMENT OF PUBLIC WORKS, ENGINEERING DIVISION, CITY OF CORAL GABLES, FLORIDA, FILE NO. 1313, DATED JULY 7, 1971, ON SHEET 1 OF 1 SHEET, AND REPEALING ALL ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH.

WHEREAS, after notice of public hearing duly published and notification of all property owners of record within three hundred (300) feet, a public hearing was held before the Planning and Zoning Board of the City of Coral Gables, Florida on June 15, 1981, at which hearing all interested persons were afforded an opportunity to be heard, and

WHEREAS, the Planning and Zoning Board at its regular meeting of June 15, 1981 recommended that the existing "S" Use zoning on said 5.49 acres of the Biltmore Complex Property be changed to include additional uses, subject to certain conditions and restrictions,

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

SECTION 1. That Ordinance No. 1525, as amended and known as the "Zoning Code", and in particular that "Use and Area Map Plate No. 7", attached thereto and by reference made a part thereof, shall be and the same is hereby amended to show henceforth a change in the existing "S" Use zoning on 5.49 acres of the Biltmore Complex Property which is located at 1200 Avenue Anastasia adjacent to the Biltmore Golf Course in Country Club Section Part 1, Plat Book 8, Page 108, and Country Club Section Part 4, Plat Book 10, Page 57 as set forth and delineated as Tract "A" on the Biltmore Complex Proposed Land Re-use Plan prepared by the Department of Public Works, Engineering Division, City of Coral Gables, Florida, File No. 1313, dated July 7, 1971, on Sheet 1 of Sheet 1, and more particularly described as follows

Begin at the Northwest corner of Lot 149, Block 50, of Coral Gables Country Club Section Part Four, according to the plat thereof recorded in Plat Book 10, at Page 57, of the public record of Dade County, Florida, being a point in the South right-of-way line of Avenue Anastasia as the same is shown thereon; thence run West along the prolongation westerly of the North boundary line of said Lot 149 and being along the South right-of-way line of the said Avenue Anastasia for a distance of 809.69 feet to the point of beginning, thence run westerly along said South right-of-way line of Avenue Anastasia for a distance of 365.24 feet to a point, thence run along said South right-of-way line of Avenue Anastasia being a circular curve concave to the Northeast having a radius of 781.799 feet through a central angle of $7^{\circ}42'04''$ for an arc distance of 105.08 feet to a point; thence run due South for a distance of 114.92 feet to a point; thence run $S 30^{\circ}30'00'' W$ for a distance of 105 feet to a point; thence run $S 59^{\circ}30'00'' E$ for a distance of 140 feet to a point, thence $S 30^{\circ}30'00'' W$ for a distance of 80 feet to a point; thence run $S 59^{\circ}30'00'' E$ for a distance of 115 feet to a point, thence run $S 30^{\circ}30'00'' W$ for a distance of 210 feet to a point; thence run $S 57^{\circ}43'38''$ for a distance of 33.52 feet to a point; thence run $S 58^{\circ}14'57'' E$ for a distance of 13.51 feet to a point, thence run $N 34^{\circ}55'48'' E$ for a distance of 33.65 feet to a point, thence run $N 60^{\circ}31'41'' E$ for a distance of 50 feet to a point, thence run $N 83^{\circ}51'41'' E$ for a distance of 135.29 feet to a point, thence run $S 85^{\circ}13'34'' E$ for a distance of 200 feet to a point; thence run $N 81^{\circ}12'45'' E$ for a distance of 14.49 feet to a point; thence run due north for a distance of 550.42 feet to the point of beginning on the said South right-of-way of Avenue Anastasia, containing 5.49 acres, more or less,

shall be and the same is hereby amended by adding thereto the following additional uses

1. Apartment units
2. Hotel rooms

SECTION 2. That such use and change of zoning shall be subject to the developer abiding by the parking requirements in effect on the date of the application for such zoning change.

SECTION 3. That all ordinances or parts of ordinances in conflict or inconsistent herewith shall be and the same are hereby repealed insofar as there is conflict or inconsistency.

PASSED AND ADOPTED THIS TWENTY-FIFTH DAY OF AUGUST, A. D., 1961.

APPROVED:

William H. Chapman
WILLIAM H. CHAPMAN
MAYOR

ATTEST.

Virginia L. Paul
VIRGINIA L. PAUL
CITY CLERK

ORDINANCE NO. 2572

AN ORDINANCE AMENDING ORDINANCE NO. 1525, AS AMENDED, AND KNOWN AS THE "ZONING CODE" IN ORDER TO PROVIDE A CHANGE IN THE EXISTING "S" SPECIAL ZONING ON THE MIAMI BILTMORE HOTEL AND COUNTRY CLUB LOCATED AT 1200 ANASTASIA AVENUE ON THE SOUTH SIDE OF ANASTASIA AVENUE ADJACENT TO THE BILTMORE GOLF COURSE IN COUNTRY CLUB SECTION PARTS 1 AND 4, AND MORE SPECIFICALLY SET FORTH AND DELINEATED AS TRACTS "A", "B" AND "C" ON THE BILTMORE COMPLEX SURVEY PREPARED BY THE DEPARTMENT OF PUBLIC WORKS, ENGINEERING DIVISION, CITY OF CORAL GABLES, FILE NO. 1313-R-2, DATED JUNE 11, 1984 ON SHEET 1 OF SHEET 1; AND REPEALING ALL ORDINANCES INCONSISTENT HERewith.

WHEREAS, an application was made for a change in the existing "S" Use zoning for the Miami Biltmore Hotel and Country Club located at 1200 Anastasia Avenue on the south side of Anastasia Avenue adjacent to the Biltmore Golf Course in Country Club, Section Parts 1 and 4, and more specifically, set forth and delineated as Tracts "A", "B" and "C" on the Biltmore Complex Survey prepared by the Department of Public Works Engineering Division, City of Coral Gables, File No. 1313-R-2, dated June 11, 1984 on Sheet 1 of Sheet 1 in order to allow new permitted uses on the described property in addition to those uses previously permitted by City Commission Ordinance Nos. 1953, 2097 and 2384; and

WHEREAS, after notice of public hearing duly published and notification of all property owners of record within three hundred (300) feet, a public hearing was held before the Planning and Zoning Board of the City of Coral Gables on April 17, 1985, at which hearing all interested persons were afforded an opportunity to be heard; and

WHEREAS, the Planning and Zoning Board at a special meeting of April 17, 1985, recommended to the City Commission the approval of all requested uses with the exception of Commercial Offices on Tract "B" for which denial was recommended, and all the recommended uses to be subject to certain conditions and restrictions;

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

SECTION 1. That Ordinance No. 1525, as amended, and known as the "Zoning Code", and in particular, that certain Use and Area Map Plate No. 7, attached thereto and by reference made a part thereof, shall be and it is hereby amended to show henceforth a change in the existing "S" Use zoning for the Miami Biltmore Hotel and Country Club located at 1200 Anastasia Avenue on the south side of Anastasia Avenue adjacent to the Biltmore Golf Course in Country Club Section Parts 1 and 4, and more specifically set forth and delineated as Tracts "A", "B" and "C" on the Biltmore Complex Survey prepared by the Department of Public Works, Engineering Division, City of Coral Gables, File No. 1313-R-2, dated June 11, 1984 on Sheet 1 of Sheet 1 in order to allow the following new permitted uses on the described property in addition to those uses previously permitted by City Commission Ordinance Nos. 1953, 2097 and 2384:

TRACT "A"

1. Health Club
2. Private Business Club

TRACT "B"

1. Commercial Offices
2. Parking Structure

TRACT "C"

1. Assembly Uses
2. Restaurant
3. Cultural, Civic, Recreational, Educational and related Community Institutional Uses.

SECTION 2. That such uses and change of zoning shall be and they are hereby subject to the following conditions and restrictions:

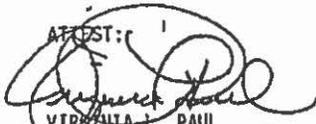
1. All of the above uses to be in accordance with the improvements specified on the submitted site plan and that professional commercial offices currently allowed in the Tower Building on Tract "A" shall be limited to five thousand, five hundred and sixty (5,560) square feet as shown on the submitted plan.
2. That service vehicles making deliveries be restricted to the hours of 7:00 A.M. to 7:00 P.M.

SECTION 3. That all ordinances or parts of ordinances in conflict or inconsistent herewith shall be and they are hereby repealed insofar as there is conflict or inconsistency.

PASSED AND ADOPTED THIS TWENTY-THIRD DAY OF JULY, A. D., 1985.

APPROVED:

Dorothy Thomson
 DOROTHY THOMSON
 MAYOR

ATTEST:

 VIRGINIA L. PAUL
 CITY CLERK

ABE058

Exhibit B

ARTICLE 1 - GENERAL PROVISIONS

- D. Previously granted variances. All variances granted under this, or any prior edition of the Zoning Code subject to a timeframe for construction which are still in effect on the adoption of these regulations shall remain in full force and effect, including any conditions attached thereto, and the recipient of the variance may proceed to develop the property in accordance with the plans previously approved. However, if the recipient of the variance has failed to commence construction before the variance expires, the provisions of these regulations shall govern and the variance shall have no further force and effect.
- E. Previously approved conditional uses. All conditional uses approved prior to the adoption of these regulations, and any conditions attached thereto, shall remain in full force and effect, and the recipient of the approved conditional use may proceed to develop the property in accordance with the previous approval and shall hereafter be deemed a conditional use in the district in which it is located. However, if the recipient of the approved conditional use has failed to commence construction before the approval expires or if the approval is abandoned, the provisions of these regulations shall govern. No conditional use approved prior to the adoption of these regulations where no certificate of occupancy has been granted shall not be extended.
- F. Previously approved special uses. All special uses approved prior to the adoption of these regulations, and any conditions attached thereto, shall remain in full force and effect, and the recipient of the approved special use may proceed to develop the property in accordance with the previous approval and shall hereafter be deemed to be a Special Use District. However, if the recipient of the approved special use has failed to commence construction before the approval expires or if the approval is abandoned, the provisions of these regulations shall govern. No Special Use approved prior to the adoption of these regulations but not constructed shall be extended.
- G. Approved "X" uses. Any lawfully established permitted "X" use shall be considered to be a non-conforming approved conditional use under the provisions of these regulations, unless abandoned.
- H. Prior zoning districts. Unless provided otherwise on the Official Zoning Map, upon the adoption of these regulations, land which is presently zoned within an existing zoning classification shall be classified within one of the zoning classifications set forth in Article 4 of these regulations, as follows:

<i>Archived zoning districts</i>	<i>New zoning districts</i>
R-1-2, R-3, R-4, R-5, R-6, R-6-7, R-7, R-8, R-9, R-9-10, R-11, R-12, R-14, R-14-15, R-16, R-17, R-18, R-19	Single Family Residential (SFR) District
R-TH Use Districts	Multi-Family 2 (MF2) District
D-Use Districts	Multi-Family 1 Duplex (MF1) District and Multi-Family Special Area (MFSA) District
A-Use Districts	Multi-family Special Area (MFSA) District and Multi-family 2 (MF2) District
Mixed Use District 1, 2 and 3	Mixed Use (MXD) District
CA-Use Districts	Commercial Limited (CL) District
CB* and CC-Use Districts	Commercial (C) District
M-Use Districts	Industrial (I) District
Downtown Overlay District	Downtown Overlay (DO) District
Planned Area Development (PAD) District	Planned Area Development (PAD) District
University of Miami Campus Area Development (UMCAD) District	University Campus (UCD) District
P-Use Districts	Preservation (P) District
S-Use District	Special Use (S) District
X-Uses	Conditional uses in various districts

*Prior CB zoning districts adjoining SFR districts shall be designated as new CL district.