

City of Coral Gables Planning Department Staff Report

To: Honorable Planning and Zoning Board Members

From: Planning Department

Date: April 9, 2008

Subject: **Application No. 04-08-056-P. Amendments to Conditions of Approval.** Reconsideration of previously approved Resolution No. 2007-16 of the City Commission of Coral Gables which granted approval of a separation of a building site pursuant to Zoning Code Section 12-5, for Lots 17-19 and 40-42, Block 127, Riviera Section Part 10 (5705 Riviera Drive), Coral Gables, Florida; whereas the applicant desires to amend the condition requiring a Restrictive Covenant from the four (4) adjoining property owners; and the approval and all other conditions of approval contained in Resolution No. 2007-16 shall remain in effect; and providing for an effective date.

Recommendation

The Planning Department recommends approval of the proposed amendment of Resolution No. 2007-16. A copy of the approved Resolution No. 2007-16 is provided as Attachment A. The draft Resolution showing the proposed amendments in ~~strike thru~~ / underline format is provided as Attachment B.

Background

Resolution No. 2007-16 was adopted by the City Commission on 01.23.07. That Resolution contains conditions of approval required by the City Commission at the time of adoption. The applicant appeared before the Commission requesting to amend the condition requiring all adjoining property owners to become a party of the Restrictive Covenant. The City Commission on 03.11.08 referred the request to the Planning and Zoning Board for review and recommendation.

The application for building site separation was heard twice by the Planning and Zoning Board. On 05.11.05 the Board requested that the applicant address specific issues and return with a revised application, which the re-considered and Board recommended approval on 07.12.06. Copies of Staff's reports for those public hearings are provided as Attachment C.

The condition requiring a Declaration of Restrictive Covenant with the adjoining properties was offered by the applicant at the 07.12.06 hearing at the request of a resident to provide assurance to all four adjoining property owners that the conditions of approval would be fulfilled. A copy of the Board's 07.12.06 meeting minutes is provided as Exhibit D.

Proposed Amendments

The applicant, working with the City Attorney's Office, prepared the draft Resolution and the alternative language for the Restrictive Covenant to address and provide for the restrictions imposed by the Commission when Resolution No. 2007-16 was approved. The draft Resolution showing the proposed amendments in ~~strike thru~~ / underline format is provided as Attachment B. The proposed Restrictive Covenant showing proposed changes in ~~strike thru~~ / underline format is provided as Attachment E.

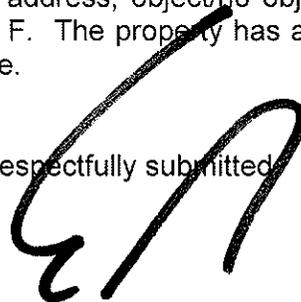
Public Notification/Comments

The following has been completed to solicit input and provide notice of the application:

Type	Explanation
Courtesy notification of all property owners within 1,000 feet of subject property	Completed 03.27.08
Certified notification letter mailed to adjoining property owners	Completed 03.25.08
Newspaper ad published	Completed 03.27.08
Posted property	Completed 03.27.08
Posted agenda on City web page/City Hall	Completed 04.04.08
Posted Staff report on City web page	Completed 04.04.08

Staff re-notified all property owners within 1000 feet of the subject property to advise them of the request and provide an opportunity to comment on the application. The four (4) adjoining property owners were mailed a certified letter notifying them of the proposed amendment and public hearing. The listing of property owners who returned the notification/comment form, including the date received, property owners name, address, object/no objection/no comment and verbatim comments are attached as Attachment F. The property has also been posted to advise of the Planning and Zoning Board meeting date.

Respectfully submitted,



Eric Riel, Jr.
 Planning Director
 City of Coral Gables

Attachments:

- A. Resolution No. 2007-16.
- B. Draft Resolution with amendments shown in ~~strike thru~~ / underline format.
- C. 05.11.05 and 07.12.06 Staff reports.
- D. 07.12.06 Planning and Zoning Board meeting minutes.
- E. Draft Restrictive Covenant with amendments shown in ~~strike thru~~ / underline format.
- F. Synopsis of comments received from property owners within 1,000 feet.

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2007-16 (As Amended)

2008 FEB 15 PM 2:41

A RESOLUTION OF THE CITY COMMISSION OF CORAL GABLES APPROVING A SEPARATION OF A BUILDING SITE PURSUANT TO ZONING CODE SECTION 12-5, TO INDICATE THAT LOTS 17-19 AND 40-42, BLOCK 127, RIVIERA SECTION PART 10 (5705 RIVIERA DRIVE), CORAL GABLES, FLORIDA, SHALL BE CONSIDERED TWO SEPARATE BUILDING SITES, WITH ONE BUILDING SITE CONSISTING OF LOTS 17-19 AND THE OTHER BUILDING SITE CONSISTING OF LOTS 40-42; AS SET FORTH IN APPLICATION NO. 06-06-422-P; SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, the request for a building site separation of Lots 17-19 and 40-42, Block 127, Riviera Section 10 (5705 Riviera Drive), Coral Gables, Florida, as set forth in Application No. 06-06-422-P, requesting that Lots 17-19 would be a separate building site and Lots 40-42 would be a separate building site for single-family residences; and

WHEREAS, after notice of a public hearing being duly published and a courtesy public notice was mailed to all property owners of record within a one thousand (1,000) foot radius from the said property, a public hearing was held before the Planning and Zoning Board on July 12, 2006, at which hearing all interested persons were afforded the opportunity to be heard; and

WHEREAS, at the July 12, 2006 Planning and Zoning Board meeting, the Board recommended approval of the proposed building site separation with conditions (vote: 4-1); and

WHEREAS, pursuant to Section 12-5 of the Zoning Code all proposed building site separation applications are subject to a public hearing for City Commission review and approval via Resolution; and

WHEREAS, after notice of public hearing was duly published, a public hearing was held before the City Commission on August 22, 2006, at which hearing this item was presented and all interested persons were afforded the opportunity to be heard; and

WHEREAS, the City Commission on August 22, 2006 denied the request for building site separation (vote: 3-2); and

WHEREAS, the City Commission on September 12, 2006 adopted Resolution No. R-2006-175 by which the Commission reconsidered the failed vote allowing for the rescheduling of a public hearing to reconsider the request; and

WHEREAS, the City Commission on January 23, 2007 reconsidered and approved the request for building site separation with conditions of approval (vote: 3-2);

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

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

SECTION 2. . The request for a building site separation of Lots 17-19 and 40-42, Block 127, Riviera Section 10 (5705 Riviera Drive), Coral Gables, Florida, as set forth in Application No. 06-06-442-P, requesting that Lots 17-19 would be a separate building site and Lots 40-42 would be a separate building site for single-family residences shall be approved subject to all of the following conditions:

- a. The property shall not be further separated, with the existing property divided into two building sites each with three (3) platted lots.
- b. Each building site shall be for one single-family residence.
- c. All existing encroachments shall be removed from the proposed building site (Lots 17-19) within one (1) year of the approval.
- d. The existing single-family shall be reconfigured to remove all non-conforming encroachments within one (1) year of the approval.
- e. The new residence constructed on Lots 17-19 shall meet all requirements of the new single-family Zoning Code regulations.
- f. As proffered by the applicant, no encroachments or variances shall be granted for the new residence constructed on Lots 17-19.
- g. Prior to the issuance of a building permit, all conditions of approval recommended by the City Commission shall be included within a Restrictive Covenant prepared by the applicant subject to final review and approval by the City Attorney.
- h. The Restrictive Covenant shall be proffered by the applicant to all adjoining property owners to join and become a party of the agreement.

SECTION 3. The applicant indicated on the record at the July 17, 2006 Planning and Zoning Board meeting agreement with all of the above conditions.

SECTION 4. That the applicant shall further be required to comply with all applicable zoning regulations and any changes to the application herein granted shall require a recommendation from the Planning and Zoning Board and approval by the City Commission.

SECTION 5. That this resolution shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS TWENTY-THIRD DAY OF JANUARY, A.D.,
2007.

(Moved: Anderson / Seconded: Withers)
(Yeas: Withers, Anderson, Cabrera)
(Nays: Kerdyk, Slesnick)
(Majority (3-2) Vote)
(Agenda Item E-6)

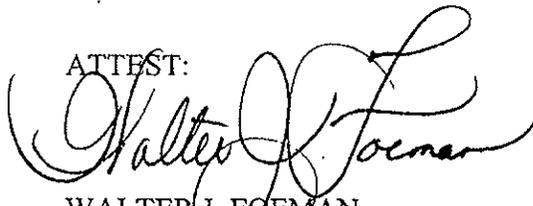
APPROVED:



DONALD D. SLESNICK II
MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ATTEST:



WALTER J. FOEMAN
CITY CLERK



ELIZABETH M. HERNANDEZ
CITY ATTORNEY

NOTE: Amended resolution (~~strike-thru~~ and underlining will be removed on codified version)

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2008-_____

RECONSIDERATION OF PREVIOUSLY APPROVED RESOLUTION NO. 2007-16 OF THE CITY COMMISSION OF CORAL GABLES WHICH GRANTED APPROVAL OF A SEPARATION OF A BUILDING SITE PURSUANT TO ZONING CODE SECTION 12-5, FOR LOTS 17-19 AND 40-42, BLOCK 127, RIVIERA SECTION PART 10 (5705 RIVIERA DRIVE), CORAL GABLES, FLORIDA; WHEREAS THE APPLICANT DESIRES TO AMEND THE CONDITION REQUIRING A RESTRICTIVE COVENANT FROM THE FOUR (4) ADJOINING PROPERTY OWNERS; AND THE APPROVAL AND ALL OTHER CONDITIONS OF APPROVAL CONTAINED IN RESOLUTION NO. 2007-16 SHALL REMAIN IN EFFECT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the request for a building site separation of Lots 17-19 and 40-42, Block 127, Riviera Section 10 (5707 Riviera Drive), Coral Gables, Florida, as set forth in Application No. 06-06-422-P, requesting that Lots 17-19 would be a separate building site and Lots 40-42 would be a separate building site for single-family residences; and

WHEREAS, after notice of a public hearing being duly published and a courtesy public notice was mailed to all property owners of record within a one thousand (1,000) foot radius from the said property, a public hearing was held before the Planning and Zoning Board on July 12, 2006, at which hearing all interested persons were afforded the opportunity to be heard; and

WHEREAS, at the July 12, 2006 Planning and Zoning Board meeting, the Board recommended approval of the proposed building site separation with conditions (vote: 4-1); and

WHEREAS, pursuant to Section 12-5 of the Zoning Code all proposed building site separation applications are subject to a public hearing for City Commission review and approval via Resolution; and

WHEREAS, after notice of public hearing was duly published, a public hearing was held before the City Commission on August 22, 2006, at which hearing this

item was presented and all interested persons were afforded the opportunity to be heard; and

WHEREAS, the City Commission on August 22, 2006 denied the request for building site separation (vote: 3-2) and

WHEREAS, the City Commission on September 12, 2006, adopted by Resolution No. R-2006-175 by which the Commission reconsidered the failed vote allowing for the rescheduling of a public hearing to reconsider the request; and

WHEREAS, the City Commission on January 23, 2007 reconsidered and approved the request for building site separation with conditions of approval (vote: 3-2); and

WHEREAS, one of the conditions for approval, that the Restrictive Covenant shall be proffered to all adjoining property owners and become a party of the agreement, was unattainable because one of the adjoining property owners would not become party to the agreement; and

WHEREAS, the applicant requested to amend the condition requiring all adjoining property owners to become a party of the Restricted Covenant; and

WHEREAS, the amended Restrictive Covenant binds the applicant for building site separation, successors heirs, assigns, and may be enforced by the four (4) adjoining property owners and the City of Coral Gables; and

WHEREAS, the Planning and Zoning Board on 04.09.08 reviewed and recommended _____ of the amendment to previously approved Resolution No. 2007-16 with all other previously required conditions of approval to remain in effect (vote: - -); and

WHEREAS, the City Commission on 05.13.08 reconsidered previously approved Resolution No. 2007-16 and _____ the amendment to the conditions of approval (vote: - -).

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

SECTION 1. The foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of the resolution upon adoption hereof.

SECTION 2. The request for a building site separation of Lots 17-19 and 40-42, Block 127, Riviera Section 10 (5705 Riviera Drive), Coral Gables, Florida, as set forth Application No. 06-06-442-P, requesting that Lots 17-19 would be a separate building site and Lots 40-42 would be a separate building site for single-family residences shall be approved subject to all of the following conditions:

- a. The property shall not be further separated, with the existing property divided into two building sites each with three (3) platted lots; and
- b. Each building site shall be for one single-family residence; and
- c. All existing encroachments shall be removed from the proposed building site (Lots 17-19) within one (1) year of the approval; and
- d. The existing single-family shall be reconfigured to remove all non-conforming encroachments within one (1) year of the approval; and
- e. The new residence constructed on Lots 17-19 shall meet all requirements of the new single-family Zoning Code regulations; and
- f. As proffered by the applicant, no encroachments or variances shall be granted for the new residence constructed on Lots 17-19; and
- g. Prior to the issuance of a building permit, all conditions of approval recommended by the City Commission shall be included within a Restrictive Covenant prepared by the applicant subject to final review and approval by the City Attorney; and
- ~~h. The Restrictive Covenant shall be proffered by the applicant to all adjoining property owners to join and become a party to the agreement; and~~
- h. The Restrictive Covenant shall be binding against the property that is located at, Lots 17-19 and Lots 40-42 Block 127 of Coral Gables Riviera Section 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County, and enforceable by the City of Coral Gables and the four (4) adjoining properties who's addresses are 5617 Riviera Drive, 5709 Riviera Drive, 5614 San Vicente Street and 5700 San Vicente Street, Coral Gables, Florida; and
- i. The Restrictive Covenant shall be binding upon the respective successors, heirs, executors, administrators, representatives and assigns of the Applicant / Owner, and upon all persons arguing an interest thereunder and shall constitute a covenant running with the land for a period of thirty (30) years from the date of the covenant is recorded after which it shall be extended automatically for successive periods of ten (10) years, unless modified or released by the City of Coral Gables.

SECTION 3. That the applicant shall further be required to comply with all applicable zoning regulations and any changes to the application herein granted shall require recommendation from the Planning and Zoning Board and approval by the City Commission.

SECTION 4. That this resolution shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D., 2008.

APPROVED:

DONALD D. SELESNICK II
MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ATTEST:

WALTER J. FOEMAN
CITY CLERK

ELIZABETH M. HERNANDEZ
CITY ATTORNEY

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Report revised on 05-12-05 to indicate additional conditions requested by Planning and Zoning Board at 05.11.06 meeting in underline format.

City of Coral Gables Planning Department Staff Report

To: Honorable Planning and Zoning Board Members

From: Planning Department

Date: May 11, 2005

Subject: **Application No. 03-05-331-P. Building Site Separation.** Submitted by H & S Investments, Inc. owner, requesting separation of a building site pursuant to Zoning Code Section 12-5 requesting that Lots 17-19 and 40-42, Block 127, Riviera Section Part 10 (5705 Riviera Drive), Coral Gables, Florida, shall be considered two separate building sites for single-family residences. One building site will consist of Lots 17-19 and the other building site to consist of Lots 40-42.

Recommendation

The Planning Department recommends denial of the applicant's request for a building site separation, pursuant to Section 12-5(a) of the Zoning Code. Staff's recommendation of denial is based on Staff findings of fact of the six criteria included in Section 12-5(b) of the Zoning Code. Staff has determined that the application satisfies only three (3) of six (6) criteria for review, and a minimum of four (4) criteria are required to be met to be considered a candidate for building site separation according to the Zoning Code.

Alternative Recommendation

If the Planning and Zoning Board and the City Commission determined on the basis of the facts of the application, testimony, and evidence received that the application is consistent with the requirements of the Zoning Code, and recommends approval of the building site separation request and release from the existing Declaration of Restrictive Covenant, Planning Staff recommends the following conditions of approval be included:

1. Remove all existing encroachments. The existing swimming pool located on Lots 17-19 shall be removed by the applicant within one (1) year of the date of the adopting resolution.
2. Reconfigure existing residence. Remove encroaching portion of one story CBS garage and reconfigure existing brick driveway located on Lots 40-42 to meet the Code's 5' minimum setback requirement within one (1) year of the date of the adopting resolution.
3. Restrictive Covenant. The applicant provide a Restrictive Covenant between the subject property owner and adjoining property owners that shall contain the following provisions: 1) the property shall not be further separated, with the existing property divided into two building sites each with three (3) platted lots; 2) each building site shall be for one single-family residence; 3) the residence constructed on San Vicente Street shall only be one

5705 Riviera Drive - Building Site Separation

May 11, 2005

Page 2

story in height; 4) that specific massing and design provisions are included that address size/scale of residence and provision of open space (in lieu of adoption of draft Zoning Code provisions). Review and approval of proposed Restrictive Covenant shall be required by the City Attorney and Planning Director. Execution of the approved Restrictive Covenant shall be required within thirty (30) days of the date of the adopting resolution.

The above conditions 1 and 2 will remove all existing encroachments on to the proposed building site, and will bring the existing structure into compliance with Zoning Code requirements on the remaining building site.

Request

The applicant is requesting consideration of a building site separation in accordance with Section 12-5(a) of the Zoning Code. This request is to allow the property at 5705 Riviera Drive (Lots 17-19 and 40-42, Block 127, Riviera Section Part 10) to be separated into two building sites. Currently, the existing single family residence is located on Lots 40-42. A swimming pool and portion of the residence's one story garage is located on Lots 17-19. An asphalt driveway (shown on the applicant's survey) which previously encroached onto Lots 17-19 and screen enclosure over the swimming pool have been removed from the property. Each lot has a 50' frontage with Lots 17-19 having a depth of 100' and Lots 40-41 having a depth of 120' each. The size of the entire site is 33,000 square feet in size (approximately 0.76 acres).

The applicant is seeking to designate Lots 17-19 as a separate building site. Each building site would consist of three (3) platted lots. Building site separations are adopted by Resolution by the City Commission. The applicant has submitted an application package (binder) that is included with this Staff Report as Attachment A.

Background

The existing residence was constructed in 1950 and is a one story 3,797 adjusted square foot residence with 4 bedrooms and 3 bathrooms. The Historic Resources Department has reviewed the existing residence located on the property, and determined that it does not have historic significance. In 1959 a Declaration of Restrictive Covenant was recorded for the purpose of constructing a screened enclosure over the existing swimming pool on that binds the entire property together as one building site. The screen enclosure has since been removed. The applicant is requesting a release from that Restrictive Covenant with this request. A copy of the Restrictive Covenant and the applicant's statement of use regarding the subject property are provided by the applicant in the application packet (see Attachment A).

This property has a "thru-block" configuration (with facings onto two different streets) and has a "Residential Use (Single-Family) Low Density" land use designation and two different zoning designations. Lots 17-19, which faces onto San Vicente Street, are zoned "R-7", Residential Single-Family, and Lots 40-42, which faces onto Riviera Drive, are zoned "R-9", Residential Single-Family.

Surrounding Uses

Location	Existing Land Uses	CLUP Designations	Zoning Designations
North	Single-family residential	"Residential Use (Single-Family) Low Density"	"R-9" and "R-7", Residential
South	Single-family residential	"Residential Use (Single-Family) Low Density"	"R-9" and "R-7", Residential
East	Single-family residential	"Residential Use (Single-Family) Low Density"	"R-7", Residential
West	Single-family residential	"Residential Use (Single-Family) Low Density"	"R-16", Residential

The residences surrounding the property are shown in the applicant's photographs of neighboring properties (see Attachment A).

Discussion

The property is in an established residential neighborhood consisting of one and two story residences. Larger homes are typically located along Riviera Drive with smaller houses located in the residential neighborhood to the east, behind Riviera Drive. This property and all other residences along Riviera Drive are zoned "R-14", Residential, Single-Family. A field survey by Staff found that there are no other building sites with the same size, thru-block configuration and multiple zoning designations which are included within the applicant's building site frontage analysis.

Permitted Development

Currently, this 33,000 square foot property has been determined to be a single building site for one single-family residence. The Zoning Code permits a residence with a maximum 11,058 square foot size to be constructed on this property. This is based on the current Zoning Code provisions allowing 48% for the first 5,000 square feet of the property, 35% for the second 5,000 square feet and 30% for all remaining property over 10,000 square feet.

Zoning Code Requirements

This building site separation request according to the recently adopted provision contained in Ordinance No. 2003-11 (adopted 04.08.03). That ordinance amended the Zoning Code provisions and provides more specific criteria for determining if properties are candidates for building site separation. The provisions are as follows:

"Sec. 12-5. Separation or establishment of building sites.

- (a) Review process. Any change from the foregoing provisions for the purpose of separating or establishing a building site shall require the following:*
 - 1. Submittal of an application to the Planning Department for review and recommendation.*
 - 2. Planning and Zoning Board review and recommendation in a public hearing.*
 - 3. Review and approval in resolution form duly passed and adopted by the City Commission in a public hearing.*
- (b) Application review criteria. When reviewing and providing a recommendation on an application, the Planning Department, Planning and Zoning Board and the City Commission shall consider and evaluate the request and provide findings that the application satisfies at least four (4) of the six (6) criteria:*

5705 Riviera Drive - Building Site Separation

May 11, 2005

Page 4

1. *That exceptional or unusual circumstances exist, that are site specific such as unusual site configuration or partially platted Lots, or are code specific such as properties having two or more zoning and/or land use designations, multiple facings or thru-block sites) which would warrant the separation or establishment of a building site(s).*
 2. *That the building site(s) created would be equal to or larger than the majority of the existing building site frontages of the same zoning designation within a minimum of 1000-foot radius of the perimeter of the subject property or extending no farther than the immediate vicinity, whichever is less. "Immediate vicinity" shall be defined as an area in which a parcel of land is located, that is physically, functionally or geographically identifiable as a distinct realm, place or neighborhood, or an area within a radius of not more than one-half (½) mile from the subject property, whichever is smaller.*
 3. *That the building site(s) separated or established would not result in any existing structures becoming non-conforming as it relates to setbacks, Lot area, Lot width and depth, ground coverage and other applicable provisions of the Zoning Code, Comprehensive Land Use Plan and City Code.*
 4. *That no restrictive covenants, encroachments, easements, or the like exist which would prevent the separation of the site.*
 5. *That the proposed building site(s) maintains and preserves open space, promotes neighborhood compatibility, preserves historic character, maintains property values and enhances visual attractiveness of the area and approval of the request is in the best interest of the public.*
 6. *That the building site(s) created was purchased as a separate building(s) by the current owner prior to September 17, 1977.*
- (c) *Conditions of approval (if applicable). If an application is recommended for approval, the Planning Department, Planning and Zoning Board, and City Commission may prescribe conditions, restrictions or safeguards deemed necessary, to satisfy the provisions within this Article."*

Review of Zoning Code Criteria

Staff has reviewed each of the above six criteria and notes the following:

1. *"That exceptional or unusual circumstances exist, that are site specific such as unusual site configuration or partially platted Lots, or are code specific such as properties having two or more zoning and/or land use designations, multiple facings or thru-block sites) which would warrant the separation or establishment of a building site(s)."*

Staff Comment:

1. Property has two different zoning designations, with "R-9" zoning on platted lots which face onto Riviera Drive, and "R-7" zoning on platted lots which face onto San Vicente Street.
2. Property has a thru-block configuration, with two facings. One onto Riviera Drive and one onto San Vicente Street.

This proposal satisfies this criteria.

2. *"That the building site(s) created would be equal to or larger than the majority of the existing building site frontages of the same zoning designation within a minimum of 1000-foot radius of the perimeter of the subject property or extending no farther than the immediate vicinity, whichever is less. "Immediate vicinity" shall be defined as an area in which a parcel of land is located, that is physically, functionally or geographically identifiable as a distinct realm, place or neighborhood, or*

5705 Riviera Drive - Building Site Separation

May 11, 2005

Page 5

an area within a radius of not more than one-half (1/2) mile from the subject property, whichever is smaller.”

A building site frontage analysis prepared by the applicant comparing the request with the surrounding neighborhood is presented on a map in the application package, (see Attachment A) the results from the analysis are as follows:

Applicant’s Building Site Frontage Analysis:

Existing building site fronting Riviera Drive				
Frontage	0 to 149'	150'	151+	Total
No. of Sites	22	1	0	23
Percentage	96%	4%	0%	100%

Proposed building site fronting San Vicente Street				
Frontage	0 to 149"	150'	151+	Total
No. of Sites	127	7	0	134
Percentage	95%	5%	0%	100%

Staff Comment: Staff has reviewed the applicant’s building site frontage analysis and agrees with its findings. The frontage of the proposed building site and building site with existing residence would be equal to or larger than all (100%) of the surrounding building site frontages.

This proposal satisfies this criteria.

3. *“That the building site(s) separated or established would not result in any existing structures becoming non-conforming as it relates to setbacks, Lot area, Lot width and depth, ground coverage and other applicable provisions of the Zoning Code, Comprehensive Land Use Plan and City Code.”*

Staff Comment: The existing residence remaining on Lot 40-42 encroaches onto the proposed building site. The portion of the one story garage which encroaches onto the second building site and into the required rear setback would have to be removed to meet Code requirements.

This proposal does not satisfy this criteria.

4. *“That no restrictive covenants, encroachments, easements, or the like exist which would prevent the separation of the site.”*

Staff Comment: A Restrictive Covenant and encroachments exist which consist of a swimming pool, asphalt driveway (removed) and the existing residence’s garage. All encroachments would be required to be removed as a condition of approval.

This proposal does not satisfy this criteria.

5. *“That the proposed building site(s) maintains and preserves open space, promotes neighborhood compatibility, preserves historic character, maintains property values and enhances visual attractiveness of the area and approval of the request is in the best interest of the public.”*

5705 Riviera Drive - Building Site Separation

May 11, 2005

Page 6

Staff Comments: This proposal would: 1) retain the existing residence; 2) have the largest building site frontage along Riviera Drive and San Vicente Street in the area of the frontage analysis; and, 3) has a thru block configuration and has two separate zoning designations. This proposal is consistent with the development pattern of the surrounding residential neighborhood.

This proposal satisfies this criteria.

6. "That the building site(s) created was purchased as a separate building(s) by the current owner prior to September 17, 1977."

Staff Comment: The current owner purchased the property in 2002.

This proposal does not satisfy this criteria.

Staff's evaluation of the proposal determined that this application satisfies only three (3) of the six (6) criteria contained in the Zoning Code. The Code requires that a minimum four (4) criteria be satisfied to be considered for building site separation, therefore, Staff recommends denial of the request.

Zoning Code Amendment

If approved, Zoning Code Article 4, Site Specific Regulations, Section 4-85, "Riviera Section Part 10" shall be considered as amended to indicate Lots 17-19 and 40-42 are separate building sites, as follows: (Underlining denotes additions)

Sec. 4-85. Riviera Section Part 10

(b) Building Sites

1. Lots 17-19 and 40-42, Block 1 shall be considered two (2) building sites as follows:
 - a. One building site consisting of Lots 17-19.
 - b. One building site consisting of Lots 40-42.

City Staff Comments

This proposal was distributed to City Departments including Historical Resources, Public Works and Building and Zoning with a request for review and comments and no objections were received.

Findings of Fact

Based upon Staff's review and evaluation, Staff recommends denial and presents the below listed findings of fact. This application satisfies only three (3) of the six (6) criteria established in the Zoning Code required for properties qualifying as candidates for building site separation. A minimum of four (4) criteria must be satisfied for a recommendation of approval. The criteria satisfied by this proposal are as follows:

1. "That exceptional or unusual circumstances exist, that are site specific such as unusual site configuration or partially platted Lots, or are code specific such as properties having two or more zoning and/or land use designations, multiple facings or thru-block sites) which would warrant the separation or establishment of a building site(s).

5705 Riviera Drive - Building Site Separation

May 11, 2005

Page 7

2. *That the building site(s) created would be equal to or larger than the majority of the existing building site frontages of the same zoning designation within a minimum of 1000-foot radius of the perimeter of the subject property or extending no farther than the immediate vicinity, whichever is less. "Immediate vicinity" shall be defined as an area in which a parcel of land is located, that is physically, functionally or geographically identifiable as a distinct realm, place or neighborhood, or an area within a radius of not more than one-half (1/2) mile from the subject property, whichever is smaller.*
3. *That the proposed building site(s) maintains and preserves open space, promotes neighborhood compatibility, preserves historic character, maintains property values and enhances visual attractiveness of the area and approval of the request is in the best interest of the public."*

There are no objections from other City Departments regarding this proposed building site separation.

Timeline

This application is tentatively scheduled for City Commission review and consideration as follows:

Tuesday, June 14, 2005 at 9:00 a.m.
(Adopted via Resolution.)

Date and time is subject to change.

Public Notification/Comments

Staff mailed out notifications to all property owners within 1000 feet of the subject property to advise them of the request and provide an opportunity to comment on the application. The listing of property owners who returned the notification/comment form, including the date received, property owners name, address, object/no objection/no comment and verbatim comments are attached as Attachment B. The property has also been posted to advise of the Planning and Zoning Board and City Commission meeting dates. A copy of the published newspaper notification of this public hearing item is included as Attachment C.

Respectfully submitted,

Eric Riel, Jr.
Planning Director
City of Coral Gables

Attachments:

- A. Application package.
- B. Synopsis of comments received from property owners within 1,000 feet.
- C. Published newspaper notification (advertisement).

City of Coral Gables Planning Department Staff Report

To: Honorable Planning and Zoning Board Members

From: Planning Department

Date: July 12, 2006

Subject: **Application No. 06-06-442-P. Building Site Separation.** Separation of a building site pursuant to Zoning Code Section 12-5, requesting that Lots 17-19 and 40-42, Block 127, Riviera Section Part 10 (5705 Riviera Drive), Coral Gables, Florida, shall be considered two separate building sites for single-family residences. One building site will consist of Lots 17-19 and the other building site to consist of Lots 40-42.

Recommendation

The Planning Department recommends denial of the applicant's request for a building site separation, pursuant to Section 12-5(a) of the Zoning Code. Staff's recommendation of denial remains the same as provided in the 05.11.05 Staff report. That recommendation of denial is based on Staff findings of fact that the application satisfies only three (3) of six (6) criteria for review, and a minimum of four (4) criteria are required to be met to be considered a candidate for building site separation according to the Zoning Code.

At the 05.11.05 meeting, the Board requested additional conditions, and required that the applicant return to the Board once the conditions had been satisfactorily addressed. The conditions recommended by the Board, with the additional conditions not included in Staff's original alternative recommendation shown in underline format, are as follows:

1. Remove all existing encroachments. The existing swimming pool located on Lots 17-19 shall be removed by the applicant within one (1) year of the date of the adopting resolution.
2. Reconfigure existing residence. Remove encroaching portion of one story CBS garage and reconfigure existing brick driveway located on Lots 40-42 to meet the Code's 5' 10' minimum setback requirement within one (1) year of the date of the adopting resolution.
3. Restrictive Covenant. The applicant provide a Restrictive Covenant between the subject property owner and adjoining property owners that shall contain the following provisions: 1) the property shall not be further separated, with the existing property divided into two building sites each with three (3) platted lots; 2) each building site shall be for one single-family residence; 3) the residence constructed on San Vicente Street shall only be one story in height; 4) that specific massing and design provisions are included that address size/scale of residence and provision of open space (in lieu of adoption of draft Zoning Code provisions). Review and approval of proposed Restrictive Covenant shall be required by the City Attorney and Planning Director. Execution of the approved Restrictive Covenant shall be required within thirty (30) days of the date of the adopting resolution.

5705 Riviera Drive - Building Site Separation

July 12, 2006

Page 2

The above conditions 1 and 2 will remove all existing encroachments on to the proposed building site, and will bring the existing non-conforming structure into compliance with Zoning Code requirements on the remaining building site. The new single family regulations now require a minimum 10' rear setback (5' previously required), so condition 2 has been revised to reflect this new requirement.

Background

Since the 05.11.05 meeting, the property has been sold and the new property owner is submitting this revised application. The revised application includes the draft Restrictive Covenant requested by the Board and plans for the second residence proposed to be constructed on the created building site. The revised application package dated 06.29.06 is included with this Staff Report as Attachment A. A copy of Staff's revised 05.11.05 report indicating additional conditions of approval requested when this request was considered by the Board is provided as Attachment B. The minutes of the Board's 05.11.05 meeting are included as Attachment C.

Staff has included for the Board's review and reference a copy of a memorandum prepared by the City Attorney for the City Commission outlining the history and intent of the City's Building Site Separation Ordinance. Staff has also included a copy of Ordinance No. O-2003-11 adopted on April 8, 2003, which includes the most recent amendments to the building site separation provisions and contains a description of the purpose of those amendments within the Ordinance's "whereas" clauses. A copy of that memo and related ordinances are provided as Attachment D.

Revised Application

Staff has compared the revised application with the additional conditions recommended by the Planning and Zoning Board as stated in condition 3, with the following findings:

- 1) No future separation of property. The Board requested that there be no further separation of this property if approval of this request is granted. The draft Restrictive Covenant submitted by the applicant addresses this issue (see Attachment A).
- 2) Single family residences only. The Board requested that only single family residences be constructed on this site if this request is granted. The draft Restrictive Covenant submitted by the applicant addresses this issue (see Attachment A).
- 3) Maximum one story height. The Board requested that the height of the new residence constructed on the proposed building site facing onto San Vicente Street be a maximum of one (1) story. The plans submitted by the applicant propose the construction of a one (1) and two (2) story residential structure (see Attachment A).
- 4) Specific massing and design provisions. The Board requested the applicant provide specific massing and design provisions addressing the size, scale and open space for the new residence in lieu of the adoption of new single family regulations. The applicant has chosen not to submit those requested provisions, but has submitted conceptual plans for the new residence instead.

Timeline

This application is tentatively scheduled for City Commission review and consideration as follows:

5705 Riviera Drive - Building Site Separation

July 12, 2006

Page 3

Tuesday, August 22, 2006 at 9:00 a.m.
(Adopted via Resolution.)

Date and time is subject to change.

Public Notification/Comments

Staff renotified all property owners within 1000 feet of the subject property to advise them of the request and provide an opportunity to comment on the application. The listing of property owners who returned the notification/comment form, including the date received, property owners name, address, object/no objection/no comment and verbatim comments are attached as Attachment E. The property has also been posted to advise of the Planning and Zoning Board meeting date. A copy of the published newspaper notification of this public hearing item is included as Attachment F.

Respectfully submitted,

Eric Riel, Jr.
Planning Director
City of Coral Gables

Attachments:

- A. Revised application package dated 06.29.06.
- B. Revised 05.11.06 Staff report.
- C. 05.11.05 Planning and Zoning Board meeting minutes.
- D. 10.25.95 City Attorney's memorandum and related ordinances.
- E. Synopsis of comments received from property owners within 1,000 feet.
- F. Published newspaper notification (advertisement).

57

1 MS. KEON: By September?

2 MS. MORENO: Yeah, City-wide.

3 CHAIRMAN KORGE: City wide, using criteria

4 like this.

5 MR. BEHAR: Yes.

6 CHAIRMAN KORGE: Our next item on the

7 agenda is Application Number 06-06-44-P, Building

8 Site Separation. Separation of a building site,

9 pursuant to Zoning Code Section 12-5, requesting that

10 Lots 17 through 19 and 40 through 42 of Block 127,

11 Riviera Section Part 10, located at 5705 Riviera

12 Drive, be separated into two building sites,

13 consisting of Lots 17 through 19 and Lots 40 through

14 42.

15 MR. CARLSON: Before I begin, I'd like to

16 indicate to you that there were some comments that

17 were submitted for this application, and they were

18 included in your package. We have some recent

19 comments which -- for this application, also, some of

20 the old comments which were submitted for this

21 application when it was last submitted.

22 Also in your package, at the request of the

23 Board last month, we have put some background

24 information on building site separations. A previous

25 memo which was prepared by the City Attorney has come

58

1 before the Commission in the past, and also past

2 legislation, including the most recent legislation

3 regarding this, which was Ordinance Number 2003-11,

4 in which Staff has highlighted the intent of that

5 last legislation, which was to provide greater notice

6 and public participation, to establish new written

7 administrative review criteria for the Building &

8 Zoning Department, and to clarify for the Planning &

9 Zoning Board the process and application review

10 criteria for the separation or establishment of

11 building sites.

12 That background information was included for

13 you in your package, and since that time, another

14 memorandum has been prepared by the City Attorney's

15 Office, which we e-mailed to you this afternoon, and

16 I would like to provide to you a hard copy up here

17 for your review during the discussion.

18 The application which is before you this

19 evening is a request for a building site separation

20 for a property which is located on Riviera Drive.

21 This is the same request that was presented at a

22 Planning & Zoning Board in May of 2005, but has not

23 proceeded forward since that time.

24 The property has since been sold, and the

25 applicant -- and the application resubmitted by the

59

1 new property owner. The application remains the same

2 as originally proposed, and Staff's recommendation of

3 denial remains the same, as well.

4 The facts of this application are documented

5 in the Staff Report, which is included in your

6 package and dated May 11th. This application

7 satisfies only three of the six criteria which are

8 outlined in the Zoning Code for building site

9 separation, and a minimum of four criteria are

10 required.

11 At the May 11th meeting, the Board required

12 the applicant to address some specific issues and

13 return to the Board once they had been addressed:

14 Those issues included the removal of all existing

15 encroachments on the proposed building site, the

16 reconfiguration of the existing residence to conform

17 to Code requirements, and submit a draft of

18 restrictive covenant which would allow only -- would

19 allow no further separation of the property, allow

20 the construction of only single-family residences on

21 the property, limit the height of the new residence

22 to one story, and provide specific massing and design

23 provisions for the new residence.

24 A draft restrictive covenant has been

25 submitted by the applicant and is included in your

60

1 package, and that draft addresses those concerns,

2 except that the proposed new residence is a two-story

3 structure, and the applicant has submitted conceptual

4 plans for the new residence, instead of massing and

5 design provisions.

6 Also, the existing residence would only have

7 a five-foot setback, rear setback, and the new Zoning

8 Code provisions for single-family residences would

9 require a 10-foot setback, the rear setback.

10 The applicant is here today with the

11 proposed drawings for the new residence and is

12 prepared to present them to you.

13 MR. GUILFORD: Good evening, Mr. Chairman,

14 Members of the Board. For the record, again, Zeke

15 Guilford, with offices at 400 University Drive. I

16 have the great pleasure of representing Guillermo and

17 Connie Huergo, the owners of property at 5705 Riviera

18 Drive.

19 This matter was before you a little bit over

20 a year ago. It was heard in May 2005. This matter

21 was deferred, pending a site plan and, obviously, the

22 things that Walter just discussed.

23 What I'd like to do is kind of -- some of

24 the Board Members are new, so I'd like to walk

25 through a little bit of this application with you.

JOAN L. BAILEY & ASSOCIATES

1 What we have is San Vicente on this side.
 2 Riviera Drive down here. The house sits on these
 3 three lots. The principal structure sits on these
 4 three lots. We have a swimming pool here. It is
 5 tied together as one building site.
 6 The picture is the front of the house, the
 7 rear, and these are the two properties that abut the
 8 rear of the -- the rear portion of the property, the
 9 San Vicente side.
 10 When we did the analysis of the property, we
 11 did over 23 properties along Riviera Drive, and what
 12 we found, that there was only one residence that was
 13 equal to the size of the building site that is being
 14 proposed. On the rear section, we did 10 blocks, and
 15 of those, there were 134 building sites. Seven of
 16 them were equal to the site that we are proposing.
 17 There were zero that were larger. So, basically,
 18 what happens is, the site we are proposing is 95
 19 percent larger than the houses in the area.
 20 Now, what we did, and based upon the
 21 comments from, actually, you Board Members, a year
 22 ago, we prepared a site plan and an elevation, and we
 23 also had an opportunity to go and talk to the
 24 neighbors. What we actually came up with is a one
 25 and two-story structure. We have a 15-foot setback

1 here. This section here remains one story. So we
 2 have approximately 37 feet, almost 40 feet, of a
 3 one-story structure, almost a lot size, where the
 4 house is one story. On this side, we have
 5 approximately 20 feet, again, where it is one sto
 6 in height, and it pops up in the middle.
 7 In addition, we also broke up the massing.
 8 This section here, which is two stories,
 9 approximately 40 feet back on the site, 20 feet, and
 10 then we get to approximately 30, 35 feet. So we
 11 basically broke up the massing, front and back, and
 12 also tiered the house, so it's one story and then
 13 builds up to two.
 14 You can see this in the elevation. We've
 15 got the setback, the one story. We go up to two.
 16 This section is pushed back, this comes out, and then
 17 this section is pushed back again.
 18 What we did is, between last year and this
 19 year, we went and spoke to the neighbors. One of the
 20 conditions that was of concern -- oh, I'm sorry.
 21 MR. CARLSON: That's all right.
 22 MR. GUILFORD: One of the conditions was of
 23 concern of one of the neighbors -- actually, let me
 24 just take this -- the neighbor right here. His name
 25 is Dean -- Constantine Nickas, and he requested

1 originally that the house be one story in the rear.
 2 We went and we met with Dean. Dean has no objections
 3 to this application. As a matter of fact, I've been
 4 working with him on the restrictive covenant. He
 5 asked for a couple additional matters, and I'd just
 6 like to read those matters, which are acceptable to
 7 us, and then I'll give it to Staff.
 8 One of the issues that he had was, he did
 9 not want any tree over 10 feet in height within 15
 10 feet of the property line. Obviously, what he didn't
 11 want is a large oak with the limbs hanging over onto
 12 his property. We have no objections to that.
 13 He also wanted to have a specific reference
 14 to a height restriction that is contained on the
 15 plans. That's 29 feet. That is consistent with the
 16 interim Building Code and the new Building Code.
 17 I also put in there that if he ever wanted
 18 to change the plans, which obviously he would have to
 19 come through this Board, but we have a separate
 20 restrictive covenant with the neighbors. What I put
 21 in is that we needed 75 percent of those neighbors to
 22 sign off, actually three out of the four. He said
 23 four out of the four. You know, I did 75 percent
 24 because there's always somebody who doesn't want to
 25 get involved. He wants four out of four. That's

1 fine. We can change 75 percent to 100 percent.
 2 I think there's a paragraph in there that
 3 talks about, "This instrument may be recorded." He
 4 wants that, "It shall be recorded." Again, there is
 5 no objections to that.
 6 I believe we've met the concerns that this
 7 Board has discussed. As a matter of fact, what's
 8 kind of interesting, and Walter kind of touched on
 9 it, is that there was a question from Ms. Keon, at
 10 the last meeting. She said, "Well, are these an
 11 owner or a developer of these properties?" And at
 12 the time, it was a developer who was renting out this
 13 site on Riviera and was going to develop the back.
 14 Well, I'm proud to tell you, the Huergos are
 15 the owners of the property. They intend to live on
 16 that piece of property. They will sell off the back
 17 portion. So they are clearly affected and concerned
 18 about what is going to be built behind their house.
 19 So, in fact, we have the two neighbors to the rear
 20 and Mrs. Huergo, who are the most directly affected
 21 neighbors, in favor of this application.
 22 Again, I can go back and reiterate that my
 23 standing objection -- which is kind of pertaining to
 24 the City Attorney's memorandum, which is, I believe
 25 we meet four of the criteria out of the six. Again,

JOAN L. BAILEY & ASSOCIATES

1 we go back to the same thing. We have two criteria,
2 Criteria 3 and Criteria 4. The plain language of
3 Criteria 3 says, once separated, do these violate the
4 setback requirements, the land -- the open space, the
5 lot coverage, et cetera. I'm holding firm, it does
6 not. What 3 talks about is, does it encroach.

7 I've read the City Attorney's memorandum. I
8 do not disagree with her memorandum as written, which
9 is that once you have a situation like this, it is
10 one building site. I agree with you, it is one
11 building site. If I did not believe it was one
12 building site, I would have appealed the decision of
13 the Building & Zoning Department, their letter saying
14 it is one building site.

15 I don't believe her memorandum discusses
16 Section 3 and Section 4, as they relate to each
17 other, or the background or intent of those
18 provisions when they were enacted.

19 Mr. Chairman, Members of the Board, if you
20 have any questions, I'm more than happy to answer
21 them at this time, and I'd like to reserve a few
22 minutes for rebuttal, if necessary.

23 CHAIRMAN KORGE: Sure.

24 Any questions? Anybody?

25 MS. KEON: I have one question. The house

1 that's existing will remain; is that what you're
2 saying?

3 MR. GUILFORD: Correct.

4 MS. KEON: That house will remain as it is?

5 MR. GUILFORD: As -- yes, the owners are
6 living there now. They intend to live there.

7 There's one -- do you want to get that board, Pedro?

8 What they would do is, the garage, which is
9 encroaching over here, would be removed. We'd have a
10 10-foot setback, and the pool would be turned,
11 essentially, sideways, to fit, and we'd meet the
12 setback requirements.

13 MS. KEON: Well, would they be the new
14 Zoning Code setbacks --

15 MR. GUILFORD: No, actually --

16 MS. KEON: -- or the existing Zoning Code
17 setbacks?

18 MR. GUILFORD: This section, which is
19 existing, will meet the existing Code, right now.

20 MS. KEON: The five feet?

21 MR. GUILFORD: The five feet. We've got
22 five feet seven.

23 MS. KEON: Okay. It's not 10 feet, though?

24 MR. GUILFORD: It is not 10 feet --

25 MS. KEON: Not within the proposed?

1 MR. GUILFORD: -- but that's not what the
2 Code is today.

3 MS. KEON: Okay.

4 MR. GUILFORD: The new portion, we have no
5 problems making that to 10 feet. So we have a small
6 portion here that will remain five feet.

7 MR. RIEL: Zeke, maybe if you put the other
8 plan, so that will be on the back parcel --

9 MR. GUILFORD: Which?

10 MR. RIEL: The proposed plan.

11 So that's basically what would be going in
12 in the back, correct? Okay.

13 MR. GUILFORD: This is going to fall, I
14 know.

15 MS. KEON: And the proposed plan is under
16 the new Building Code?

17 MR. GUILFORD: Meets under the new Building
18 Code, yes.

19 MS. KEON: It's a 10-foot setback from the
20 property line?

21 MR. GUILFORD: Yes, absolutely.

22 CHAIRMAN KORGE: So the old portion, if the
23 new Building Code -- the new Zoning Code change is
24 adopted, would then be legally nonconforming?

25 MR. GUILFORD: Correct. Absolutely.

1 CHAIRMAN KORGE: Okay.

2 MR. BEHAR: And the size of these proposed
3 lots are comparable to the --

4 MR. GUILFORD: Well, it's larger. Even
5 separated, we are as -- we're still the largest lot,
6 separated. We have a 150-foot frontage. A majority
7 of the houses along Riviera are 100-foot frontage.
8 So we're over 50 percent greater on Riviera. Again,
9 it's a mix. There's a lot of 50s, 75s --

10 CHAIRMAN KORGE: Why don't you show the
11 building site analysis? I think it's clearer, to
12 understand, than that.

13 MS. KEON: Yeah.

14 MR. GUILFORD: You actually, in your
15 package, have a breakdown of the sites and the area
16 that was actually looked at. So that's actually in
17 your package. So you can actually see what's 75,
18 what's 100, et cetera.

19 CHAIRMAN KORGE: What you're telling us is
20 that the existing lot, the six lots combined, the
21 existing site, is double the size of the largest lots
22 fronting Riviera and the largest lots fronting San
23 Vicente?

24 MR. GUILFORD: Oh, yes.

25 MS. KEON: What's that double? You said --

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69

1 MR. GUILFORD: I guess double -- the six
 2 lots together, the size-wise, it is double -- it is
 3 double any of the other lots, the six lots together,
 4 area-wise. You're not looking at frontage anymore.
 5 MS. KEON: Oh, right. Right, but --
 6 MR. GUILFORD: Frontage-wise --
 7 MS. KEON: Frontage wise --
 8 MR. GUILFORD: Frontage-wise, about 50
 9 percent greater than the lots -- at a minimum, 50
 10 percent greater than the lots on Riviera, and more
 11 than 50 percent based upon the lots -- I lived a half
 12 a block away from this site.
 13 MS. KEON: Right.
 14 MR. GUILFORD: I drove by it every day. As
 15 a matter of fact, I wish I'd bought this site.
 16 MS. KEON: Right.
 17 MR. GUILFORD: But the fact of the matter
 18 is, there's a lot -- it's a mixed neighborhood, a lot
 19 of 50s, a lot of 75s, some 100s.
 20 MS. KEON: A lot of 100s.
 21 MR. GUILFORD: And it's just a mix.
 22 MS. KEON: Right. Right.
 23 CHAIRMAN KORGE: Any other questions?
 24 Does anybody wants to speak from the
 25 audience?

71

1 now gone into the domino effect of tearing down the
 2 old ones and building McMonster houses, and that's
 3 compatible with the Riviera Drive area on the west
 4 side.
 5 On the Vicentian area, most all those houses
 6 are single-story, and they built some two-story
 7 houses on smaller lots.
 8 I'm directly opposed to giving this
 9 variance, because the buyer bought the lots and the
 10 house with full knowledge, one, that there was a
 11 covenant, and the covenant is something given for
 12 something received. They've already had the
 13 variances when they built the pool and whatever.
 14 We're going to give them another covenant now, and in
 15 eight or 10 more years, when things change in the
 16 City of Coral Gables, they're going to come right
 17 back to you and ask you to void that covenant, to let
 18 them do something else.
 19 If we had had the Building & Zoning Code
 20 changed -- which they talked about five years ago
 21 doing, and right now they're doing it, finally -- we
 22 would not have all this McMonster houses in areas
 23 that are not compatible. I don't believe that when
 24 they change that zoning, that that house is going to
 25 be compatible with the rest of the neighborhood,

70

1 Yes, sir.
 2 MR. RIEL: Mr. Chair, you're going to need
 3 to swear everybody in.
 4 MS. KEON: You need to swear them in, Tom.
 5 Tom --
 6 CHAIRMAN KORGE: Yeah?
 7 MR. RIEL: He needs swearing in.
 8 MS. KEON: You need to swear him in.
 9 CHAIRMAN KORGE: Oh, we need to swear you
 10 in. State your name and address for the record,
 11 please.
 12 (Thereupon, James Hartnett was duly sworn by
 13 the court reporter.)
 14 MR. HARTNETT: Will you repeat that again,
 15 please, a little bit slower? I do, yes. Right.
 16 My name is Jim Hartnett, born and raised in
 17 the City of Coral Gables. I live at 510 Marmore
 18 Avenue. I've lived there for 42 years. The house
 19 has only had two owners, the one that built it and
 20 myself.
 21 I travel this area, where we're talking
 22 about right now. In May, you rejected or deferred
 23 this, based on Staff recommending against it.
 24 On the Riviera Drive, that faces the canal,
 25 those houses that used to be mostly single-story have

72

1 which are mostly single-stories.
 2 They have, in certain streets, already
 3 allowed the monster house, in certain areas, short of
 4 Hardee and down some of the side streets, and they
 5 are, in most cases, out of place and out of
 6 compatibility with the houses that exist there prior
 7 to the change.
 8 They knew what they were buying. If the
 9 lots are good enough, they can sell them off and let
 10 them build within restrictions, without a covenant,
 11 without any variances, and let's just hold to what
 12 they already agreed to when they bought the house.
 13 MR. BEHAR: Let me ask you a question or --
 14 We're doing this as a lot separation. We're not
 15 approving anything on the proposed residential
 16 project, right?
 17 MR. GUILFORD: Right.
 18 MR. RIEL: Correct.
 19 MR. GUILFORD: What I'm willing to do, and
 20 what I'm asking to do, because it was really the
 21 issue that came up before, I do not want you to
 22 approve a style of this house. I want you to approve
 23 a site plan and a massing. I mean, you have the
 24 right to reject or not reject it.
 25 MR. BEHAR: But maybe I'm a little bit

JOAN L. BAILEY & ASSOCIATES

73

1 confused. Are we doing a lot separation?
 2 MR. GUILFORD: You are doing a lot
 3 separation ordinance.
 4 MR. RIEL: You're doing a lot separation.
 5 You're not approving a site plan. The site plan is
 6 only provided for illustration purposes.
 7 MR. COE: That's informational.
 8 MR. GUILFORD: But what I'm saying is --
 9 MR. COE: The legal issue is the lot split,
 10 and nothing else.
 11 MR. RIEL: Correct.
 12 MR. COE: That's the only thing before this
 13 Board tonight.
 14 MR. GUILFORD: That's the only thing before
 15 you, is the lot separation.
 16 MR. COE: Correct.
 17 MR. GUILFORD: If you want to condition it
 18 upon that, that is yours, but what the application
 19 before you is, is a building site separation.
 20 MR. BEHAR: For any particular style of
 21 house, they have to go through the whole process of
 22 the Board of Architects, to make sure it's
 23 compatible --
 24 MR. RIEL: Absolutely. Absolutely.
 25 MR. BEHAR: And we're not going there.

75

1 approval. That's the vesting.
 2 MS. KEON: Before that day.
 3 MR. RIEL: Before October 1st, correct.
 4 MS. KEON: So, then, we could condition this
 5 lot separation -- we could condition it on its
 6 being --
 7 MR. RIEL: You could condition --
 8 MS. KEON: -- in compliance with the Code,
 9 the new Code?
 10 MR. RIEL: You could.
 11 MS. KEON: Can we?
 12 MR. RIEL: You could do that.
 13 MS. KEON: Okay.
 14 MR. RIEL: And if the applicant agrees to
 15 that. Or, if it, obviously, happens that they don't
 16 secure that approval before October 1st, obviously,
 17 they need to meet the new Code, so --
 18 MS. KEON: The new Code, but if they happen
 19 to have new plans ready, we could condition the
 20 separation on it being subject to the new Code?
 21 MR. RIEL: We've certainly discussed that on
 22 other lot separations.
 23 MS. KEON: Okay.
 24 MR. RIEL: Yes, you could.
 25 MS. KEON: Okay.

74

1 MS. ALFONSIN: You're only here today on the
 2 lot separation.
 3 MR. GUILFORD: That's it.
 4 MR. BEHAR: Okay.
 5 CHAIRMAN KORGE: Right. That includes
 6 setback requirements, too.
 7 MR. GUILFORD: Absolutely.
 8 CHAIRMAN KORGE: And height --
 9 MR. GUILFORD: Absolutely.
 10 CHAIRMAN KORGE: -- and massing.
 11 MR. GUILFORD: This new house will have to
 12 comply -- and right now, which it's not going to be
 13 built, but with the interim regulations, but by the
 14 time it gets there, with the new regulations that are
 15 in place at the time, that the City has put in, which
 16 is the 10-foot setbacks, the 29-foot height
 17 restrictions, et cetera, you know, counting the
 18 garage as full unless it's detached, and all the
 19 other items that the new regulations have provided.
 20 MR. RIEL: Just as a side note, the City
 21 Commission passed, on first reading, the new
 22 single-family regulations. The effective date is
 23 going to be October 1st of 2006, and they will be
 24 vested -- properties will be vested if they've
 25 secured preliminary Board of Architects review and

76

1 MR. HARTNETT: May I ask a question?
 2 The previous owner, which was a developer,
 3 and the current owners, is there any relationship to
 4 those two people, those two buyers?
 5 MR. RIEL: I don't know. You'd have to --
 6 MR. HARTNETT: Are they independent of each
 7 other, in any capacity?
 8 MR. RIEL: I think you have to direct your
 9 question to the Chair, and then the Chair can have
 10 the applicant respond.
 11 CHAIRMAN KORGE: Yeah. Mr. Guilford?
 12 I think Mr. Guilford --
 13 MR. GUILFORD: I just spoke to my clients.
 14 The answer is no, there is no relationship between
 15 the two.
 16 CHAIRMAN KORGE: Thank you.
 17 MR. COE: Even if there was, what's the
 18 relevance?
 19 CHAIRMAN KORGE: Any more questions or
 20 discussions? Anybody else wish to speak?
 21 Yes?
 22 MR. HARTNETT: Mr. Chairman, in closing, I
 23 ask you that you don't void the covenant, that you
 24 leave the properties as they are, let them build to
 25 conformity of what those lots will take.

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77

1 CHAIRMAN KORGE: So, if they build an
 2 11,000-square-foot house there, because the lots
 3 allow it, six lots, you'd be --
 4 MR. HARTNETT: What?
 5 CHAIRMAN KORGE: Currently, there are six
 6 lots for that building site. Right?
 7 MR. HARTNETT: On each street?
 8 MR. BEHAR: No...
 9 CHAIRMAN KORGE: No. The total building
 10 site is six lots. It's not three lots. The house is
 11 located on the front three.
 12 MR. HARTNETT: I know that.
 13 CHAIRMAN KORGE: Yeah. So they could build
 14 an eleven -- maybe ten or eleven-thousand-square-foot
 15 house, if they build on the entire building site, as
 16 opposed to dividing the lots.
 17 MR. HARTNETT: But that --
 18 MR. COE: But they'll have more green space.
 19 MR. HARTNETT: Are you saying that that's
 20 what they can do now?
 21 MS. MORENO: Yes.
 22 MS. KEON: Yes.
 23 MR. BEHAR: Yes.
 24 MS. KEON: Yes.
 25 MR. BEHAR: Now, they can build a McMansion

79

1 MR. HARTNETT: Now, what they're asking you
 2 to do is, hey, let's undo that, and now we're going
 3 to give them another shot at doing something else.
 4 MR. BEHAR: Not necessarily.
 5 MS. KEON: Right, they're saying that, but
 6 what they're also saying is, when those -- the
 7 covenant that exists now, that ties the six lots
 8 together, --
 9 MR. HARTNETT: Right.
 10 MS. KEON: -- gives them also the ability to
 11 build an about 11,000-square-foot house on those six
 12 lots together, because it's one building site, and
 13 the current Code, as it's written, would allow them
 14 to build a huge home on those lots, as they exist
 15 today, as-of-right.
 16 If their request to separate those two
 17 lots -- you know, so that three lots face San
 18 Vicente, the other three lots would face Riviera
 19 Drive, then they would have two building sites and
 20 they would have to build in conformance with what the
 21 existing building Code today is. So they couldn't
 22 build such a huge house today, if the lots were
 23 separated. They wouldn't be able to build it.
 24 But now, with the covenant in place, with
 25 those six lots, they could build a very, very big

78

1 on that lot, the way that they have the rights to do
 2 it today.
 3 CHAIRMAN KORGE: Because of the unique
 4 characteristics of the depth of that lot.
 5 MR. HARTNETT: Can you build that with the
 6 covenant in force?
 7 MS. KEON: Yes.
 8 MS. MORENO: Yes.
 9 MR. BEHAR: Of course.
 10 MS. MORENO: All the covenant says is that
 11 the lots are tied together.
 12 MS. KEON: Yeah.
 13 MR. HARTNETT: But you're going to untie it.
 14 MR. BEHAR: Not if you build --
 15 MS. MORENO: If we don't do anything, he
 16 could build there a 12,000-square-foot house.
 17 MR. HARTNETT: As I understand it, the
 18 existing house, they gave a covenant in order to
 19 build the pool, that went from west to east, from
 20 Riviera to San Vicente, and in doing that, he agreed
 21 to tie them all together.
 22 CHAIRMAN KORGE: Right.
 23 MR. HARTNETT: Correct?
 24 MR. BEHAR: That's correct.
 25 MS. KEON: Right.

80

1 house.
 2 MR. HARTNETT: Yeah, but the design that
 3 they presented here, that's going to face San
 4 Vicente, is not actually compatible with the
 5 single-story houses that are there.
 6 MR. BEHAR: We're not approving that.
 7 CHAIRMAN KORGE: We won't approve that.
 8 MR. BEHAR: We're not approving the design.
 9 MR. COE: This is just the lot split --
 10 MS. KEON: This is the lot split. That
 11 would --
 12 MR. COE: -- and we could condition the lot
 13 split.
 14 MR. HARTNETT: Isn't the lot split a
 15 prerequisite to what's going to happen? That's what
 16 he's telling you, right here.
 17 MS. KEON: Well, they're telling him that
 18 they could build, but it would still have to go
 19 through -- and they will build.
 20 MR. HARTNETT: They will.
 21 MS. KEON: Absolutely, they will build, but
 22 it has to go -- if it's conditioned on the new
 23 Building Code, it won't -- it would not be as big as
 24 what could be built there today.
 25 What you're seeing in your neighborhood,

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1 what you're seeing now being built, it could not 81
 2 be -- you will not be able to build as big a house,
 3 once the new Zoning Code goes into place, if they
 4 adopt it as it's been written. They can't -- they
 5 wouldn't be able to build it as big as they could
 6 under the existing Zoning Code.
 7 MR. BEHAR: The option now is, if you leave
 8 it the way it is today, they could get up to 11,000
 9 or so square feet. So that would be a significant
 10 size structure.
 11 With the lot separation, it means that they
 12 have to decrease the overall massing of those two
 13 homes, to be more compatible with what you -- in my
 14 opinion, what you're trying to preserve.
 15 MR. HARTNETT: But in all probability, the
 16 massive part is going to be on Riviera, facing across
 17 the street, with massive houses. They are not going
 18 to put the mass back on San Vicente and all the
 19 streets perpendicular to it. So I'm saying that the
 20 Board has an opportunity to say no to this
 21 application, leave it as it is, and the buyer knew
 22 what he was getting. Don't disturb the covenant.
 23 MR. BEHAR: But -- and, Mr. Chairman, you
 24 may want to elaborate on the specific of the
 25 covenant, because the covenant is just tying the six

1 fronting San Vicente. 83
 2 So, practically speaking, what they're
 3 asking is not to -- is not out of conformity with the
 4 neighborhood, but it really fits within the confines
 5 of the neighborhood.
 6 MR. HARTNETT: Okay.
 7 MR. CARLSON: When this was last discussed
 8 by the Board, what the Board asked was that the
 9 applicant go back, consider a one-story house on the
 10 proposed new lot, and also provide design and massing
 11 criteria which would regulate how that house would be
 12 constructed on the lot. That was what the Board
 13 asked to go back and consider.
 14 CHAIRMAN KORGE: Uh-huh.
 15 MR. CARLSON: And that's what has been -- a
 16 plan has been submitted, instead of those massing and
 17 design criteria.
 18 MR. BEHAR: But they came back with a
 19 two-story proposal.
 20 MR. CARLSON: That's exactly right.
 21 CHAIRMAN KORGE: Exactly.
 22 MR. CARLSON: The Board originally asked for
 23 a one-story. They have come back with a two-story.
 24 MR. COE: Substantially larger now.
 25 MS. MORENO: But I think -- I think that the

1 properties together, right? 82
 2 CHAIRMAN KORGE: That's correct.
 3 MS. MORENO: That's all it is, right.
 4 MS. KEON: It doesn't say how long big you
 5 can build.
 6 MR. BEHAR: If they want to do, today, an
 7 addition on the San Vicente side, they could do the
 8 same two-story addition back there and increase the
 9 size of that house to ten, twelve thousand square
 10 feet.
 11 MR. COE: They still have 22,000 square feet
 12 of green space.
 13 MR. HARTNETT: You mean, on the Vicente
 14 part?
 15 MR. BEHAR: They could do that today,
 16 maintaining the six lots.
 17 CHAIRMAN KORGE: The practical application
 18 of splitting is to make these lots, basically, fit --
 19 MS. MORENO: The neighborhood.
 20 CHAIRMAN KORGE: -- within the whole
 21 neighborhood. That's the real practical application,
 22 because you can see from the building site analysis,
 23 there are no lots greater than 150 feet of frontage
 24 on either Riviera or San Vicente, and there's only
 25 one of those lots fronting Riviera, and seven

1 answer to the whole problem is what Pat said. Let's 84
 2 just split the lots, and say the new house has to
 3 conform with the new Code. Why would we impose
 4 anything different on them?
 5 MS. KEON: Right.
 6 MR. BEHAR: Right.
 7 MS. MORENO: That, to me, is clear.
 8 MR. BEHAR: I don't disagree with you. I
 9 agree.
 10 MS. KEON: Right, yeah.
 11 MR. HARTNETT: I just want you to know that
 12 the previous Board -- and there were other, different
 13 people on there -- they did address the covenant
 14 issue, very seriously.
 15 CHAIRMAN KORGE: Yes.
 16 MS. KEON: Well, I think the covenant is
 17 that they would tie the three lots together so that
 18 they couldn't further separate those into three
 19 different building sites, that -- you know, if you
 20 split it in half. So the three lots that face San
 21 Vicente would remain as one building site, so you
 22 couldn't -- you couldn't make it smaller than the
 23 150-foot frontage, was the discussion that was had
 24 before about --
 25 MR. HARTNETT: You mean, on San Vicente?

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85

1 MS. KEON: Right, that it would have to stay
 2 at the 150. They couldn't break it up into three
 3 50-foot lots, that you would remain -- it would have
 4 to be --

5 CHAIRMAN KORGE: There would only be one
 6 house on San Vicente built, not three.

7 MS. KEON: Right.

8 MR. BEHAR: If you look at the exhibit that
 9 they provided us, there are a couple lots of probably
 10 less than --

11 MS. KEON: Yeah.

12 MR. BEHAR: -- 75 feet.

13 MS. KEON: Sure. This is -- yeah.

14 MR. BEHAR: This would allow no further lot
 15 splittage, either on San Vicente or Riviera Drive.

16 MS. KEON: Right.

17 MR. HARTNETT: This year. This year.

18 MS. KEON: Well, that's true. But we
 19 could -- but this Board could ensure that, for now,
 20 that it would be 150.

21 MR. HARTNETT: As a matter of observation,
 22 Pat, you have changed certain members, and they had a
 23 very great concern about the covenant. You had an
 24 hour's discussion --

25 MS. KEON: Right.

87

1 attention.

2 CHAIRMAN KORGE: Thank you.
 3 Anybody else who'd like to speak?
 4 If you want them to speak -- if you want,
 5 you need to be sworn in.

6 (Thereupon, Consuelo Huergo was duly sworn
 7 by the court reporter.)

8 MS. HUERGO: My name is Connie Huergo. My
 9 husband, Guillermo; Sara and Daniel, my kids.

10 We've been living in the Gables for the past
 11 10 years, and we used to live three houses away from
 12 the one that we have right now. Our lot was also the
 13 biggest in the neighborhood, three houses away from
 14 that one. It was a beautiful house. Our children
 15 grew up there. It was great, but it was too small.
 16 It was 1,500 square feet. And in order for me to
 17 expand, we needed to knock down the house, and I
 18 didn't want to do that. So we decided to go into
 19 Riviera, which had a bigger square footage and it had
 20 a bigger yard, like the one that we used to have.

21 The one that we have right now is great, but
 22 we cannot put anything in the back, so the kids
 23 cannot have the freedom of playing back there or take
 24 out the dog, and everybody uses our lot to cross away
 25 from San Vicente to Riviera.

86

1 MR. HARTNETT: -- of the covenant and the
 2 value of it, the relationship of it, and what they --
 3 what they got for what they gave away.

4 MS. KEON: Absolutely.

5 MR. HARTNETT: So --

6 MS. MORENO: But since then, we've had a
 7 number of architects come before us and discuss the
 8 possibility of lot splits being able to be used to
 9 preserve the character of the neighborhood, and I
 10 think that has educated us, because we don't want a
 11 12,000-square-foot house --

12 MS. KEON: Right.

13 MS. MORENO: -- in your neighborhood. We
 14 think it is more appropriate to have two homes that
 15 are consistent with the other homes in the
 16 neighborhood than to have this huge house in your
 17 neighborhood.

18 MR. HARTNETT: We already have some of
 19 those. They've already let the dominos begin.

20 MS. KEON: Right, and we'd like to --

21 MR. HARTNETT: If you drive around that
 22 area --

23 MR. BEHAR: But if we could stop that --

24 MS. KEON: We'd like to stop it now.

25 MR. HARTNETT: Okay. Thank you for your

88

1 So I agree with you, you know, we could
 2 build a humongous house. That is not our idea. We
 3 want to live within the neighborhood. We really like
 4 it, and, you know, we want to just split it, be able
 5 to have our kids playing in our yard and split the
 6 lot so that the back, you know, fits into the
 7 neighborhood.

8 I feel that that would be the right thing,
 9 and I agree with you guys, you guys cannot commit to
 10 something right now. Let it -- whoever decides to
 11 build there, you know, commit to the covenant or to
 12 the restrictions that are in place in October or
 13 whenever it is that -- but we are planning to live
 14 there. We're not willing to affect the neighborhood,
 15 and the direct affected will be us. So that's all I
 16 wanted you guys to know.

17 CHAIRMAN KORGE: Thank you.

18 Mr. Guilford, did you have some further
 19 comments?

20 MR. GUILFORD: I'm just going to make --
 21 really very, very, very brief.

22 Talking about the restrictive covenant
 23 that's on the property, it really did not have to do
 24 with the pool. It had to do with the screen
 25 enclosure. And the screen enclosure has been gone

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1 for years. It was also that -- that covenant was
2 also proffered in 1959, almost 20 years before the
3 lot separation ordinance even came into effect.

4 Now, I'm not here to say that the woman who
5 bought the house or owned the house, you know, didn't
6 want to keep it together. She was willing to do it
7 for the screen enclosure. Clearly, in today's time,
8 no one would have tied six lots together for a screen
9 enclosure. It just would not have happened.

10 We have no problems proffering that we will
11 comply with the new Code that is being developed by
12 the City, and we ask that you support this
13 application. Thank you.

14 CHAIRMAN KORGE: Thank you.

15 MS. MORENO: I'm sorry, let me just check.
16 We would have a restrictive covenant that would say,
17 first, that the property will be not further
18 separated, with the existing property divided into
19 building sites with three platted lots.

20 MR. GUILFORD: Correct.

21 MS. MORENO: Each building site shall be for
22 a single-story residence, and then instead of these
23 two other, 3 and 4, the residence, et cetera, it
24 would be, the new residence to be constructed will
25 comply with the new Zoning Code?

1 MR. GUILFORD: Correct.

2 MS. KEON: Well, the one -- the
3 single-story --

4 MR. GUILFORD: No, it's supposed to be
5 single-family. It's not one-story, it's
6 single-family. You kind of read single-story versus
7 single-family.

8 MR. RIEL: Single-story or single-family?

9 MR. GUILFORD: It's single-family. Each one
10 will be a single-family.

11 MS. MORENO: Each building shall be for one
12 single-family residence.

13 MR. GUILFORD: There you go.

14 MS. MORENO: And then we're eliminating 3
15 and 4, which had to do with the one story --

16 MS. KEON: Right.

17 MS. MORENO: -- in height and special --
18 specific massing and design provisions, and instead
19 of that, we're saying that the new home to be
20 constructed will comply with the new Zoning Code
21 provisions.

22 MR. RIEL: Correct.

23 MS. MORENO: Is that -- does everybody
24 understand?

25 MR. RIEL: And only one suggestion, that Mr.

1 Guilford prepare the restrictive covenant and get it
2 finalized and have it available for when the
3 Commission considers it, if the Board is desiring to
4 recommend approval.

5 MS. MORENO: Okay, I make a motion to that
6 effect.

7 CHAIRMAN KORGE: Is there a second to that
8 motion?

9 MS. KEON: I'll second it.

10 CHAIRMAN KORGE: Mr. Guilford, do you accept
11 all those conditions?

12 MR. GUILFORD: Yes, I do.

13 CHAIRMAN KORGE: Is there any discussion,
14 further discussion, on this motion?

15 Let's call the roll -- oh, I'm sorry.

16 MR. RIEL: I'm sorry. Did -- Mr. Guilford
17 proffered some of his neighbors' conditions. Is that
18 included in those, as well --

19 MR. GUILFORD: That's --

20 MR. RIEL: -- in your motion?

21 MR. GUILFORD: If you want to quote them or
22 if you want me to quote them again, I'm more than
23 happy to do so.

24 MR. RIEL: He proffered some additional
25 conditions from the neighbor.

1 CHAIRMAN KORGE: Yeah.

2 MR. GUILFORD: There's two restrictive
3 covenants. Obviously, there's going to be a
4 restrictive covenant with the City, and then one with
5 the four neighbors, which actually gives Mr. Hartnett
6 additional assurances, because then we cannot split
7 it without the approval of those four neighbors.
8 Even though the City is not involved, it's between
9 those neighbors. So there's the additional
10 protection for Mr. Hartnett.

11 MR. RIEL: I just wanted to know how --

12 CHAIRMAN KORGE: The restrictive covenants
13 included everything that had been proffered, is that
14 correct, in your motion?

15 MS. MORENO: I can add it. Is that the
16 City's concern at all?

17 MR. RIEL: Well, I mean, if he's proffering
18 that he agrees to that, you know, it would probably
19 be better to have it in our restrictive covenant.

20 MS. MORENO: Okay. All right, include it
21 in my motion.

22 MR. RIEL: Okay. I just want to be clear.
23 Thank you.

24 MS. MORENO: And include it in your second.

25 MS. KEON: Is it also included, then, that

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93

1 the pool is going to be removed? I mean, the
 2 conditions on the other lot.
 3 MR. GUILFORD: Right. That is one of the
 4 conditions that was already in Staff's
 5 recommendation, that those encroachments be removed
 6 within one year.
 7 MS. MORENO: Yeah, I --
 8 MR. GUILFORD: That is, in fact, one of
 9 the conditions.
 10 MS. MORENO: I'm only addressing -- I'm
 11 assuming that we are --
 12 MR. GUILFORD: We're fine -- you're just
 13 going with the new ones.
 14 MS. MORENO: We're adopting Conditions 1 and
 15 2.
 16 MR. GUILFORD: Correct.
 17 MS. MORENO: And then Condition 3, which
 18 was -- I guess I didn't do my motion properly. On
 19 Condition 3, we're making the revision on the new
 20 Zoning Code, instead of 3 and 4, and we're also now
 21 including the restrictive covenant that you proffered
 22 to the neighbors.
 23 MR. GUILFORD: Correct.
 24 MS. MORENO: So my motion is that we allow
 25 this lot split, based on the Staff conditions, 1 and

94

1 2, the revised restrictive covenant with the City,
 2 and the proffered restrictive covenant with the
 3 neighbors.
 4 MS. KEON: Second.
 5 MR. HARTNETT: Before you vote, Mr.
 6 Chairman, could I request a clarification? The four
 7 neighbors, is that defined as the four owners of the
 8 property?
 9 CHAIRMAN KORGE: This would be the four
 10 adjacent --
 11 MR. GUILFORD: Do you want me to answer
 12 that? It's the four property owners, the two on
 13 Riviera that abut the existing house, and the two
 14 property owners that abut the proposed building site
 15 in the rear, on San Vicente.
 16 CHAIRMAN KORGE: On San Vicente.
 17 MS. KEON: On San Vicente.
 18 MR. GUILFORD: And those are actually --
 19 MR. HARTNETT: You're referring -- you're
 20 referring to neighbors as owners of the property --
 21 MR. GUILFORD: Yes, they are property
 22 owners.
 23 MR. HARTNETT: -- at any given time?
 24 MR. GUILFORD: Absolutely.
 25 MS. MORENO: At the time a change is sought.

95

1 MR. GUILFORD: Absolutely. As a matter of
 2 fact, those neighbors in the restrictive covenant, if
 3 you see, are not identified by name. They're
 4 identified as --
 5 CHAIRMAN KORGE: Property owner.
 6 MR. GUILFORD: -- owner of X -- Lot
 7 so-and-so, and so-and-so, and so-and-so.
 8 MS. KEON: Yes.
 9 MR. RIEL: Thank you.
 10 CHAIRMAN KORGE: Thank you.
 11 Okay. Would you call the roll, please?
 12 MS. MENENDEZ-DURAN: Robert Behar?
 13 MR. BEHAR: Yes.
 14 MS. MENENDEZ-DURAN: Jack Coe?
 15 MR. COE: For the record, I'm going to vote
 16 no on this. It's clearly, in my mind, in violation
 17 of 12-5(b) of the Zoning Code. They only meet three
 18 of the six requirements as set forth in the Zoning
 19 Code. They do not meet four, which is a minimum
 20 requirement for passing a lot split. I see no legal
 21 justification for granting a lot split in this case,
 22 and therefore, I'm voting no.
 23 MS. MENENDEZ-DURAN: Pat Keon?
 24 MS. KEON: Yes.
 25 MS. MENENDEZ-DURAN: Cristina Moreno?

96

1 MS. MORENO: Yes.
 2 MS. MENENDEZ-DURAN: Tom Korge?
 3 CHAIRMAN KORGE: Yes.
 4 MR. GUILFORD: Thank you very much.
 5 CHAIRMAN KORGE: Thank you.
 6 MR. RIEL: Just for the record, this item
 7 will go on the August 22nd City Commission meeting,
 8 if Mr. Guilford can get the restrictive covenant in
 9 time.
 10 MS. KEON: Can we talk a little bit about
 11 this memo from the City Attorney?
 12 CHAIRMAN KORGE: Well, we can, but I don't
 13 know why we would talk about it now. We just
 14 finished the issue.
 15 MS. KEON: Well, no, because it goes back
 16 to -- it really just deals with this administrative
 17 review criteria, and it's the same thing we talked
 18 about on another item that was before us a few days
 19 ago.
 20 CHAIRMAN KORGE: Well, I think this memo
 21 will come into play when that other lot split comes
 22 back before us.
 23 MS. KEON: But that's why -- I only have
 24 just -- Can I make a couple comments? I'll be very
 25 quick.

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97

1 CHAIRMAN KORGE: Yeah, sure.

2 MS. KEON: Okay. In reading the

3 administrative determination review criteria, and

4 then reading the memo from the City Attorney, the

5 City Attorney's memo makes it abundantly clear that

6 the intent was whether any building ever existed on

7 that site, for the lot split, anything ever existed

8 there.

9 Your administrative criteria doesn't say

10 that. I mean, I'm sort of surprised that there

11 isn't -- one of your criteria is that there was ever

12 a building on that site, because that's the point

13 that we keep arguing. That's the point that Mr.

14 Guilford has put forth, that's the point that made it

15 sort of confusing when we talked about it, and it

16 doesn't -- one of your --

17 CHAIRMAN KORGE: It's not clear.

18 MS. KEON: It isn't clear. I mean, you

19 really --

20 MR. COE: What's not clear about it?

21 MS. KEON: It isn't clear at all, and,

22 you know --

23 MS. ALFONSIN: If I may address that, when

24 we discussed this last time and I told you that I was

25 going to review the building site section -- which I

99

1 MS. ALFONSIN: They wouldn't be meeting

2 it -- in this situation, they wouldn't be meeting

3 it --

4 MS. KEON: Right.

5 MS. ALFONSIN: -- because they're going to

6 be removing the pool, and the pool is encroaching on

7 the other half of the property.

8 MS. KEON: Right. But when you present this

9 to us, and it says administrative determination

0 review criteria -- when this is presented to us, as

1 it's stated here, that issue, the historical -- the

2 issue that you just talked about, as there ever being

3 one there, I mean, ever being a building on that

4 site, isn't -- it's not -- it's not clear here.

5 MS. ALFONSIN: There's also another issue.

6 There's an issue of unity of title. Once there's

7 unity of title and there's six lots --

8 MS. KEON: Right.

9 MS. ALFONSIN: -- then you look at that

0 criteria along with all of the other matters under

1 12.

2 MS. KEON: Right.

3 MS. ALFONSIN: Section 12-2(c), for example,

4 what I just said.

5 MS. KEON: Right.

98

1 did, and it's referred to there --

2 MS. KEON: Right.

3 MS. ALFONSIN: -- the five criteria are for

4 review purposes, if you don't meet the other

5 sections, and you must take every section together.

6 When you're talking about existing building, if there

7 is an existing building -- and I'll give you a

8 hypothetical. You have three lots, it's a triple

9 lot, and the existing building begins in Lot 1, goes

10 through Lot 2 and enters into Lot 3, and in order to

11 separate those three lots, they have to demolish the

12 house, then they're not meeting Criteria 3 and 4,

13 because you have to look at the six criteria under

14 12-5 along with 12-2(c).

15 MS. KEON: Right, but you know what? That's

16 not clear.

17 MS. ALFONSIN: However, if you have three

18 lots, and you have one home sitting on Lot 1, but

19 Lots 2 and 3, there's nothing on them, and they're

20 coming in under these criteria, they would meet the

21 criteria for 3 and 4.

22 MS. KEON: And I -- exactly. But that --

23 but when you -- when you're presenting that

24 information to us here, it's almost like, if they

25 didn't meet the first one, then --

100

1 MS. ALFONSIN: But that comes in with unity

2 of title, and you have to look at unity of title

3 along with everything else in that section.

4 Whenever you have any section of the Code,

5 and there are different parts per section, you've got

6 to review them all together. The criteria here is

7 perfect when you have what I said before, as an

8 example, a triple lot, and the home sits on one of

9 the lots only.

10 MS. KEON: Right, but that's -- you know

11 what? And that's really not such an issue. The

12 issue becomes when there are encroachments onto the

13 lot --

14 MS. ALFONSIN: Exactly.

15 MS. KEON: -- and the way that it's written

16 here and presented to us here, it isn't -- it's not

17 clear that this criteria is being applied in

18 conjunction with the other --

19 CHAIRMAN KORGE: Sections.

20 MS. KEON: -- sections that you have

21 included in your memo.

22 MS. MORENO: Okay, why don't I make a

23 suggestion? Eric, why don't you have --

24 MS. KEON: It isn't clear.

25 MS. MORENO: -- Charlie Siemon and the City

JOAN L. BAILEY & ASSOCIATES

1 Attorney's office work to make sure that that's
2 clear, as part of their. --

3 MS. ALFONSIN: It's already been done.

4 MS. KEON: Yeah. I really don't think that
5 it is clear, and I think, you know, Zeke's argument
6 makes sense, when you look at it.

7 MR. RIEL: Okay, we'll do that.

8 MS. ALFONSIN: It has actually --

9 MR. RIEL: Okay.

10 CHAIRMAN KORGE: We're adjourned, meeting
11 adjourned?

12 MR. RIEL: Yes.

13 CHAIRMAN KORGE: Okay.

14 MS. ALFONSIN: We've actually addressed that
15 with Charlie already.

16 MS. KEON: Okay, but I think -- I really
17 think that should be folded into anything that's
18 done.

19 (Hereupon, the hearing was adjourned at
20 8:00 p.m.)

CERTIFICATE

1
2
3 STATE OF FLORIDA:

4 SS.

5 COUNTY OF MIAMI-DADE:
6

7 I, JOAN L. BAILEY, Registered Diplomate
8 Reporter, and a Notary Public for the State of
9 Florida at Large, do hereby certify that I was
10 authorized to and did stenographically report the
11 foregoing proceedings and that the transcript is a
12 true and complete record of my stenographic notes.
13

14 I, JOAN L. BAILEY, a Notary Public in and
15 for the State of Florida at large, do hereby that all
16 witnesses were duly sworn by me.
17

18 DATED this 21st day of July, 2006.
19

20
21
22 JOAN L. BAILEY,
REGISTERED DIPLOMATE REPORTER

23 Notary Commission Number DD 190412.
24 My current notary commission expires 6/14/07.
25

DRAFT

NOTE: Amended resolution (~~strike-thru~~ and underlining will be removed on codified version)

DECLARATION OF RESTRICTIVE COVENANTS

KNOWN ALL BY THESE PRESENTS, that Guillermo and Consuelo Huergo, hereinafter referred to as “**Owner**”, hereby makes, declares, and imposes on the land herein described, the covenants running with the title to the land, which shall be binding on the Owners, their heirs, successors, and assigns, personal representatives, mortgages, lessees, and against all persons claiming by through or under them.

WHEREAS, Owner holds the fee simple title to the land in the City of Coral Gables, Florida, described as:

Lots 17-19 and 40-42, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5705 Riviera Drive); and

WHEREAS, Owner has submitted Application No. 06-06-422-P, to the Planning Department of the City of Coral Gables, requesting the following:

Approval of a Building site separation pursuant to Section 12-5 of the Zoning Code of the City of Coral Gables, Florida, as amended; and

WHEREAS, The Owner is desirous of giving the City of Coral Gables and certain abutting property owners whose properties are described as follows:

Parcel 1 - Lots 20 and 21, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5700 San Vicente Street.)

Parcel 2 – South one-half of Lot 15 and Lot 16, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5614 San Vicente Street.)

Parcel 3 - Lots 38 and 39, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5709 Riviera Drive.)

Parcel 4 - Lots 43 and 44, Block 127 of Coral Gables Riviera Section, Part 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the Public Records of Miami-Dade-County. (5617 Riviera Drive.); and

WHEREAS, the Planning and Zoning Department, based upon its “findings of facts” recommended, approval. As a part of the approval, the owner agreed to execute a Restrictive Covenant in favor of the neighbors and not as required by the City Commission pursuant to Resolution No.R-2007-16 as amended as part and parcel of the approval agreeing to certain conditions.

NOW, THEREFORE, in order to assure the City of Coral Gables and the abutting property owners that the representations include as a part of the record of the proceedings made by the Owner in connection with the approvals by the City and issuance of a certificate of use and occupancy, will be abided by. The Owner freely, voluntarily, and without duress, makes the following Declaration of Restrictive Covenant covering and running with the Property and agrees as follows:

1. The above recitations are true and correct and are incorporated herein in their entirety; and
2. Lots 17-19 will be developed in substantial conformity with the site plan and elevations prepared by the architectural firm of Bravo, LLC, and dated January 31, 2006, all of which is on file in the office of the Planning Director of the City of Coral Gables (hereinafter referred to as the “Site Plan”); and
3. The property shall not be further separated, with the existing property divided into two building sites, each with three (3) platted lots; and
4. Each building site shall be for a one single family residence; and
5. All existing encroachments shall be removed from the proposed building site (Lots 17-19) within one (1) year of the approval; and
6. There shall not be any landscaping over 10 feet in height within 15 feet of the south property line; and
7. The existing single-family residence located on Lots 40-42 shall be reconfigured to remove all non-conforming encroachments within one (1) year of the approval; and
8. The new residence constructed on Lots 17-19 shall meet all requirements of the new single-family Zoning Code regulations; and
9. As proffered by the applicant, no encroachments or variances shall be granted for the new residence constructed on Lots 17-19; and
10. This Declaration of Restrictive Covenant shall be binding against the property is located at, Lots 17-19 and Lots 40-42 Block 127 of Coral Gables Riviera Section 10 according to the Plat thereof as recorded in Plat Book 31 at Page 1 of the

Public Records of Miami-Dade-County, and enforceable by the City of Coral Gables and the four (4) adjoining properties; and

11. The Owner freely agrees to be bound by the restrictions depicted on the Site Plan including but not limited to setbacks, and heights of the various portions of the residence and shall not be change without the written authorization of one hundred (100%) percent of the abutting property owners; and
12. This Declaration of Restrictive Covenant on the part of the Owner shall constitute a covenant running with the land and shall be recorded, at the Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare; and
13. This Declaration of Restrictive Covenant is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years unless an instrument signed by the then owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by the City of Coral Gables; and
14. This Declaration of Restrictive Covenant may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the then, owner(s) of all of the Property, or if the property has been submitted to a condominium form of ownership, by an authorized representative of the condominium association responsible to manage the condominium, in lieu of all the property owners, including joinders of all mortgages, if any, provided that the same is also approved by the City of Coral Gables. Should this Declaration of Restrictions be so modified, amended or released, the City shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release; and
15. Enforcement shall be by action at law or in equity against any parties or person violating, or attempting to violate, any covenants, either to restrain violations or to recover damages. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of their attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both; and
16. As further part of this Declaration, it is hereby understood and agreed that any official inspector of the City of Coral Gables, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and

inspecting the premises to determine whether or not the requirements of all applicable City codes and the conditions herein agreed to are being complied with; and

17. In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the City is hereby authorized to withhold any further permits and refuse to make any inspections or grant any approvals, until such time as there is compliance with this Declaration; and
18. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges; and
19. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the City, and inspections made and approval of occupancy given by the City, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with this Declaration; and
20. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto; and
21. The location for settlement of any claims, controversies, disputes, arising out of or relating to any part of this Agreement, or breach hereof, shall be in Miami-Dade County, Florida.

ACKNOWLEDGEMENT

Signed, sealed, executed, and acknowledged on this ____ of _____,
2008.

Witness:

Print Name:

Guillermo Huergo

Print Name:

April 3, 2008
City of Coral Gables - Planning Department
Letters Received from Property Owners
Application No. 04-08-056-P Amendments to Conditions of Approval
5705 Riviera Drive

Date Received	Name and Address	Object	No Objection	No Comment	Comments (Verbatim)
1. 4/03/08	Maria & Paul Ingelmo 5409 Riviera Drive Coral Gables, FL 33146	X			To allow the separation of this lot will lead to setting a precedent for future lot splits. In addition, to do so would further alter the character of the neighborhood. The owners purchased this property knowing the conditions and bought it for speculative reasons, now have been demolished portions of the structure that encroached on the area they seek to separate.
2. 4/02/08	Raymond F. & Mary E. Mieloch 439 Bargello Ave Coral Gables, FL 33146	X			We object to splitting land that was previously <u>one</u> building site with pool on said lots. The smaller lots that are the result then are utilized to erect oversized, multi-storied homes with numerous bedrooms that never have enough parking available for all of the people there.
3. 3/31/08	Michael L. Brown & Adelto Pons 5538 San Vicente St. Coral Gables, FL 33146		X	X	
4. 3/31/08	Charles & Mildred Tutan 5709 Riviera Dr. Coral Gables, FL 33146		X		Good Idea.