

City of Coral Gables
Planning Department Staff Report

To: Honorable Planning and Zoning Board Members

From: Planning Department

Date: November 12, 2008

Subject: **Proposed Zoning Code Text Amendment pursuant to a Proposed Settlement Agreement with Fernando Menoyo and Almeria Row, LLC, represented by Tew Cardenas, LLP**

Zoning Code Text Amendment – Appendix A, Site Specific Zoning Regulations. An Ordinance of the City of Coral Gables amending the text of the Official Zoning Code, Appendix A, Site Specific Zoning Regulations providing for changes to the allowable townhouse building height for specific properties from 35 to 45 feet pursuant to a City of Coral Gables City Commission Settlement Agreement; providing for repeal, providing severability, providing for codification thereof, and providing for an effective date.

Purpose of Staff Report

The purpose of this report is to provide City Staff's position (including both the Building and Zoning Department and Planning Department) related to a proposed Zoning Code text amendment (Site Specifics provisions) as a means of settlement from a Bert J. Harris Private Property Rights Protection Act Claim filed by a property owner. This report provides background, history and findings of fact.

Planning and Zoning Board Desired Action

The property owners' representatives are desirous to secure the Planning and Zoning Board's input, which may include input, comments, and/or a recommendation. The Board's action will then be presented to the City Commission.

Background and History

The property owners, Fernando Menoyo and Almeria Row, LLC, represented by Tew Cardenas, LLP filed a claim on 01.08.08 for compensation for \$8,135,000.00 dollars with the City of Coral Gables pursuant to the Bert J. Harris Private Property Rights Protection Act Claim (see Attachment A – 01.08.08 letter).

The Bert J. Harris Private Property Rights Protection Act is a statute enacted by the Florida Legislature that allows a property owner to take legal action for compensation for local government regulations, if the owner can provide that there is an inordinate burden on the owner's existing uses or vested rights in his or her property.

Proposed Zoning Code Text Amendment Pursuant to a Proposed Settlement Agreement

November 12, 2008

Page 2 of 9

The Fernando Menoyo Claim, hereinafter referenced as “Claim,” relates to the following properties (see Attachment B- Map of Groups):

- Group I: 744 Biltmore Way, Folio No.: 03-4117-008-1570
2509 Anderson Road, Folio No.: 03-4117-008-1580
745 Valencia Avenue, Folio No.: 03-4117-008-1870
- Group II: 635 Almeria Avenue, Folio No. 03-4117-056-0070
643 Almeria Avenue, Folio No. 03-4117-056-0060
- Group III: 2605 Anderson Road, Folio No. 03-4117-008-1890
2611 Anderson Road, Folio No. 03-4117-008-1970
- Group IV: 731 Almeria Avenue, Folio No. 03-4117-008-1931
735 Almeria Avenue, Folio No. 03-4117-008-1940
743 Almeria Avenue, Folio No. 03-4117-008-1950
2615 Anderson Road, Folio No. 03-4117-008-1960
- Group V: 760 Valencia Avenue, Folio No. 03-4117-008-1880

The subject properties are currently designated as Residential Use (Multi-Family) Low Density Land Use Classification (see Attachment C – CLUP map) and Multi-Family Special Area District (MFSA) zoning designation (see Attachment D – Zoning Map).

The Claim states that the current Zoning Code Ordinance (approved on January 9, 2007) Multi-Family Special Area (MFSA) District reduces the permissible building height on the properties from 45 feet to 35 feet for the first 50 feet and allows 45 feet thereafter, versus the previous “A District/Special Area” zoning district (approved on July 13, 2004) which had allowed 45 feet. The Claim further states that the height reduction reduces the allowable building height on the properties to 35 feet as a whole, since designing the buildings for the properties with the stepped height is not feasible. The Claim is for the loss in fair market value of the properties via the adoption of Ordinances that “inordinately burden, restrict and limit” the properties such that Section 70.001(3)(e), Florida Statutes, requires that the City compensate Fernando Menoyo and Almeria Row, LLC for the loss of fair market value.

The property owners’ representatives, Tew Cardenas, LLP have requested a Settlement Agreement of the \$8,135,000.00 dollar Claim that would provide for an amendment to the Site Specific Standards of the Zoning Code. Specifically, the amendment would allow the properties described herein to develop at 45 feet and up to an additional 10 feet for architectural elements to a total height of 55 feet (See Attachment E – Claimants Proposed Site Specific Zoning Regulations).

Comparison of Current Zoning Code MFSA Zoning District to the Previously Approved Year 2004 “A” District/Special Area Zoning District

Current MFSA Provisions

The current Zoning Code Section 4-104., MFSA District, subsection D., titled “Performance standards,” Subsection 8 (b) and (i), titled “Height” provides for the following (see **highlighted/bold text**):

- 8. *Height. The maximum permitted height is as follows:*
 - a. *Pursuant to the Comprehensive Land Use Plan Map designation and/or Site Specific Zoning regulations.*

Proposed Zoning Code Text Amendment Pursuant to a Proposed Settlement Agreement

November 12, 2008

Page 3 of 9

- b. MFSA properties shall have a height limitation of thirty five (35) feet within fifty (50) feet of an adjacent, abutting or contiguous (including streets, waterways, or alleys) SFR and/or MF1 property, as measured from the MFSA property line. MFSA properties shall have a height limitation of three (3) floors or forty-five (45) feet, whichever is less, on the remaining portions adjacent, abutting or contiguous (including streets, waterways, or alleys) to an SFR and/or MF1 property.**
- c. Parcels of land which are contiguous or adjacent to MF1 Districts or land designated as public buildings and grounds. Forty-five (45) feet.
- d. Parcels of land designated Comprehensive Land Use Plan Residential Use - multi-family low-density.
- i. Parcels of land which are contiguous or adjacent to parcels designated residential use - multi-family low-density land use designations: forty-five (45) feet.
 - ii. Parcels of land which are contiguous or adjacent to other parcels designated residential use - multi-family medium density land use designations: forty-five (45) feet.
 - iii. Parcels of land which are contiguous or adjacent to parcels designated residential use - multi-family high density or commercial use high-rise intensity land use designations: sixty (60) feet.
- e. Parcels of land designated Comprehensive Land Use Plan Residential Use - multi-family medium-density.
- i. Parcels of land which are contiguous or adjacent to parcels designated residential use - multi-family low-density land use designations: sixty (60) feet.
 - ii. Parcels of land which are contiguous or adjacent to parcels designated residential use - multi-family medium-density land use designations: sixty (60) feet or seventy (70) feet if a parcel of land has an area of twenty-thousand (20,000) square feet or more.
 - iii. Parcels of land which are contiguous or adjacent to parcels designated residential use - multi-family high-density or commercial use high-rise intensity land use designations: sixty (60) feet or one-hundred (100) feet if a parcel of land has an area of twenty-thousand (20,000) square feet or more.
- f. Parcels of land designated Comprehensive Land Use Plan Residential Use - multi-family high-density.
- i. Parcels of land which are contiguous or adjacent to parcels designated residential use - multi-family low-density land use designations: sixty (60) feet or seventy (70) feet if a parcel of land has an area of twenty-thousand (20,000) square feet or more.
 - ii. Parcels of land which are contiguous or adjacent to parcels designated residential use - multi-family medium-density land use designations:
 - (a) Sixty (60) feet if a parcel of land is less than ten-thousand (10,000) square feet, or seventy (70) feet if a parcel of land has an area of ten-thousand (10,000) square feet or greater but less than twenty-thousand (20,000) square feet; or
 - (b) One hundred (100) feet if a parcel of land has an area of twenty-thousand (20,000) square feet or more.
 - iii. Parcels of land which are contiguous or adjacent to other parcels designated residential use - multi-family high-density or commercial use high-rise intensity land use designations: sixty (60) feet or one-hundred-fifty (150) feet if a parcel of land has an area of twenty-thousand (20,000) square feet or more.
- g. Parcels of land abutting existing buildings with non-conforming heights. Notwithstanding any other provision of this Subsection 8, a parcel of land which is proposed for development which abuts parcels of land on three (3) sides improved with existing buildings with heights exceeding the maximum permitted height shall have a maximum permitted height of the lowest height of the three (3) buildings on the parcels abutting the parcel proposed for development.

**Proposed Zoning Code Text Amendment Pursuant to a Proposed Settlement Agreement
November 12, 2008
Page 4 of 9**

h. Height summary. The following matrix summarizes the provisions of Subsection 8, a-f:

Maximum height						
	Parcel size	SFR	MF1	MF L	MF M	MF H
MF L		35'	45'	45'	45'	60'
MF M	<20 K	35'	45'	60'	60'	60'
	>20 K	35'	45'	60'	70'	100'
MF H	<10 K	35'	45'	60'	60'	60'
	10K – 20K	35'	45'	60'	70'	70'
	>20 K	35'	45'	70'	100'	150'

“SFR” means any of the SFR District in the Zoning Code.

“MF1” means any of the MF1 District in the Zoning Code.

“MF L” means the residential multi-family low density category in the Comprehensive Land Use Plan.

“MF M” means the residential multi-family medium density category in the Comprehensive Land Use Plan.

“MF H” means the residential multi-family high density category in the Comprehensive Land Use Plan.

- i. The maximum permitted height is measured from established grade to the flat roof deck and when there is no flat roof deck the height shall be to the tie-beam on the top floor of the building. Mechanical equipment areas and decorative roof structures may extend beyond the permitted height a total of ten (10) feet. When more than one (1) of the following conditions occurs for a specific property, the more restrictive condition shall apply.***

Article 8 of the current Zoning Code defines “height” as follows:

“Height of building means the vertical distance measured from the established grade to the level of the highest point of the building.”

See Attachment F for a complete copy of the current Zoning Code MFSA requirements.

Previously Approved Year 2004 “A” District/Special Area District

The “A” District/Special Area District provided for the following:

- I. Height.*
 - 1. Parcels of land abutting or contiguous to R-Use Districts. 45 feet, except that no portion of any building within 50 feet of any property line which abuts or is contiguous to the land designated as R-Use District shall have a height in excess of 35 feet.*
 - 2. Parcels of land adjacent to R-Use Districts. 45 feet*

Height is defined as follows:

“Height” means the vertical distance measured from the established grade at the center of the front of the building to the level of the highest point of the building if a flat roof, and to the mean height between eaves and ridges for gable, hip and gambrel roofs, excluding parapets that extend no more than four (4) feet above the height of the building, and excluding air-conditioning equipment rooms, elevator shafts and mechanical equipment rooms, and ornamental roof structures not exceeding a combined area of twenty-five percent (25%) of the total area of the roof and not exceeding twenty-five (25) feet above the maximum permitted height of the building.

See Attachment G for a complete copy of the previously approved year 2004 “A” District/Special Area District adopted via Ordinance #2004-25.

Proposed Zoning Code Text Amendment Pursuant to a Proposed Settlement Agreement

November 12, 2008

Page 5 of 9

City Commission Action/Current Status

The City Attorney advised the City Commission of the property owners' representatives' desired Settlement Agreement at the September 28, 2008 City Commission meeting (see Attachment H – 09.22.08 Memo to City Commission). The City Commission requested the item be scheduled for Planning and Zoning Board consideration, therefore the item was advertised for the October 8, 2008 Board meeting. The item was discussed at the October 8th meeting and the Board provided comments and requested the Claimant provide the necessary information to the City in order for the Building and Zoning Department and Planning Department to review and present findings of fact to the Board (See Attachment I – 10.08.08 Verbatim minutes).

Building and Zoning Department staff requested submission of various background information from the property owners' representatives to allow City staff to provide an analysis. The Building and Zoning Department (BZD) completed a preliminary Zoning Analysis based upon limited information which is not typical of the minimum information required to complete a preliminary zoning analysis for a pending development project. The information submitted by the Claimant was necessary in order for City staff to provide findings of fact thereby allowing the decision makers to provide for an informed direction and/or decision.

City Staff Findings of Fact

This section provides findings of fact of the potential effects of the proposal and Planning and Zoning Board actions and City Commission policy direction (public hearings) completed to date resulting in the current adopted MFSA legislation.

Finding # 1. Current MFSA height provisions limit building height to 35 feet within 50 feet and 3 floors or 45 feet, whichever is less, on the remaining portions adjacent, abutting or contiguous (including streets, waterways, or alleys) to an SFR and/or MF1 property

In March 2004, the City Commission enacted a 120-day Moratorium via Ordinance #2004-16 (see Attachment J) to allow City staff to complete an expedited special study of the geographic area between LeJeune Road, Bird Road, Granada Boulevard and Biltmore Way which includes the subject properties referenced herein. After completion of public outreach, public notice to all properties in the study area, and significant public input the City Commission adopted Ordinance #2004-25 (see previously referenced Attachment G) and found the following as identified in the "Whereas" clauses of the adopted Ordinance:

***WHEREAS**, in response to increased concerns over the application of the existing provisions of the City's Zoning Code; the City Commission determined that there exists concerns about the compatibility of land uses in areas of transition within the area generally bounded by Biltmore Way to the North, Bird Road to the South, Granada Boulevard to the West and LeJeune Road to the East ("Study Area") from a development standpoint and to pursue alternatives for reducing the potential impact to surrounding single family areas which could include one or more of the following planning and zoning principles to mitigate potential impacts: establishment of development appropriate architectural and conservation districts, incentive zoning overlay districts, transfer of development rights or other innovative planning tools;*

***WHEREAS**, the City Commission through Ordinance No. O-2004-16 (1) found that the existing provisions of the Zoning Code which allow the issuance of building permits for buildings exceeding three and one half (3 ½) stories or forty five (45) feet in height and in*

Proposed Zoning Code Text Amendment Pursuant to a Proposed Settlement Agreement

November 12, 2008

Page 6 of 9

particular site specific regulations Article 4, and Zoning Code Articles 3-4 (m) and 3-6 (r) may have a detrimental impact to the properties in Residential Zoning Districts, and (2) further found that it is in the public interest to make a comprehensive determination on the applicability of the present Zoning provisions and amend those regulations as appropriate;

***WHEREAS**, the City of Coral Gables' single family residential areas in many instances about multi-family or commercial zones which could, potentially, if developed allow for buildings which might exceed three and one half (3 ½) stories or forty five (45) feet in height; and while the Zoning Code provides certain measures for relief to prevent large commercial or multi-family developments which directly abut or face single family residential districts, there is a concern that certain zoning districts may be detrimental to the area should they continue to remain applicable;"*

The end result was creation of an "A District/Special Area" zoning district (see previously referenced Attachment G). Subsequent to this study and enactment of the A District, the City completed a comprehensive rewrite of the Zoning Code. As part of the rewrite, the A District regulations were retitled/renamed and assigned to various properties which presently is referenced as Multi-Family Special Area (MFSA). In September/October 2006, the City Commission requested further study, public hearings, public notice/review and input on all properties "adjacent, abutting or contiguous (including streets, waterways, or alleys) to single family and multi-family zoned properties." Specifically, the City Commission requested City staff complete further study of all properties across from and adjacent to single family properties with the intention of including "transition performance standards" to mitigate any potential impacts. City staff completed the studies, including: 3-d modeling, transition modeling, shadow studies, identified locations of applicability on City mapping, etc. and the end result was City Commission approval of the following:

- Commercial (C), Commercial Limited (CL), and Multi Family Duplex (MF2) , properties shall have a height limitation of 3 floors or 45 feet, which ever is less, within 100 feet of adjacent, abutting or contiguous (including streets, waterways, or alleys) SFR and/or MF1 properties, as measured from the C, CL and MF2 property line.
- MFSA properties shall have a height limitation of 35 feet within 50 feet of an adjacent, abutting or contiguous (including streets, waterways, or alleys) SFR and/or MF1 property, as measured from the MFSA property line. MFSA properties shall have a height limitation of 3 floors or 45 feet, whichever is less, on the remaining portions adjacent, abutting or contiguous (including streets, waterways, or alleys) to an SFR and/or MF1 property. In addition, as requested, provisions allowing an additional 10 feet for architectural elements were included only within the MFSA district.

Specifically, a reduction in building height and other performance standards were approved to mitigate potential impacts of C, CL, MF2 and MFSA properties. However, the City Commission relaxed the MFSA height provisions to 35 feet within 50 feet and 3 floors or 45 feet, whichever is less, on the remaining portions adjacent, abutting or contiguous (including streets, waterways, or alleys) to an SFR and/or MF1 property, as opposed to the 35 feet height within 100 feet provided for on C, CL and MF2 properties.

The Claimant's suggested proposal would allow for a proposed increase in building height which would allow a proposed height of 45 feet for habitable space and up to an additional 10 feet for architectural elements for a total of 55 feet.

The proposed allowable 55 foot height of the properties is in the opinion of BZD/Planning Department staff an excessive height when adjacent to single family zoned and single family

Proposed Zoning Code Text Amendment Pursuant to a Proposed Settlement Agreement

November 12, 2008

Page 7 of 9

occupied properties. City staff is of the opinion that further relaxation of the MFSA provisions, thereby allowing an increase in height sets an undesirable precedence for properties next to single family uses/properties.

The property owners' representatives have advised that their client seeks restoration of the height prior to the Zoning Code rewrite, and while they are reviewing the impact of the limitations mentioned, they continue to seek the height that was the subject of the Harris Act claim.

Finding # 2. The proposed site specific text amendments are assigned to the property and not to a specific property owner.

The proposal as noted above is assigned to the properties described herein. This could allow for property ownership transfer and development by another owner and developer. Site specific regulations essentially "run " with the land.

Finding # 3. The potential exists that the subject property owner, subsequent property owners, successors or assigns may seek and secure variations or variances to the provisions of the MFSA provisions outside of this settlement/zoning code amendment process.

The property owner, subsequent property owners, and successors or assigns may seek and secure variances to the MFSA provisions. This could result in further modifications to the properties not in keeping with the established intent of the previously completed MFSA moratorium special study and subsequent Zoning Code rewrite. The property owners' representatives have indicated they will satisfy all applicable MFSA provisions, however they have not specifically offered future prohibition to seek variations.

Finding # 4. No specific building typology limitation has been proffered as a part of the proposed site specific amendments. Townhouses are not the mandatory building typology.

City staff has advertised the proposed agenda item providing for site specific text amendments pursuant to only a "townhouse" building typology. The property owners' representatives have indicated to City Staff they desire the flexibility to construct another building typology. If a specific building typology is not named, specifically "townhouse" as defined per the Zoning Code, other building typologies could be built at the proposed 55 foot height.

Finding # 5. The proposed site specific text amendment does not include a site plan as a part of the Settlement Agreement.

Site plans have typically been requested to allow for decision makers to ascertain the expected development proposal in conformance with the action requested. Three options are available: 1) Request submission of a site plan prior to finalization of the Settlement Agreement subject to conditional use review (Planning and Zoning Board/ City Commission public hearing review); 2) Preparation of a preliminary conceptual plan that provides for a "snapshot" of the development for public hearing review; or, 3) allow the project to undergo the required Building and Zoning Department and Board of Architect review.

Finding #6. The assignment of site specific standards does not provide for the same opportunities for development commonly enjoyed by identical/similar properties within the same zoning district adjacent, abutting or contiguous (including streets,

Proposed Zoning Code Text Amendment Pursuant to a Proposed Settlement Agreement

November 12, 2008

Page 8 of 9

waterways, or alleys) to SFR and/or MF1 properties or other properties adjoining SFR and/or MF1 properties.

Site specific standards are typically enacted due to the existence of unique characteristics of a particular property. Reasonable use of the properties described herein and future construction of building(s) and structure(s) can be accommodated subject to the current MFSA provisions. Other properties located within the MFSA district adjacent to single family uses or duplex uses shall be required to develop under these provisions and the maximum limitation of height. Likewise, C, CL and MF2 properties adjacent to single family uses have maximum limitations of height.

Conclusions

The City Attorney's Office/City Staff have discussed the above findings with the property owners' representatives in an attempt to secure resolution. The representatives have indicated to the Building and Zoning and Planning Departments their desire to allow the Board and City Commission to provide direction.

The property owners' representatives' responsibility is to provide evidence and testimony to substantiate their claim/request.

A summary of City Staff findings of fact are provided herein, as follows:

1. *Current MFSA height provisions limit building height to 35 feet within 50 feet and 3 floors or 45 feet, whichever is less, on the remaining portions adjacent, abutting or contiguous (including streets, waterways, or alleys) to an SFR and/or MF1 property*
2. *The proposed site specific text amendments are assigned to the property and not to a specific property owner.*
3. *The potential exists that the subject property owner, subsequent property owners, successors or assigns may seek and secure variations or variances to the provisions of the MFSA provisions outside of this settlement/zoning code amendment process.*
4. *No specific building typology limitation has been proffered as a part of the proposed site specific amendments. Townhouses are not the mandatory building typology.*
5. *The proposed site specific text amendment does not include a site plan as a part of the Settlement Agreement.*
6. *The assignment of site specific standards does not provide for the same opportunities for development commonly enjoyed by identical/similar properties within the same zoning district adjacent, abutting or contiguous (including streets, waterways, or alleys) to SFR and/or MF1 properties or other properties adjoining SFR and/or MF1 properties.*

Next Steps

After consideration by the Planning and Zoning Board, this item will be scheduled for City Commission consideration on December 16, 2008.

Staff Position

Staff does not support the proposed change as presented. If the Planning and Zoning Board and City Commission desire to accommodate the property owners' representatives' proposal for increased height, that direction can be provided based on the findings contained herein.

Respectfully submitted,

Eric Riel, Jr.
Planning Director

Attachments:

- A. 01.08.08 Fernando Menoyo Claim Letter
- B. Map of Groups
- C. City of Coral Gables CLUP Map with properties outlined
- D. City of Coral Gables Zoning Map with properties outlined
- E. Proposed Site Specific Zoning Regulations
- F. Current MFSA provisions (complete copy)
- G. Ordinance #2004-25 –A-District/Special Area Ordinance
- H. 09.22.08 City Attorney's Office memorandum to the City Commission
- I. 10.08.08 Planning and Zoning Board verbatim minutes
- J. Ordinance #2004-16 – 120-Day Moratorium Ordinance

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