

**City of Coral Gables
 Planning and Zoning Board Meeting
 Wednesday, November 12, 2014
 Coral Gables City Commission Chambers
 405 Biltmore Way, Coral Gables, Florida**

MEMBERS	J9	F12	M12	A9	M14	J11	J9	A13	S10	O8	N12	D10	APPOINTMENT
	'14	'14	'14	'14	'14	'14	'14	'14	'14	'14	'14	'14	
Eibi Aizenstat - Chair	P	P	P	P	P	P	C	P	C	P	P		City Manager Patrick Salerno
Marshall Bellin	P	P	P	P	P	P	C	P	C	P	P		Commissioner Vince Lago
Anthony Bello	-	P	P	P	P	P	C	P	C	P	P		
Jeffrey Flanagan - Vice Chair	P	P	P	P	P	P	C	P	C	P	E		Commissioner Pat Keon
Julio Grabiell	P	P	P	P	E	P	C	P	C	P	E		Mayor Jim Cason
Maria A. Menendez	P	P	P	P	P	P	C	P	C	P	P		VM William H. Kerdyk, Jr.
Alberto Perez	P	P	P	P	P	E	C	P	C	P	P		Commissioner Frank C. Quesada

P = Present
E = Excused
C = Meeting Cancelled

City Staff and Consultants:

Charles Wu, Asst. Development Services Director
 Craig E. Leen, City Attorney
 Jane Tompkins, Development Services Director
 Ramon Trias, Planning & Zoning Director
 Walter Carlson, Asst. City Planner
 Scot Bolyard, Principal Planner
 Megan McLaughlin, City Planner
 Jill Menendez, Administrative Assistant
 Carlos Mindreau, City Architect

Court Reporter:

Joan Bailey

1 CITY OF CORAL GABLES
 2 LOCAL PLANNING AGENCY (LPA)/
 3 PLANNING AND ZONING BOARD MEETING
 4 VERBATIM TRANSCRIPT
 5 CORAL GABLES CITY HALL
 6 405 BILTMORE WAY, COMMISSION CHAMBERS
 7 CORAL GABLES, FLORIDA
 8 WEDNESDAY, NOVEMBER 12, 2014, COMMENCING AT 6:05 P.M.

9 Board Members Present:
 10 Eibi Aizenstat, Chairperson
 11 Marshall Bellin
 12 Anthony Bello
 13 Maria Alberro Menendez
 14 Alberto Perez

15 City Staff and Consultants:

16 Charles Wu, Assistant Development Services Director
 17 Craig E. Leen, City Attorney
 18 Jane Tompkins, Development Services Director
 19 Ramon Trias, Planning Director
 20 Walter Carlson, Assistant City Planner
 21 Scot Bolyard, Principal Planner
 22 Megan McLaughlin, City Planner
 23 Jill Menendez, Planning Administrative Assistant
 24 Carlos Mindreau, City Architect

25 Others Participating in Proceedings:

26 Mario Garcia-Serra, Esq.,
 27 On behalf of the Applicant.
 28 Roney Mateu, AIA
 29 Juan Espinosa, Traffic Engineer
 30 David Plummer & Associates.

31 Public Speakers:

32 Luis Padron
 33 Jim Dockerty

1 THEREUPON:

2 The following proceedings were had:
 3 CHAIRMAN AIZENSTAT: Okay, if everybody is
 4 ready, let's go ahead and get started.

5 Good evening. This Board is comprised of
 6 seven members. Four members of the Board shall
 7 constitute a quorum. An affirmative vote of
 8 four members of the Board present shall be
 9 necessary for adoption of any motion. A tie
 10 vote shall result in an automatic continuance
 11 of the matter to the next meeting, which shall
 12 be continued until a majority vote is achieved.
 13 If only four members of the Board are present,
 14 an applicant shall be entitled to a
 15 postponement to the next regularly scheduled
 16 Board meeting.

17 At this time, we also ask if there's any
 18 lobbyists that are registered, to please go
 19 ahead and make sure that you have been
 20 registered with the City, because any person
 21 who acts as a lobbyist pursuant the City of
 22 Coral Gables Ordinance Number 2006-11 must
 23 register with the City Clerk prior to engaging
 24 in lobbying activities or presentations before
 25 City Staff, Boards, Committees and/or the City

1 Commission. A copy of the ordinance is
 2 available in the office of the City Clerk.
 3 Failure to register and provide proof of
 4 registration shall prohibit your ability to
 5 present to the Board.

6 This meeting is now called to order,
 7 Wednesday, November 12th, and the time is 6:05.

8 Jill, if you'd please call the roll.

9 MS. MENENDEZ: Marshall Bellin?

10 MR. BELLIN: Present.

11 MS. MENENDEZ: Anthony Bello?

12 MR. BELLO: Here.

13 MS. MENENDEZ: Maria Menendez?

14 MS. ALBERRO MENENDEZ: Here.

15 MS. MENENDEZ: Jeff Flanagan?

16 Julio Grabiell?

17 Albert Perez?

18 MR. PEREZ: Here.

19 MS. MENENDEZ: Eibi Aizenstat?

20 CHAIRMAN AIZENSTAT: Here.

21 Charles?

22 MR. WU: Ex-parte?

23 This is the time where we announce whether
 24 the Board members have any ex-parte
 25 communication. Can any Board Member state for

1 the record they've had any ex-parte
 2 communication regarding the case tonight?

3 Seeing none, there's been no reaction that
 4 there's any ex-parte communication, let the
 5 record reflect that. Thank you.

6 CHAIRMAN AIZENSTAT: Anybody that's going
 7 to be talking tonight, if they would please
 8 sign up. Has everybody done so that wishes to
 9 talk?

10 Let's go ahead and swear in everybody,
 11 please. The people that will be talking,
 12 please stand up.

13 (Thereupon, those who were to speak were
 14 duly sworn by the court reporter.)

15 CHAIRMAN AIZENSTAT: Thank you. It would
 16 also be a good time to please either put your
 17 cell phones on silent or on vibrate. I'd
 18 appreciate it. Thank you.

19 Tonight we only have one item on the
 20 agenda. Let's go ahead and do a motion for the
 21 minutes, please. Has everybody taken a look at
 22 them? Is there a motion?

23 MR. BELLO: Move for adoption.

24 MR. PEREZ: I'll second.

25 CHAIRMAN AIZENSTAT: Second. Any comments

1 or questions?
 2 Call the roll, please.
 3 MS. MENENDEZ: Anthony Bello?
 4 MR. BELLO: Yes.
 5 MS. MENENDEZ: Maria Menendez?
 6 MS. ALBERRO MENENDEZ: Yes.
 7 MS. MENENDEZ: Alberto Perez?
 8 MR. PEREZ: Yes.
 9 MS. MENENDEZ: Marshall Bellin?
 10 MR. BELLIN: Yes.
 11 MS. MENENDEZ: Eibi Aizenstat?
 12 CHAIRMAN AIZENSTAT: Yes.
 13 The first item on the agenda, and actually
 14 the only item on the agenda, is a resolution of
 15 the City Commission of Coral Gables, Florida,
 16 requesting mixed use site plan review pursuant
 17 to Zoning Code Article 4, "Zoning Districts,"
 18 Division 2, "Overlay and Special Purpose
 19 Districts," Section 4-201, "Mixed Use
 20 Districts," known as MXD, for the mixed use
 21 project referred to as "4311 Ponce," on the
 22 property legally described as Lots 36-43, Block
 23 5, Industrial Section, whose address is also
 24 known as 4225 and 4311 Ponce de Leon Boulevard,
 25 Coral Gables, Florida; including repealer,

1 codification, providing for an effective date.
 2 This item has been continued from our last
 3 meeting of October 8th. We're going to let the
 4 applicant, please, go first and make his
 5 presentation.
 6 MR. GARCIA-SERRA: Good evening, Mr. Chair,
 7 Members of the Board. Mario Garcia-Serra, with
 8 offices at 600 Brickell Avenue. And just for a
 9 point of clarification, since I wasn't
 10 representing this applicant at the last
 11 hearing, was there Staff presentation at that
 12 hearing? I don't think there was.
 13 CHAIRMAN AIZENSTAT: Very minimal.
 14 MR. GARCIA-SERRA: Okay. So I'll do my
 15 presentation and then --
 16 CHAIRMAN AIZENSTAT: And then Staff will do
 17 their presentation.
 18 MR. GARCIA-SERRA: Sounds good, correct.
 19 Okay, I'm here tonight representing 4311
 20 Ponce de Leon, LLC, the owner of the property
 21 located at 4311 Ponce de Leon Boulevard. I'm
 22 joined tonight by Pepe Rodriguez, the principal
 23 of 4311 Ponce; Roney Mateu, the project
 24 architect; Juan Espinosa, our traffic engineer;
 25 and Mariano Corral, our landscape architect.

1 The aerial photo here indicates the
 2 location of the property of 4311 Ponce. The
 3 property is about half an acre and located on
 4 the northeast corner of the intersection of
 5 Ponce de Leon Boulevard and San Lorenzo Avenue.
 6 It is zoned commercial and located within the
 7 mixed use overlay district. The only request
 8 that we have here tonight before you and before
 9 the City is the request for the mixed use site
 10 plan approval.
 11 I'll give you a quick overview of the
 12 project and we'll then discuss in detail the
 13 one issue where we are still in disagreement
 14 with City Staff.
 15 Okay, here we have the rendering of the
 16 project, over here, in the middle board. I'm
 17 not sure if everybody can see it. Let me bring
 18 down this board here. If you look at the
 19 rendering here, you'll see that it is an
 20 eight-story building, which is -- unlike other
 21 mixed use projects that I've brought before you
 22 in the past, that generally tend to be
 23 residential, it is indeed more mixed in its mix
 24 of uses. Pepe's line of work is furniture, new
 25 furniture sales, high-end furniture. You

1 probably are familiar with his store. It's
 2 called Decor Homes. It's located on Ponce de
 3 Leon Boulevard, a few doors up from the actual
 4 site. So the idea is for Pepe to move his
 5 furniture store into a new state-of-the-art
 6 retail facility on the ground floor. He would
 7 be taking up the entire ground floor, and
 8 indeed, the project itself is inspired by his
 9 line of work with new furniture sales, and then
 10 Floors 2, 3 and 4 will be parking. Floors 5
 11 and 6, which are these floors up here, will be
 12 office space, with about 12,000 square feet on
 13 each floor, and then Floors 7 and 8 will be the
 14 residential floors, with eight two-story town
 15 home type units, up there on the ground floor.
 16 Something very important to note about this
 17 project, it's not a project that's maximizing
 18 its development parameters. Its height is
 19 eight stories, where in the mixed use district,
 20 you normally are permitted to have 10 stories.
 21 Its FAR is 2.75, where usually in the MXD
 22 district, you're permitted to have and the
 23 projects have 3.5 FAR. It also only has eight
 24 residential units, compared to the 60 that it
 25 is permitted to have, and again, the vast

1 majority of mixed use projects usually end up
 2 being ground floor retail, residential above.
 3 Here you have one with a very significant
 4 office component and a higher end residential
 5 component.
 6 At the October hearing, this matter was
 7 continued because there was a series of issues
 8 which were still open at that point in time.
 9 Since then, we have resolved almost all of
 10 these issues, and in my opinion, the one
 11 remaining issue to be resolved can be resolved
 12 on legal grounds, with the City Attorney's
 13 guidance this evening. The previously pending
 14 Public Works and Public Service comments were
 15 resolved, and a neighborhood meeting was held
 16 about two weeks ago, at which about 15
 17 neighboring property owners attended, all of
 18 which were supportive and complimentary of the
 19 project.
 20 The one remaining issue which we have, I'd
 21 like to refer to as the great stepback debate,
 22 and it all emanates from what the
 23 interpretation of one particular provision of
 24 the Code should be. And that provision of the
 25 Code is this one here, the setback requirement

1 in the mixed use district, specifically, the
 2 setback requirement for the front property
 3 line, which is highlighted here and states, "Up
 4 to 45 feet in height, none. If over 45 feet in
 5 height, 10 feet."
 6 Now, it's interesting. You can read that a
 7 thousand times and you can, with a straight
 8 face, interpret it two ways. You can look at
 9 it and say, if the building is up to 45 feet in
 10 height, there is no setback, but once you reach
 11 the 45-foot height level, you step back to 10
 12 feet. Or, you could also read it that any
 13 building that's over 45 feet in height requires
 14 a front setback of 10 feet.
 15 Both interpretations, I would argue to say,
 16 are defensible, and if you take the latter
 17 interpretation, which would require 10 feet
 18 setback for a building above 45 feet in height,
 19 you would then require a setback reduction.
 20 That's what the controversy has been about,
 21 but at the end of the day, if you look at the
 22 history and the custom of how this term has
 23 been interpreted -- and it's been interpreted
 24 more than one way over the years -- you'll see
 25 that it really isn't an issue, because this

1 project can comply with either interpretation,
 2 based on how each interpretation has been done
 3 previously in the past, and I'll explain
 4 further now.
 5 I think all of you have been provided this
 6 binder in which I have different exhibits.
 7 I'll be referring to some of them there. And
 8 what's perplexing here is that if you look at
 9 history, the almost same exact building, and
 10 the same site, was approved in 2008, both by
 11 this Board and by the City Commission, and the
 12 resolution approving that project is Tab 1 in
 13 the materials that I provided to you. And if
 14 you look at the transcript of the
 15 deliberations, both of the Planning and Zoning
 16 Board and of the City Commission, which are
 17 Tabs 6 and 7, and I've highlighted some things
 18 in there so it's easier to look at, the
 19 determination at that point in time was that
 20 the setback was the first interpretation that I
 21 provided: From zero to the 45-foot height, no
 22 setback, then at 45 feet in height, you step
 23 back 10 feet.
 24 That project back in 2008, and this project
 25 today, complies with that interpretation. In

1 other words, there's no setback from zero to 45
 2 feet, and at 45 feet, it steps back 10 feet at
 3 that point in time, and we can show you on the
 4 elevations, when the architect does his
 5 presentation. That interpretation, you can see
 6 in what happened in 2008, both the resolution
 7 and the transcripts of the Board and the City
 8 Commission. It interestingly, also, appeared
 9 during the process of reviewing this project in
 10 the first zoning analysis that was prepared for
 11 the project, back in May of 2014, which is Tab
 12 2 in your handout, and if you go through that
 13 one, if you go through Tab 2, you have to go a
 14 few pages, but you will come across Page 4, and
 15 in the middle of Page 4, you'll see where it
 16 says "Setbacks," it does the analysis, and on
 17 the other column it says, "Complies." You look
 18 at setback reduction, and it says, "Not
 19 applicable."
 20 So that is one interpretation that has
 21 happened in the past. It happened as recently
 22 as May of this year, with regard to this
 23 project, and it's one that the project
 24 completely complies with, if you look at it
 25 that way.

1 Now, I went even further. I didn't stop
 2 there. I said, "Let's play devil's advocate
 3 and let's go even further and let's do the
 4 other interpretation and see how the other
 5 interpretation is." And the other
 6 interpretation basically provides that if
 7 you're over 45 feet in height, you need a
 8 setback of 10 feet on the ground floor, and the
 9 only way you could reduce that setback would be
 10 by the setback reduction provisions which are
 11 in Section 15 of the Code.

12 Now, having represented so many of these
 13 mixed use projects in the past, I was able to
 14 go back and look at some of these and look at
 15 the analysis that was done for them, and I
 16 realized that since the practicality, the ease
 17 with which you can set back at the 45-foot
 18 height on all facades for the whole building is
 19 somewhat difficult, it's a challenge, it varies
 20 on the size of the property and what other uses
 21 you might have to have in the building, almost
 22 all previous mixed use projects which were
 23 approved had some element that did not step
 24 back 10 feet, that was at the property line or
 25 didn't step back the full 10 feet, and I

1 wondered, okay, how did this happen in the
 2 past? How was it permitted to happen? And if
 3 you look at the various zoning analyses and so
 4 forth, you realize that that setback reduction
 5 provision has always been read in conjunction
 6 with this setback reduction provision, which is
 7 Table 3 of the Med Design Ordinance. The
 8 projects that are mixed use have to go through
 9 Med Design Review, and part of the Med Design
 10 Review on Table 3, available for projects that
 11 are doing either Level 1 or Level 2 buildings,
 12 is this setback reduction, which does not have
 13 that same requirement that it step back at 45
 14 feet in height.

15 So you look at the previous zoning
 16 analysis, and the one where it comes out most
 17 clearly is probably the one that is in Tab 3E,
 18 and if you look at that one, 3E, and you have
 19 to go to the letter E, you'll see that that was
 20 for the DYL project, and if you look at the
 21 second page of that tab, it's a copy of the
 22 zoning analysis that was prepared at the time.
 23 You look at the highlighted section, towards
 24 the bottom, and it says, "must step back 10
 25 feet at the third floor or 45 feet, whichever

1 is less, for setback relief." Then, in
 2 boldface, it provides, "Not applicable. Med
 3 Bonus Table for setback reduction overrides,"
 4 referring to this Med Bonus Setback Table
 5 reduction.

6 So, historically, if you go through all the
 7 previous projects that have been approved, that
 8 are in the letter tabs, some of them had
 9 encroachments into that 10 feet. Some of them
 10 went up to the property line, just like this
 11 one does, and the interpretation always was,
 12 "Okay, you can go up to the property line if
 13 you provide the stepback, but the stepback has
 14 to be approved by the Board of Architects as
 15 the Design Review Board, and if the Board of
 16 Architects approves those stepbacks, then we're
 17 okay with it."

18 Again, playing devil's advocate, going with
 19 this other interpretation, which is an
 20 interpretation which Staff uses to this day and
 21 which Staff thinks it's the appropriate one, if
 22 the Board of Architects approves the stepback,
 23 then the stepback is sufficient and complies
 24 with the requirement of the Code.

25 Again, this project, whether it was in 2008

1 or whether it was today, was approved by the
 2 Board of Architects, and that approval was
 3 final, not appealed by anybody, by City Staff
 4 or any neighbors or anyone else, and indeed is
 5 the final design review approval for this
 6 project.

7 In the practice of law, we have an
 8 obligation to interpret the Code in a manner
 9 consistent with past practice. We can't just
 10 say that those who previously interpreted the
 11 Code did not know what they were doing or made
 12 a mistake. They were all qualified individuals
 13 who spent a lot of time deliberating over these
 14 plans and considering these issues.

15 Now Staff wants to use that sort of latter
 16 interpretation in a way that stepback reduction
 17 and stepbacks would be required even if the
 18 Board of Architects approved the stepbacks
 19 provided, with them still reserving the right,
 20 even if the Board of Architects approves the
 21 stepbacks, to still say that they are not
 22 sufficient, as they do in this recommendation
 23 that you have here today, which is the one sole
 24 base that they're using for a recommendation of
 25 denial, is this issue with the stepbacks.

1 In my opinion, fairness and equity do not
 2 permit this. In the law, we often say that the
 3 same facts and the same rules should yield the
 4 same result. If these stepbacks were Code
 5 compliant in 2008, and the regulations have not
 6 changed, how can they not be compliant today?
 7 If the Board of Architects' approval has always
 8 previously been sufficient to establish
 9 compliance with stepback requirements, why is
 10 that not sufficient for this project today?
 11 And I'm not saying that Staff does not have the
 12 right and have to be tied to these
 13 interpretations forever, but in this case,
 14 where we have relied to our detriment on these
 15 previous interpretations and approvals, some of
 16 which happened during this process now, in
 17 2014, those interpretations which are being now
 18 used as a single basis to deny this project,
 19 it's not fair or equitable, and may expose the
 20 City to liability unnecessarily.
 21 With that, I would ask your City Architect
 22 to provide his thoughts on this issue, which I
 23 hope at this point can help us lead to a
 24 discussion which is just about the overall
 25 merits of the project and get us past this

1 issue as to whether these stepbacks comply.
 2 MR. LEEN: The City Attorney or the City
 3 Architect?
 4 MR. GARCIA-SERRA: No, the City Attorney.
 5 I was sort of talking about the reliance
 6 argument --
 7 MR. LEEN: Okay.
 8 MR. GARCIA-SERRA: -- essentially, that
 9 we're putting forward.
 10 MR. LEEN: I'm sorry.
 11 MR. GARCIA-SERRA: Right.
 12 MR. LEEN: So I took a look at this, and
 13 let me just give you a general explanation of
 14 the law in this area. Estoppel against the
 15 government is hard to prove and hard to
 16 demonstrate. You generally have to show, you
 17 know, the basic requirements of an estoppel,
 18 which is -- and what that means is, you know,
 19 sometimes the law says A, but because the
 20 government has told them B, and the person has
 21 relied on B, and they've devoted money and
 22 resources into B, and they come to you with a
 23 proposal that's based on B, and then the
 24 government says, "No, no, no, we were wrong,
 25 it's A," they can still get B. I mean, that's

1 the idea behind an estoppel. It's hard to
 2 demonstrate against a government, but not
 3 impossible, and the government also has some
 4 latitude to recognize it, itself.
 5 I think that this case, there's been
 6 sufficient demonstration here of reliance in
 7 the past, that the City Commission could
 8 approve this based on the past interpretation
 9 and could recognize something akin to an
 10 estoppel here. So I did think it was
 11 appropriate for them to proceed. Now, that
 12 doesn't mean that Staff cannot take a new
 13 interpretation or a better interpretation or a
 14 different interpretation. The issue is, in my
 15 view, as the City Attorney, I don't think that
 16 should be done in a specific case. So, like,
 17 if you've had six cases and five of them were
 18 decided one way and then you have a sixth case
 19 and you think that the old interpretation was
 20 wrong, I don't think you just change it in that
 21 specific case. You change it outside of the
 22 case. You change it through bringing it to the
 23 Commission, or Staff bringing it to the City
 24 Attorney, and then reaching a new
 25 interpretation and then applying that going

1 forward. I think that that's fairer,
 2 generally. I'm not saying Staff did anything
 3 incorrect here. They gave their professional
 4 judgment, which is what they're required to do,
 5 and they read the Code and they looked at it in
 6 the way that, eventually, Staff is going to
 7 tell you today.
 8 All I'm saying is, I think in this
 9 particular case, you can apply the older
 10 interpretation. Going forward, I think Staff's
 11 interpretation should govern for future cases.
 12 In addition, just to -- a couple other
 13 small points. I do think the fact that this
 14 was approved, a project very similar to this,
 15 in 2008, is something you can consider. I also
 16 think the fact that other buildings -- that
 17 this is a little confusing and it appears that
 18 there's two different provisions of the Code
 19 that may apply, one of which would allow it and
 20 one of which would not, is also something you
 21 could consider, and honestly, that's something
 22 maybe we should take back to Staff and try to
 23 address that.
 24 It's interesting, because for a mixed use
 25 project, it's required to comply with basically

Page 21

1 Mediterranean Design, but it doesn't -- so it
 2 doesn't necessarily come under the
 3 Mediterranean Bonus Ordinance, because it's not
 4 a bonus. However, it does appear that some of
 5 these provisions have been applied in the past,
 6 and we're being -- and there's a request today
 7 to apply it to this particular project.
 8 Then, there was a debate among Staff and
 9 the City Attorney, a good debate, a discussion,
 10 really, about, well, if this qualifies for
 11 level one Mediterranean bonus, but not level
 12 two, does that make a difference? And I'll let
 13 Staff describe that more later, but in this
 14 particular case, the Board of Architects has
 15 determined that this qualifies as Mediterranean
 16 Design, and I think that that's sufficient for
 17 this case.
 18 So I do think that you can apply the older
 19 interpretation in this case, and then going
 20 forward, what I'm going to do is work with the
 21 Planning and Zoning Director, under the
 22 supervision of the Development Services
 23 Director, and put together a new
 24 interpretation, going forward, that will
 25 clarify this area for future projects.

Page 22

1 So are there any questions about that?
 2 MS. ALBERRO MENENDEZ: I have a question.
 3 CHAIRMAN AIZENSTAT: Well, do we want --
 4 Let me interject a second. Do we want Staff to
 5 make its presentation first, and then if we
 6 have questions, we can ask questions of the
 7 City Attorney or so forth? Would that be --
 8 MS. ALBERRO MENENDEZ: Okay.
 9 CHAIRMAN AIZENSTAT: Let's go ahead and
 10 proceed that way first, and that way, we don't
 11 go off track.
 12 MR. LEEN: Thank you.
 13 CHAIRMAN AIZENSTAT: Mario, are you done?
 14 MR. GARCIA-SERRA: You know, we probably
 15 have a few more comments to wrap it up and
 16 reserve some time for rebuttal, but I think
 17 it's probably appropriate for Staff to give
 18 their presentation now.
 19 CHAIRMAN AIZENSTAT: Charles, are you going
 20 to do the presentation?
 21 MR. WU: Yes, sir. If Aaron could pull up
 22 the PowerPoint. Thank you.
 23 This is located at the northeast corner of
 24 San Lorenzo and Ponce. It's about 0.46 acres.
 25 It's a 20,000 square feet piece of property.

Page 23

1 Merrick Park is on the east and the south and
 2 the west. Moving north, you do have one-story
 3 commercial buildings. Today there exists two
 4 one-story commercial buildings. None of them
 5 are historic.
 6 These are surrounding photos of the
 7 property. The property is highlighted in the
 8 bottom right. As mentioned before, the land
 9 use is Commercial Medium and the zoning is
 10 Commercial. This is a 3D rendering of the
 11 project. As you can see, it's a very modern
 12 design, and they have a -- It's an eight-story
 13 building, about 55,000 square feet, ground
 14 floor retail, three levels of parking. Unique
 15 to this project is two stories of apartments on
 16 the top. We do have a landscape wall that's an
 17 interesting feature on three sides of the
 18 project.
 19 This is the ground floor plan. The arrows
 20 indicate where the pedestrians' entryway is
 21 into the building. The yellow is where the
 22 vehicle access is, off the side street of San
 23 Lorenzo. There is proposed a pedestrian plaza,
 24 a pedestrian paseo, on the south side, along
 25 San Lorenzo.

Page 24

1 The landscape plan is proposing five
 2 existing royal palms to remain, and two
 3 existing trees to be remained, and a couple may
 4 be removed for the vehicle access on the top
 5 right corner.
 6 This is the Ponce, the front facade
 7 elevation. This is the San Lorenzo southern
 8 elevation, the east elevation, facing the 39th
 9 Avenue, which functions similar to an alley
 10 today, and the north elevation with the zero
 11 setback next to the adjacent commercial
 12 property.
 13 We mentioned as to the history at the last
 14 meeting, Resolution 28 -- 2008-38 approved a
 15 mixed use project of six lots, which is a
 16 slightly smaller project than the one you're
 17 considering tonight. It was a seven-story
 18 building. They were proposing four live/work
 19 units on the first floor. That was approved by
 20 the City Commission. However, a building
 21 permit was never issued.
 22 This is the floor plan, very similar in
 23 nature to the proposed today, other than that
 24 the residential is on the first floor, facing
 25 San Lorenzo, in the 2008 approval.

1 And at the time, we mentioned to you last
 2 month that it did not step back on all sides of
 3 the building at 10 feet above the 45-foot
 4 building height, and we believe that was an
 5 approval that was done in error.
 6 And these are the four elevations, looked
 7 at together, for the old approval.
 8 As mentioned by the applicant, they are
 9 going lower than the maximum lot FAR with the
 10 Med Bonus, which allows 3.5 FAR. They're
 11 coming in with 2.76 FAR. Of course, that has a
 12 much lower square footage than the maximum
 13 required. The building height is allowed up to
 14 100 foot, and they're going eight stories, a
 15 little over 93 feet in height.
 16 They're proposing one extra parking space
 17 than the minimum required on site. They will
 18 be losing one on-street parking space. The
 19 vertical topiary wall is required to go through
 20 the Public Arts, by the Arts Advisory Panel,
 21 the Cultural Development Board and the Board of
 22 Architects prior to the City Commission
 23 submittal.
 24 Our analysis shows it does not meet the
 25 setback/stepback requirement we mentioned last

1 month. I will not belabor the point of the
 2 dimensions required.
 3 Just to show you some examples we believe
 4 are consistent with our interpretation in the
 5 past, the first one is the Village Place on
 6 Altara and San Lorenzo -- Salzedo, I'm sorry.
 7 The yellow arrows indicate where the stepback
 8 is above 45 feet.
 9 The next project is DYL. Even though it
 10 was withdrawn prior to approval, again, it does
 11 meet the intent of the 10-foot stepback.
 12 Gables Gateway, located on LeJeune and
 13 Ponce, again consistent with that
 14 interpretation.
 15 Merrick Manor, the first approval by the
 16 P & Z Board and the City Commission. Again,
 17 the 10-foot stepback, and this is a detail
 18 showing where it's been applied. This is the
 19 east elevation of the first version that the
 20 Commission approved. Again, this is a detail.
 21 And mind you, even though there's a
 22 settlement that substantially changed the
 23 design of this project, even the redesign met
 24 the intent of the stepback requirement.
 25 The last project, Ponce Gables Point, at

1 Granello and Ponce.
 2 As mentioned by the applicant, the Board of
 3 Architects did approve this at its June 12th
 4 meeting. We believe that the setback/stepback
 5 did not meet the Zoning Code requirement.
 6 The traffic comments mentioned at our last
 7 meeting have since been addressed, and we do
 8 have some conditions in case you are inclined
 9 to approve the project, included in the Staff
 10 Report.
 11 The required meeting was held at October
 12 28th, per Code.
 13 These are our findings of fact, that
 14 Section 3-408 are not satisfied. Staff
 15 recommends denial based on the findings of
 16 fact.
 17 That concludes Staff's presentation. Thank
 18 you.
 19 CHAIRMAN AIZENSTAT: Thank you.
 20 Mario?
 21 MR. GARCIA-SERRA: The comments will be
 22 relatively brief. The only issue that I
 23 perhaps take with the Staff's recommendation
 24 and that presentation was the pictures about
 25 the other projects. You know, if you look

1 through the tabs that I've provided for you
 2 here, you look at other sides of those
 3 buildings and you'll see how the tower comes up
 4 to the property line in some cases or isn't
 5 stepped back the complete 10 feet and so forth.
 6 Anyway, we shouldn't be going around just
 7 arguing about all these other old projects.
 8 The one you have before you today is the one
 9 where we have to take a look at it and decide,
 10 you know, whether it's a good project or not.
 11 You guys have criteria to be guided by, the
 12 conditional use criteria, which you need to
 13 apply.
 14 Design, again, the Board of Architects is
 15 the Design Review Board here in the City of
 16 Coral Gables and they approved it and that
 17 approval was final. If there was an issue at
 18 that point in time, Staff had the right to
 19 appeal, and they didn't, and so that's where we
 20 are right now. You know, we have a project
 21 which is even better than the one that was
 22 approved in 2008. You know Pepe and Decor
 23 Homes' commitment to be moving into the retail
 24 space and staying here for a long term. It's a
 25 great thing for the City. This project is much

1 better as far as its living units are concerned
2 and how its parking is accommodated, with
3 minimal use of lifts, whereas the other project
4 used a considerable number of lifts.

5 With that said, we've already talked a lot.
6 I'll sort of let you guys have your discussion
7 right now. We have our architect here, if you
8 need him to go into further detail and walk you
9 through the plans. You also have those plans
10 in your binder, and we're, of course, available
11 to keep on addressing any other questions or
12 issues you might have, as well as anything that
13 might come from the public, and if there are
14 comments from the public, I'll ask for a few
15 more minutes to address those.

16 CHAIRMAN AIZENSTAT: Jill, do we have any
17 speakers?

18 MS. MENENDEZ. Yes. We have one speaker.

19 CHAIRMAN AIZENSTAT: Please call it.

20 MS. MENENDEZ: Luis Padron.

21 MR. WU: Mr. Chair, for the record, Mr.
22 Luis Padron did send us an e-mail, and you were
23 distributed on this today, this morning -- this
24 afternoon, excuse me.

25 CHAIRMAN AIZENSTAT: And this was entered

1 into the record. Was it given to counsel, the
2 e-mail? Not to ours, but also to Mario?

3 Do you have a copy?

4 MR. GARCIA-SERRA: Yes, the e-mail that was
5 received today, by Mr. Padron, was also
6 forwarded to us.

7 MR. PADRON: Good evening, Chair and
8 Members of the Board. My name is Luis Padron.
9 I'm an attorney. My office is at 135 San
10 Lorenzo Avenue, Suite 650. My building lies
11 directly east of the subject property.

12 My concerns are several. Number one, the
13 alley that lies directly behind this subject
14 property is an extremely narrow alley that
15 serves as a street more than an alley. If you
16 look at the map, 39th Avenue in Miami dead-ends
17 into that alley. It is much wider before it
18 enters the alley and then it narrows as a
19 result of the fact that the building that I am
20 in juts out and narrows that alley
21 tremendously. Therefore, whenever you have two
22 cars passing, it is hard for those two cars to
23 even make their way without the potential of
24 collision.

25 I think that this building as approved is a

1 safety issue, the reason being, if you look at
2 the back of this building, there is a number of
3 exits, of loading platforms, all that face that
4 alley, and that alley has an incredible amount
5 of traffic, both pedestrian and vehicular,
6 because it is one of the few ways that you can
7 enter from the City of Miami into the Gables.
8 The other way is to go all the way around and
9 enter through another side street. So a lot of
10 people on foot and on cars use that all the
11 time.

12 So my concern is that if there are going to
13 be cars entering, trucks entering, that it
14 would be a safety issue. I don't even believe
15 there's a sufficient turning angle or space to
16 allow a large garbage truck to enter that
17 building. If you look at the narrowness of
18 that alley, it is extremely, extremely narrow.

19 That's one issue, and the next issue that I
20 have is the parking entrance. The way the
21 parking entrance is configured, it sits just
22 next to where the alley ends. So you're going
23 to have cars entering and exiting that building
24 right next to an alley that has constant
25 traffic going back and forth. I think that's a

1 potential for a hazard, for an accident, et
2 cetera. As it is, it is very dangerous now to
3 walk on that sidewalk, because people cut
4 through that alley and try to get onto San
5 Lorenzo so they can turn right onto Ponce, and
6 if you're not careful, they'll run you over on
7 that sidewalk. To couple that with two
8 additional entrances right next to the alley,
9 one for cars to enter and one for cars to exit,
10 would aggravate the situation.

11 The other issue that I have, and it's one
12 that's more particular to me, my unit happens
13 to look onto the side of the property. When I
14 purchased that unit, all of the units -- all of
15 the buildings on Ponce de Leon were one or
16 two-story buildings, and they all lay below the
17 parking area for my building. This would
18 completely obliterate my view, and what they're
19 proposing to ameliorate that is a topiary that
20 is only the width of Orange Street, which is
21 the street that lies directly behind my
22 building and dead-ends in front of their
23 building, about this big, leaving the entire
24 wall blank.

25 So I would urge that if, in fact, at some

1 point, this or some other project is approved,
 2 some form of canopy or other, you know, type of
 3 design be configured to make that a little bit
 4 more attractive, because although this
 5 technically is an alley, it's not an alley.
 6 This is a street. It works as a street; it's
 7 used as a street. If you look at the street --
 8 at the alley as it goes through the City of
 9 Miami, there are numerous businesses that abut
 10 this, and it goes all the way up to Bird Road,
 11 where it's labeled, on the City of Miami side,
 12 as 39th Avenue. It is not used as an alley in
 13 the City of Miami. All of the other buildings
 14 that lay on this street to the east of the
 15 alley are much further down than mine is.
 16 Mine was constructed on the lot that was there,
 17 and it causes that alley to be very, very
 18 narrow.

19 So I think that the interpretation of the
 20 setback has to, at some point, take common
 21 sense and safety issues into consideration.
 22 That's why you're here. And I believe that
 23 allowing a building of this nature to be built
 24 up to the property line, with loading
 25 platforms, exit doors where people would, in

1 case of a fire, basically be exiting onto a
 2 street -- because if you look at the picture of
 3 the alley, the alley and their property is
 4 right there. So they would virtually open that
 5 door onto an oncoming street, with traffic
 6 going back and forth. It is extremely narrow
 7 and I think it's a big problem. I think the
 8 setback at the lower levels would be more
 9 appropriate, some kind of a way for them to
 10 allow for entry of cars and trucks that would
 11 not be as narrow as it is right now.

12 If that kind of a building was previously
 13 approved, I was not aware of it. It was a
 14 mistake to have approved it, because perhaps
 15 they didn't realize how short that alley is,
 16 how narrow that alley is, and how it creates a
 17 safety issue.

18 So, from my vantage point, I believe that
 19 you, as a Board, need to look at that, because
 20 it is a big problem for us to have to traverse
 21 that alley on a regular basis. The parking for
 22 my building lies in the rear, on Orange Street,
 23 so for me to get out to the Gables, I have to
 24 make a left out of my building, a left onto
 25 this alley which serves as 39th Avenue, and

1 then a right onto San Lorenzo, and it is a
 2 problem. It is one of those weird areas of the
 3 City. I think it's a unique project because
 4 there, for whatever reason, the City only has
 5 the frontage on Ponce and everything that lies
 6 behind it is City of Miami property, which has
 7 traditionally been industrial. Now it's in the
 8 middle of a resurgence and they're building a
 9 lot of residential and mixed use units in that
 10 area, but the way it's situated, it creates a
 11 dichotomy, because you've got residential area
 12 and an office building on one side, and then in
 13 the back, you've got many industrial uses. So
 14 it's a mixed bag and it creates problems
 15 because of the narrowness of that street.

16 So I would urge you not to approve the
 17 building in its present condition. I received
 18 a letter from the proponent only two or three
 19 days before the meeting was held. I was
 20 present last time when he was here, when he
 21 didn't have an attorney and when he hadn't had
 22 the meeting with the unit owners in the area,
 23 and I can tell you that in my building alone,
 24 there's at least five people who oppose the
 25 building. Three of them are on my floor, that

1 I can represent, and it would be a problem
 2 because we think this building as designed
 3 would be a safety hazard.

4 Thank you.

5 CHAIRMAN AIZENSTAT: Thank you.
 6 Anybody else?

7 MS. MENENDEZ: Yes, Jim Dockerty.

8 MR. DOCKERTY: Hi. I'm Jim Dockerty. I
 9 live at 1230 Catalonia. I'm two properties
 10 across the street from the proposed
 11 development. I'm here to enthusiastically
 12 support the development. I especially like the
 13 aesthetic, the design aesthetic of the
 14 building. It's not really modern architecture.
 15 It's contemporary, it's of our time, and I hope
 16 that 50 years from now, all of us and our heirs
 17 can look back on Coral Gables and see that we
 18 stood up and allowed contemporary architecture
 19 from this time to be developed in the City of
 20 Miami (sic) and that we don't end up with a
 21 city filled with faux Mediterranean Revival
 22 architecture.

23 It's a beautiful building. All of the
 24 neighbors on the street that I know quite well
 25 are very excited about it, especially the plant

1 wall.
 2 That's all I have to say.
 3 MS. ALBERRO MENENDEZ: Sir, may I ask you,
 4 what was your address, again?
 5 MR. DOCKERTY: I own -- I live at 1230
 6 Catalonia, but I own 4208 and 4212 Ponce de
 7 Leon.
 8 MS. ALBERRO MENENDEZ: Okay, thank you.
 9 CHAIRMAN AIZENSTAT: Thank you.
 10 Anybody else?
 11 MS. MENENDEZ: That's it.
 12 CHAIRMAN AIZENSTAT: Mario, do you want to
 13 say a few words?
 14 MR. GARCIA-SERRA: Mr. Chair, if you don't
 15 mind, I'll take a few minutes just to respond
 16 to Mr. Padron's comments and I'll have to ask
 17 some of the professionals to help address them,
 18 also.
 19 The easiest one to address is, of course,
 20 the view. Everybody loves their view,
 21 everybody enjoys their view. But it's very
 22 well-established law in Florida and throughout
 23 the United States that you don't have a right
 24 to your view. If we were to say that people's
 25 views have to be preserved in perpetuity,

1 imagine the impact that would have on other
 2 property owners, in their restrictions of
 3 developing their properties. It's whoever
 4 builds first, I guess, would have their view,
 5 and then no one else would ever be able to
 6 develop. So, while we understand, and, you
 7 know, we've probably had numerous situations
 8 ourselves involved, or other clients and so
 9 forth, that have lost views as a result of
 10 other construction, it's just a reality of how
 11 development and how law works here in Florida.
 12 The second issue, which has to do, sort of,
 13 with the alley traffic and safety issues, if
 14 there's one thing that Coral Gables takes
 15 seriously -- there's a lot of things that Coral
 16 Gables takes seriously, its aesthetics, its
 17 quality of life -- but traffic and public
 18 safety have always also been incredible
 19 priorities for the City, and any project that
 20 ends up being able to make it before this Board
 21 has gone through a pretty rigorous review
 22 process, of traffic studies that are prepared
 23 by our hired professional and reviewed not only
 24 by the City's Public Works Department, but by
 25 an outside traffic engineer that the City

1 hires, and trust me, it's months of going back
 2 and forth on the traffic study and figuring out
 3 those issues, and to sort of give you a good
 4 professional opinion of how we comply with all
 5 traffic and visibility, safety triangles, and
 6 other traffic flow issues, I'd ask Juan
 7 Espinosa, our traffic engineer, to come up and
 8 just give a brief presentation, as well as our
 9 project architect, to talk about how many
 10 entrances we actually have off of the alley.
 11 MR. ESPINOSA: Good evening. For the
 12 record, Juan Espinosa, with David Plummer &
 13 Associates. I'm the traffic engineer for the
 14 project, and as Mario said, we conducted a very
 15 extensive traffic study for the project, that
 16 was reviewed by the City traffic engineer and
 17 by a peer review, which is an outside
 18 consultant that the City hires to review the
 19 traffic study, and the traffic study was fine,
 20 sufficient, meaning we meet all the
 21 requirements for the City.
 22 I just want to remind you that the project
 23 sits in what's called the GRID, which is the
 24 redevelopment area, which is a traffic
 25 exception area.

1 I just want to briefly address the comment
 2 that was made regarding the alley. This is
 3 just an aerial of the site, and here, this is
 4 Ponce de Leon, going north-south. The project
 5 is located in this corner here, and if you're
 6 coming from the City of Miami, I mean, the easy
 7 route that anybody will take would be to make a
 8 left at the signalized intersection on 38th,
 9 continue south up to San Lorenzo, and go
 10 straight into the site. We don't anticipate
 11 people using the alley, because this is
 12 actually an alley, even though it's 39th Street
 13 (sic). So the traffic on that street is very
 14 minimal. We don't need it for access to our
 15 site. Our access is right on San Lorenzo. We
 16 expect people to come either from Ponce de
 17 Leon, which is where we're serving, and that's
 18 where the store has been, and the address of
 19 the project is on Ponce de Leon. That's where
 20 we expect people to come in and out.
 21 So, as far as safety issues with the alley,
 22 we don't expect any. If there is an existing
 23 condition, it is an existing condition that is
 24 occurring, basically, because of the building
 25 where that property is, which is encroaching

1 into the alley.
 2 If you look at the picture, the building
 3 actually created a blind condition. It's an
 4 existing condition. It's nothing that the
 5 project is creating. Our traffic does not be
 6 using -- doesn't need to use that street.
 7 Regarding the loading area, the loading area is
 8 located right where the 39th Street (sic) is
 9 wider. It's about 40 feet wide. So we have
 10 measured and we are confident the truck can
 11 make that turn.
 12 MS. ALBERRO MENENDEZ: What is the width of
 13 the alley?
 14 MR. ESPINOSA: In that section where it
 15 narrows, what is called the alley, the other
 16 one is 39th, it's about 20 feet, and they're
 17 using it as a two-way street. I mean, there is
 18 a -- I mean, the City can choose to make it
 19 one-way if there's a -- if there's a need to,
 20 if there's a safety need.
 21 MR. GARCIA-SERRA: And if you might, I want
 22 to emphasize this point, because if you look at
 23 this picture, a picture says a thousand words.
 24 We're looking at, in the City of Miami, this is
 25 considered 38th --

1 MR. ESPINOSA: 39th.
 2 MR. GARCIA-SERRA: 39th, excuse me, 39th
 3 Avenue, and in the City of Coral Gables, it's
 4 an alley. And so if you see, the road narrows
 5 all of a sudden here, at this point, and why
 6 does it narrow? It narrows because this
 7 building, where Mr. Padron is a unit owner, at
 8 the point it was developed, decided to build up
 9 to where he could, up to where the developer
 10 could build, and didn't dedicate additional
 11 land to sort of continue the width of that
 12 Avenue the rest of the way.
 13 If indeed this was a problem or an issue,
 14 it could have been addressed at this point and
 15 the alley could have been widened and made into
 16 part of the street or an extension of the
 17 street. It wasn't, so I guess it wasn't a
 18 problem at this point, and I would suspect
 19 that, based on the traffic reports that have
 20 been prepared by our team and reviewed by the
 21 City, that it is no longer and that it never
 22 has been and never will be an issue, and again,
 23 you know, this is stuff prepared by -- a
 24 professional report, prepared by a professional
 25 engineer, and reviewed by the City extensively.

1 MR. PEREZ: So the alley directly behind
 2 the building is the City of Coral Gables --
 3 MR. GARCIA-SERRA: Correct.
 4 MR. PEREZ: -- or City of Miami?
 5 MR. ESPINOSA: Well, I mean, the property
 6 has a piece that is right behind the alley but
 7 extends to the other side, which is 39th
 8 Street, which is the wider.
 9 CHAIRMAN AIZENSTAT: But is it the City of
 10 Coral Gables or the City of Miami?
 11 MR. BELLIN: Coral Gables.
 12 MR. ESPINOSA: Well, I don't know exactly
 13 who owns it, if the City owns half the
 14 right-of-way or the --
 15 MR. GARCIA-SERRA: I believe it acts as the
 16 City boundary. It's the boundary between the
 17 two cities and --
 18 MS. ALBERRO MENENDEZ: But is it at the end
 19 of the alley or is it in the middle of the
 20 alley?
 21 CHAIRMAN AIZENSTAT: It's the end of the
 22 alley.
 23 MR. GARCIA-SERRA: Right.
 24 MS. ALBERRO MENENDEZ: So it's in the Coral
 25 Gables side?

1 MR. GARCIA-SERRA: If you could, an aerial
 2 view, this building is within the City of Coral
 3 Gables, so draw an imaginary line this way, and
 4 that is the boundary of the City of Coral
 5 Gables.
 6 MR. ESPINOSA: From Orange north is City of
 7 Miami. So the property, which is all this
 8 here, part of the property is within the City
 9 of Coral Gables and part is in the back up into
 10 the City of Miami.
 11 MS. ALBERRO MENENDEZ: The existing
 12 property at this site?
 13 MR. ESPINOSA: At this site.
 14 CHAIRMAN AIZENSTAT: Is City of Miami?
 15 MS. ALBERRO MENENDEZ: Is encroaching into
 16 the City of Miami?
 17 MR. ESPINOSA: Well, the back side. It
 18 doesn't encroach. It's the back.
 19 MS. ALBERRO MENENDEZ: It doesn't encroach.
 20 It just backs into --
 21 MR. ESPINOSA: It backs up into the City of
 22 Miami.
 23 MS. ALBERRO MENENDEZ: But where does the
 24 alley begin and end? Whose alley is it?
 25 MR. ESPINOSA: Well, 39th Street -- 39th

1 Avenue is all the way from Ponce to Orange.
 2 That's where --
 3 MS. ALBERRO MENENDEZ: So it's not an
 4 alley, it's an avenue?
 5 MR. ESPINOSA: It's an avenue, a City of
 6 Miami avenue, all the way to Orange. From
 7 Orange to San Lorenzo --
 8 CHAIRMAN AIZENSTAT: It's an alley.
 9 MR. ESPINOSA: -- it's an alley.
 10 MS. ALBERRO MENENDEZ: I see.
 11 MR. GARCIA-SERRA: And it's a Coral Gables
 12 alley.
 13 MR. ESPINOSA: That's where the building --
 14 MS. ALBERRO MENENDEZ: And it's a Coral
 15 Gables alley?
 16 MR. ESPINOSA: It's a Coral Gables alley.
 17 MS. ALBERRO MENENDEZ: Okay. Got it.
 18 CHAIRMAN AIZENSTAT: It's a unique
 19 situation.
 20 MR. GARCIA-SERRA: It's --
 21 MR. ESPINOSA: That's where the
 22 property encroaching the -- It's the 20-foot
 23 alley.
 24 MR. GARCIA-SERRA: And I'd ask Roney now to
 25 just come up and talk about how many entrances

1 and exits we indeed have on the rear of the
 2 property.
 3 MS. ALBERRO MENENDEZ: So it goes from 40
 4 feet to 20 feet?
 5 MR. ESPINOSA: Yeah, approximately.
 6 MS. ALBERRO MENENDEZ: Got it.
 7 MR. MATEU: Good evening. My name is Roney
 8 Mateu, Mateu Architecture. I'm the architect
 9 for the project. Before I talk -- I mean, I
 10 guess, am I going to talk about the building
 11 or -- Before I talk about the building, I
 12 wanted to address a couple of comments, one
 13 that was made by Mr. Wu, that it is an
 14 incorrect statement that the previous building
 15 was not permitted, because it was permitted.
 16 The permit was extended a couple of times, in
 17 the hopes that it could be built, but the
 18 economy made it where it did not get built, so
 19 it was --
 20 MS. ALBERRO MENENDEZ: Are you referring --
 21 I'm sorry to interrupt you.
 22 MR. MATEU: The prior building.
 23 MS. ALBERRO MENENDEZ: You're talking about
 24 2008?
 25 MR. MATEU: Yes, ma'am.

1 MS. ALBERRO MENENDEZ: Okay.
 2 MR. MATEU: The other comments that I was
 3 going to address, about Mr. Padron's
 4 statements, have been mostly addressed, but
 5 suffice it to say that the only thing I wanted
 6 to make clear is that he continues to -- in his
 7 letter, it said that there was five exits out
 8 to the alley. There are actually no exits from
 9 the building out to the alley. That is an
 10 incorrect statement. The doors that are shown
 11 on the alley and on 39th Avenue are actually
 12 doors to fire pump rooms, they are doors to
 13 electric rooms, they are doors to mechanical
 14 things that are not necessarily public spaces.
 15 The doors do not open out. They are actually
 16 recessed, because it would be illegal for them
 17 to open out into the property. We're allowed
 18 100 percent to put the doors the way we have
 19 done them. The truck loading area, which, in
 20 fact, from the design that we have here in the
 21 submittal, since this time we've actually
 22 angled it for ease of maneuvering in and out,
 23 but it never happens in the alley. He
 24 continues to refer to it happening in the
 25 alley, but it never has been on the alley.

1 It's always been on the wider part, behind 39th
 2 Avenue.
 3 And I think, as has been stated, the
 4 building where he bought is probably more of a
 5 culprit in causing whatever perceived issues
 6 there are about safety or tightness in the
 7 alley. The City of Coral Gables, as it owns
 8 it, could do anything it wants with the alley,
 9 make it one-way. In fact, they could close it.
 10 Then Mr. Padron himself could not use the
 11 alley. He would have to go around the building
 12 in the other way. It would not be convenient
 13 for him to use it, as he does.
 14 So the other item that I wanted to address
 15 is the fact that we originally, in the old --
 16 in the original building, had the entrance to
 17 our parking from the alley, and in this design,
 18 we took out all of the traffic from the parking
 19 from the alley and 39th Avenue, and put it off
 20 to San Lorenzo, because we felt that it was a
 21 much better solution, to not aggravate and add
 22 to what is clearly a tight and used
 23 back-of-the-house, if you will, condition at
 24 39th Avenue and the alley, and by putting it
 25 along the side, we believe it is a much better

1 flow. It separates people from actually having
 2 to come in and out of 39th Avenue, by having
 3 most people actually enter the building in and
 4 out from Ponce, making a right, and going in
 5 and out, making a right turn, which was
 6 probably what most people will do.
 7 If you would like, I can explain a little
 8 bit of the building, if you wish, or --
 9 MR. GARCIA-SERRA: You know, Roney, what I
 10 was thinking, that we've already been up here
 11 for an hour and it's mostly been us talking, so
 12 I'm thinking we'll open it up to discussion and
 13 part of that, I'm sure, will involve asking
 14 questions about the design of the building, at
 15 which point we'll be able to go into more
 16 details. I leave it up to the Board, of
 17 course. I'm conscious of everyone's time here,
 18 too.
 19 MS. ALBERRO MENENDEZ: I just have a quick
 20 question. Who did the peer review for traffic
 21 and circulation, peer review on behalf of the
 22 City?
 23 MR. ESPINOSA: Atkins Engineering.
 24 MS. ALBERRO MENENDEZ: Who?
 25 MR. ESPINOSA: Atkins.

1 MS. ALBERRO MENENDEZ: Atkins? Okay.
 2 Thank you.
 3 MR. GARCIA-SERRA: Thanks.
 4 CHAIRMAN AIZENSTAT: At this point, let's
 5 go ahead and close the floor for discussion.
 6 Maria?
 7 MS. ALBERRO MENENDEZ: You know, to me,
 8 it's not a visual issue of the neighbor. It's
 9 not a design issue. It's not a traffic issue.
 10 But to me, it's a zoning issue, that I don't
 11 think the Board of Architects has a lot -- does
 12 not interpret zoning. It's done by our zoning
 13 professionals.
 14 Not to go against our City Attorney, but
 15 with my experience, an estoppel is established
 16 when a permit is issued, and I don't think that
 17 was the case for this particular project. The
 18 2008 project is a totally different project and
 19 it's not this project, so I'm not sure -- you
 20 know, although the same interpretation was
 21 done, I guess, originally, allowing it, it's
 22 not the project we have before us today. Today
 23 we have a new project, and my concern is going
 24 against our zoning professionals, which I
 25 personally lean towards, as far as zoning

1 matters. You know, so those are my comments.
 2 I reviewed this very extensively, and those are
 3 my comments until now, but I'm looking forward
 4 to hearing my colleagues.
 5 MR. BELLO: I think it's the same project.
 6 I disagree that it's a different project. I
 7 see it very similar. And I think that what the
 8 City Attorney pointed out was that Staff needs
 9 to go back, and from this point forward, we
 10 interpret it this way, but this was clearly
 11 already in the stream when the policy changed,
 12 and it's not fair to the owners for the City to
 13 do that. So I think I see it as the same
 14 project.
 15 MR. PEREZ: My concern has to do with the
 16 fact that the project was approved, was
 17 permitted, and I -- as Mr. Bello stated, I'm of
 18 the opinion the project is very similar to the
 19 building that was permitted and approved in the
 20 past, and what concerns me, on a moving forward
 21 basis, is someone who wants to do a great
 22 project in the City, did their up-front
 23 homework, got opinions on several occasions
 24 that their building complied, and then after he
 25 made the commitment to go forward on it, that

1 opinion changed.
 2 So my concern is, the homework is done on a
 3 building that was approved, has not changed
 4 much, so that's what my basis is, my opinion is
 5 based on. I agree with Mr. Bello that moving
 6 forward, that should be handled a little bit
 7 differently, but the fact that we're dealing
 8 with a building that is very similar to a
 9 building that was approved and permitted in the
 10 past, and now is trying to be taken a different
 11 route, is what concerns me.
 12 I respect Zoning's position, I respect
 13 Zoning's opinion, but once again, my basis and
 14 my opinion is hung up on the fact that this
 15 building was approved and permitted in the past
 16 and what we're seeing before us today is not
 17 different.
 18 CHAIRMAN AIZENSTAT: Thank you.
 19 Marshall?
 20 MR. BELLIN: Yeah. I have a couple of
 21 comments. First, I'd like to know, was there a
 22 permit issued or was there not a permit issued?
 23 Apparently there's a difference of opinion
 24 between the applicant and the City.
 25 MR. GARCIA-SERRA: You know, I would need

1 to look into that further. If you look at
 2 the -- Maybe we can even look into it right
 3 now. If you look at Tab 5 of the binder that I
 4 gave you, that is the printout of the 2008
 5 building permit review. You will see that
 6 there is still pending comments --
 7 MR. BELLIN: Wait. Where is that?
 8 MR. GARCIA-SERRA: That is Tab Number 5.
 9 CHAIRMAN AIZENSTAT: It's on the other
 10 folder.
 11 MR. GARCIA-SERRA: It's right under -- what
 12 you see under the black cover over there. That
 13 one. If you look under that printout, which
 14 we're all familiar with, probably, from
 15 previously, and you'll see that there were
 16 still some disciplines. When I looked at this,
 17 and I looked at it fairly quickly, I believe
 18 Zoning still had pending comments. It's
 19 important to note that Zoning's pending
 20 comments did not include anything about setback
 21 or stepback, and Mr. Mateu's recollection,
 22 though, is that a permit was issued. To be
 23 honest with you, I would need to look at this
 24 further to give you a more authoritative
 25 answer. I walked in here thinking that it had

1 not been issued, but I believe Roney, also.
 2 You know, we would have to go back there and
 3 see what actually happened.
 4 But whether the permit was issued or not is
 5 irrelevant to the fact that this application --
 6 that application was reviewed by City Staff,
 7 was reviewed by this Planning and Zoning Board,
 8 was reviewed by the City Commission, and the
 9 issue of setback and stepback was never raised,
 10 and so it had all its zoning approvals that it
 11 needed. That it didn't go to a building permit
 12 and get a building permit was, as Mr. Mateu
 13 explained, more a product of the economy and
 14 the world was falling apart at that time.
 15 MR. BELLIN: Can we hear from Staff?
 16 MR. GARCIA-SERRA: Excuse me?
 17 MR. BELLIN: Can we hear from Staff?
 18 MR. GARCIA-SERRA: Sure, of course.
 19 MR. WU: It's our opinion that a permit
 20 wasn't issued. As shown by the applicant's
 21 attorney, that it was going through the review
 22 process, and in the middle of the review
 23 process, somehow the project got stopped and
 24 has since expired.
 25 MR. MATEU: If I -- Can I --

1 MR. GARCIA-SERRA: Sure.
 2 MR. MATEU: I believe that the -- My
 3 recollection of the events was that the permit
 4 was approved. I'm going to retract the word
 5 issued, but I believe that it got to a point
 6 where it was approved, because -- and I know
 7 for a fact that there were several extensions
 8 that were granted by the City to keep that
 9 approval alive, and then it finally expired at
 10 one time, and I don't know, again, if it was
 11 the actual permit or the fact that it was
 12 approved and it had to be pulled by a certain
 13 date, but there were several extensions that
 14 were done, that were being asked for because
 15 the economy had turned, and they were trying to
 16 get financing, et cetera, to build it. But
 17 there were, in fact, those extensions granted
 18 by the City. So the permit was ready.
 19 MR. PEREZ: But it went through the entire
 20 process --
 21 MR. MATEU: Oh, absolutely.
 22 MR. PEREZ: -- and all the divisions
 23 approved it?
 24 MR. MATEU: Yes.
 25 MR. GARCIA-SERRA: I think, combined with

1 Mr. Mateu's recollection and what we've been
 2 able to find in actual written record, it
 3 appears zoning -- it got its zoning approvals
 4 from this Board and the City Commission. It
 5 then went to building permit, it went through
 6 the various building permit reviews. Where I
 7 think it ended up was that all the disciplines
 8 had okayed it and it would have been ready for
 9 issuance. They did not get it issued because
 10 they simply did not pay for the permit fee.
 11 You know, at that point in time, there was no
 12 point in moving forward with the project, due
 13 to the economy. And then --
 14 MR. LEEN: Could I add something? Pardon
 15 me.
 16 MR. GARCIA-SERRA: Sure.
 17 MR. LEEN: Probably it's some sort of
 18 approval that -- and under our Code, those
 19 approvals are good for 18 months.
 20 MR. GARCIA-SERRA: Correct.
 21 MR. LEEN: So -- and those can be extended
 22 one time. That's probably what you're talking
 23 about. I did want to mention, you know,
 24 whether a permit was granted or not, and
 25 Ms. Menendez mentioned this, as well, that goes

1 more to the issue of whether there's a vested
 2 right. If a permit is issued, there's a vested
 3 right for a certain amount of time. And of
 4 course, a permit issued in 2008 doesn't
 5 necessarily vest you with a right now. And I'm
 6 not saying there's a vested right here, and I
 7 want to be clear about that. I'm saying that
 8 the doctrine of estoppel is more something
 9 that's imposed in equity by a court, and
 10 there's a certain standard that you have to
 11 reach to meet that. I've interpreted this Code
 12 in the past to allow us, to allow the City
 13 Commission, to recognize a past approval or
 14 past interpretation and give it weight, based
 15 on an estoppel theory. It's basically the
 16 theory that a government -- you know, a
 17 government can change an interpretation, but in
 18 doing it, it still must consider the fact that
 19 someone may have relied on the prior one, and
 20 so if you ask me as the City Attorney, I'd much
 21 prefer -- and the way that I've operated as
 22 City Attorney is, if there's a new
 23 interpretation or a different interpretation, I
 24 apply it going forward to new projects, and
 25 I'll even issue a City Attorney opinion based

1 on that interpretation, we'll put it in the
 2 opinion book, which we're going to put online
 3 and we make that available for people, so that
 4 everyone is treated exactly the same, which is
 5 the goal.
 6 So, here, I felt that there was enough in
 7 the record -- and I'm not saying I disagree. I
 8 mean, you could definitely find the other way.
 9 I haven't issued a binding opinion that this is
 10 an estoppel. I believe that estoppel could be
 11 found here by the City Commission, and I think
 12 that, therefore, this should be allowed to go
 13 forward to the City Commission, but ultimately,
 14 what they will look at is the totality of the
 15 circumstances, which is the 2008 resolution by
 16 the City Commission, how similar is this
 17 project, the prior interpretations on other
 18 buildings that been have been approved under
 19 similar or like circumstances, and how like are
 20 those circumstances, and based on the totality,
 21 in my view, they could approve this.
 22 MR. GARCIA-SERRA: And again, that's what
 23 we're talking about here.
 24 MS. ALBERRO MENENDEZ: But I'm a little
 25 confused.

1 MR. GARCIA-SERRA: Sure.
 2 MS. ALBERRO MENENDEZ: I'm a little
 3 confused, because I'm looking at this exhibit.
 4 This exhibit refers to the 2008 project.
 5 MR. GARCIA-SERRA: You're talking about Tab
 6 Number 5, right?
 7 MS. ALBERRO MENENDEZ: Yes, the one that
 8 you pointed out to us, and in this exhibit,
 9 there's no indication that Zoning approved.
 10 There's no indication -- For the most part, you
 11 have 11 pages of comments, and I have no
 12 indication that the 2008 permit was issued.
 13 MR. GARCIA-SERRA: Correct.
 14 MS. ALBERRO MENENDEZ: So where are we --
 15 Why are we saying it was issued, if there's no
 16 proof? I hear from Staff that it --
 17 Was it issued or was it not issued?
 18 MR. WU: Well, the applicant pulled this
 19 from our records, so I rely upon the
 20 applicant's investigation, and it doesn't show
 21 that it's been issued. It shows it in the
 22 middle of the process review, permit review,
 23 but it doesn't show on this record, and our
 24 records show it has not been issued.
 25 MR. GARCIA-SERRA: And I think --

1 MS. ALBERRO MENENDEZ: So there's a lot of
 2 statements being made that this 2008 permit was
 3 issued, but I could not find it in the
 4 information that you all gave us, so I don't
 5 think -- From what I see, a permit wasn't
 6 issued.
 7 MR. GARCIA-SERRA: Correct.
 8 MS. ALBERRO MENENDEZ: So -- and then I
 9 don't see a zoning approval here, so I'm kind
 10 of wondering, where is the proof?
 11 MR. GARCIA-SERRA: Well, I think, number
 12 one, on the issue of the building permit and
 13 whether it was issued or not, I think
 14 Mr. Mateu, after he came up here and corrected
 15 himself, I think the recollection that he had
 16 was that it went through the disciplines. He
 17 seems to remember that most of the disciplines
 18 had approved, but I think it's pretty clear
 19 from this record that a permit was not actually
 20 issued.
 21 MS. ALBERRO MENENDEZ: No, and plus zoning,
 22 I don't see a zoning approval on it.
 23 MR. GARCIA-SERRA: You're right. I didn't
 24 see it, either, but it's important to look,
 25 also, when you look at the zoning comments,

1 they don't say anything about setback or
 2 stepback.
 3 MS. ALBERRO MENENDEZ: I understand, but
 4 when it's not final, comments can continue
 5 going.
 6 MR. GARCIA-SERRA: Sure.
 7 MS. ALBERRO MENENDEZ: I mean, I'm telling
 8 you, I'm going through a permit at the County,
 9 and every time I turn around, they're adding
 10 more comments to my review. So it never ends
 11 until you get that paper.
 12 MR. GARCIA-SERRA: Sure. The one thing
 13 that is for certain, and it's indicated in Tab
 14 1 of the exhibit book that I gave you, was that
 15 the City Commission approved this project.
 16 MS. ALBERRO MENENDEZ: Oh, yes, sure.
 17 MR. GARCIA-SERRA: And before you get
 18 there -- It's not like we just show up there
 19 and they approve. It goes through a pretty
 20 rigorous zoning review process and review by
 21 this Board.
 22 CHAIRMAN AIZENSTAT: Let's let Marshall
 23 finish his --
 24 MR. GARCIA-SERRA: Sure.
 25 MS. ALBERRO MENENDEZ: Sorry, Marshall.

1 MR. BELLIN: That's okay.
 2 If you go to the other comments, go to Page
 3 11/15, 11 of 15, okay? And take a look at the
 4 zoning -- Erick Tejera's comments of 8/6/2010.
 5 He mentions in there a previous approval. Now,
 6 I don't know if this was approved previously.
 7 MS. ALBERRO MENENDEZ: I'm sorry, where?
 8 I'm having a hard time finding it.
 9 CHAIRMAN AIZENSTAT: 11 of 15.
 10 MS. ALBERRO MENENDEZ: Oh, yeah. All
 11 right.
 12 MR. BELLIN: So it says, plans must match
 13 previously approved plans dated 1/4/2008.
 14 MR. GARCIA-SERRA: Yeah. Those are the
 15 plans that were approved at City Commission.
 16 If you look at the City Commission resolution,
 17 it says it's based on those plans.
 18 MR. WU: This was the '08 approval.
 19 MR. BELLIN: Okay. I guess we're not going
 20 to put that one to bed right at this minute,
 21 but I have a comment. When you use a setback
 22 reduction, under Med Bonus, you don't get it
 23 for nothing. You've got to provide certain
 24 things to get that setback reduction. Have you
 25 provided them?

1 MR. GARCIA-SERRA: One major thing that's
 2 required by that setback reduction is the open
 3 space, and yes, that open space is provided on
 4 the ground floor.
 5 MR. BELLIN: There's a couple things. If
 6 you tell me you did, okay, I'll buy it, but --
 7 MR. MATEU: There's like 12 --
 8 MR. GARCIA-SERRA: No, the one that he's
 9 talking about is on Table 3, and it's probably
 10 about four or five different requirements. If
 11 you want, we can look through it and -- but
 12 yes.
 13 MR. BELLIN: We can look through it. I'm
 14 just asking a question.
 15 MR. GARCIA-SERRA: Yes. We did provide it.
 16 MR. BELLIN: The other thing is, when the
 17 Board of Architects reviews a set of plans,
 18 they only review for aesthetics, and the fact
 19 that they give you Mediterranean bonuses and
 20 certain things are required, zoning-wise, they
 21 don't review for that. So, because the
 22 stepbacks were not provided and they didn't say
 23 they needed to be provided, that doesn't mean,
 24 you know, that they didn't need to be provided.
 25 MR. GARCIA-SERRA: My response to that,

1 it's important, as far as, the interpretation
 2 of that setback reduction, historically, has
 3 always been, if the Board of Architects has
 4 approved it as part of the Mediterranean Design
 5 approval, then the setback that is provided is
 6 acceptable, and if you look at the letter tabs
 7 that I have under Tab 3 of the binder that I
 8 gave you, you start leafing through them, and
 9 just go through each first page on each letter.
 10 3B, if you look at the highlighted portion
 11 there, which talks about setbacks and what's
 12 required and what's proposed, "A proposed
 13 setback of zero feet is acceptable if approved
 14 by Board of Architects for Mediterranean
 15 architectural style."
 16 If you go to C -- and it looks like we
 17 don't have that. Oh, my dear, where is that?
 18 Again, at the very bottom of that page, we
 19 didn't highlight it, but, "Setback requirements
 20 for mixed use projects approved for
 21 Mediterranean style."
 22 if you go to D, "Permitted for buildings
 23 approved by the Board of Architects for
 24 Mediterranean architectural style."
 25 You go to E, "Setback relief may be awarded

1 for mixed use projects approved for
 2 Mediterranean style bonus."
 3 You keep on going, and there's a few more
 4 left here, but I won't belabor the point. It's
 5 always been tied to the Board of Architects
 6 Mediterranean approval.
 7 MR. BELLIN: So, if the Board of Architects
 8 approves something that's clearly not right,
 9 it's okay?
 10 MR. GARCIA-SERRA: Well, we're certainly
 11 not saying that, Marshall.
 12 MR. BELLIN: Well, you know.
 13 MR. GARCIA-SERRA: What we're saying is
 14 that, in interpreting the stepback
 15 requirements, there's always been an
 16 understanding that there has to be some sort of
 17 leniency and some sort of interpretive
 18 authority, and where that interpretive
 19 authority has been vested in, up until now, has
 20 been the Board of Architects.
 21 What's happening tonight is that the Board
 22 of Architects said it's okay. The Planning
 23 Department still feels that it isn't okay.
 24 MR. MATEU: Can I add something, Marshall,
 25 if I may?

1 MR. BELLIN: Yeah.
 2 MR. MATEU: Because I think we have been
 3 focusing on the Mediterranean bonus portion of
 4 where we believe we're allowed to design the
 5 building the way we did. And by the way, just
 6 for the record, I forgot to mention this
 7 earlier, the building behind us, where the
 8 gentleman has his office, that building has a
 9 stepback in the front of 10 feet, it has a
 10 stepback on the side, by the alley, and it has
 11 no stepback in the back, straight up.
 12 MR. BELLIN: Isn't that building in the
 13 City of Miami?
 14 MR. MATEU: No. It's in the City of Coral
 15 Gables. So, miraculously, that building has no
 16 stepback in the back, but that's another point,
 17 and neither does The Collection building on
 18 Ponce de Leon, across the street, on the front.
 19 It goes straight up, nine floors, at zero
 20 setback.
 21 But I want to point out, to the zoning
 22 review that was prepared on the date that is --
 23 I don't know if you have this zoning review on
 24 your booklet submittal, but in the original
 25 submittal that we submitted, that was dated

1 April 15th, in Section -- and I think you had a
 2 hard time finding this, the last time, on Page
 3 4. Section 4-201, E-14. I want to go back to
 4 that paragraph, because I think it's important
 5 that we point out that we believe that this
 6 paragraph, this is not a matter of
 7 interpretation. This is where I think we're
 8 also having issues, because to me, this is
 9 reading what it says. This is not a matter of
 10 interpretation. And Section 4-201, E-14, says
 11 Setbacks, under the referenced provision
 12 paragraph: Front, up to 45 feet in height,
 13 none, zero. If 45 feet in height, 10-foot.
 14 That has been interpreted where you go up 45
 15 feet at zero setback and then you step back.
 16 There's a reason I say that, even though
 17 the words could be interpreted, "Well, if you
 18 have a higher building than 45, the whole thing
 19 has to go back." The reason that isn't the way
 20 it has been interpreted in the past is because
 21 planners, urban planners, and zoning people
 22 that write these things, the intent of the 45
 23 foot, why there's a 45-foot dimension, is a
 24 magic number that basically says, at four
 25 stories, the scale of an experience as a

1 pedestrian on a sidewalk, on a street, after
 2 that height, it becomes too high. So the idea
 3 of the 45 feet -- and you can argue whether
 4 it's 40, 45 feet, 47, 46, whatever -- at that
 5 point, there should be a relief. There should
 6 be a change, where higher buildings step back,
 7 and then they can go up, because the perception
 8 of the pedestrian is then not overpowered by a
 9 high building.
 10 The idea of saying, if you have a
 11 nine-story building, a 90 or hundred-foot
 12 building, the idea of setting it back 10 feet
 13 from a sidewalk, then you can go straight up,
 14 makes no sense from an urban planning point of
 15 view, if you think about it. The idea of the
 16 45 foot and then having a change is the intent
 17 of why that dimension is used, make no mistake
 18 about that.
 19 So, when you read this and I read this,
 20 saying, 45 feet, zero setback; if over 45 feet,
 21 then there's a 10-foot setback, to go up
 22 higher. It says side, interior side, zero
 23 setback, none. Side street, 15 feet. Rear,
 24 abutting a dedicated alley or a street, none.
 25 No abutting a dedicated alley or street, 10

1 feet. Okay? And that speaks about balconies,
 2 balconies may project, et cetera, et cetera.
 3 At the bottom of that paragraph, it says,
 4 "Applicants and property owners desiring to
 5 develop pursuant to these regulations may not
 6 seek a variance for relief or reductions in
 7 building setbacks. Reductions are only
 8 permitted subject to the below-listed
 9 regulations." The below-listed regulations are
 10 Section 4-201, E-15. That paragraph is the one
 11 that says, if you are wanting to reduce your
 12 setbacks, then you have to have setbacks on all
 13 sides.
 14 There is a paragraph on the right side that
 15 says "Required and Provided." The first word
 16 says, "Complies." Our building setbacks
 17 complies. Then there's a paragraph that was
 18 written by Staff, that we did not ask for. It
 19 was a comment that was written and admitted to
 20 by one of the Staff members, that he thought
 21 that we wanted, and he put this in here, but we
 22 didn't ask for this, which then that paragraph
 23 that he wrote, on his own -- we didn't ask for
 24 this -- on his own, that paragraph then kicks
 25 the project into Section 15. If that paragraph

1 was something we were asking for, then I would
 2 agree that then we would have to set back on
 3 all sides, but we did not.
 4 CHAIRMAN AIZENSTAT: Let us continue our
 5 discussion. Thank you for your comment.
 6 MR. MATEU: Thank you.
 7 CHAIRMAN AIZENSTAT: Marshall?
 8 MR. BELLIN: Let me ask you a basic
 9 question.
 10 MR. GARCIA-SERRA: Sure.
 11 MR. BELLIN: If we approve this building,
 12 then every other building that comes before us
 13 and has no setbacks, are we going to make them
 14 have the setbacks?
 15 MR. GARCIA-SERRA: Not necessarily.
 16 MR. BELLIN: So then let's take it out of
 17 the Code.
 18 MR. GARCIA-SERRA: Excuse me?
 19 MR. BELLIN: Let's take it out of the Code.
 20 Let's fix this whole situation, so we don't
 21 have these --
 22 MR. GARCIA-SERRA: Oh, I think definitely,
 23 a conclusion of this discussion here should
 24 definitely be that this issue should be
 25 straightened out in the Code, and one thing

1 that I can tell you, also, though, remember,
 2 same project, same rules, should have the same
 3 result, at this point in time.
 4 MR. BELLIN: That's exactly the point.
 5 MR. GARCIA-SERRA: Yeah.
 6 MR. BELLIN: And that has to be fixed,
 7 because it has a great impact on a lot of the
 8 buildings we're doing.
 9 MR. GARCIA-SERRA: Sure.
 10 MR. WU: Mr. Chair, if I can add one
 11 clarification. You're talking about setbacks
 12 and setbacks. The way from a planning
 13 perspective, setback is the entire building
 14 facade or line where it is set back from the
 15 property line. Stepback, however, is from the
 16 building, where you step the building back. So
 17 that is how, from planning terminology, setback
 18 versus stepback are applied. So, to us, it's
 19 clear, the stepback, either zero feet or 10
 20 feet is the setback for the building.
 21 When it applies to stepback is where you
 22 have clear you have to step the building back
 23 above 45 feet, further in.
 24 CHAIRMAN AIZENSTAT: That's the stepback.
 25 MR. WU: Thank you.

1 CHAIRMAN AIZENSTAT: Mario, from the
 2 project that was approved in 2008 to the
 3 project you're presenting now, what percentage
 4 of square footage do you have additional?
 5 MR. GARCIA-SERRA: There was an additional
 6 lot that was added.
 7 Roney, could you tell us?
 8 CHAIRMAN AIZENSTAT: Just give me the
 9 numbers.
 10 MR. MATEU: The prior project was only 150
 11 feet frontage.
 12 CHAIRMAN AIZENSTAT: Give me the total --
 13 MR. GARCIA-SERRA: Floor area.
 14 CHAIRMAN AIZENSTAT: Give me the total
 15 floor area. What percentage did you add?
 16 MR. MATEU: Our building is about 48,000,
 17 50,000 -- 50,000 square feet total, and I
 18 think --
 19 CHAIRMAN AIZENSTAT: The one today?
 20 MR. MATEU: The one today.
 21 CHAIRMAN AIZENSTAT: And how much was the
 22 2008?
 23 MR. WU: 46,150.
 24 MR. MATEU: But it was on 150 feet instead
 25 of 200.

1 CHAIRMAN AIZENSTAT: Right. Apartments,
 2 residential, on the components --
 3 MR. MATEU: We have eight.
 4 CHAIRMAN AIZENSTAT: On the 2008, how many
 5 apartments?
 6 MR. MATEU: We had four live/work units.
 7 CHAIRMAN AIZENSTAT: And now?
 8 MR. MATEU: We have eight townhouses.
 9 CHAIRMAN AIZENSTAT: Double that. Offices?
 10 MR. GARCIA-SERRA: Office space.
 11 MR. MATEU: We have about 24,000 square
 12 feet today.
 13 CHAIRMAN AIZENSTAT: Which is -- How do you
 14 have it divided up? It's rental or condo?
 15 MR. MATEU: Two floors of about 12,000 feet
 16 each.
 17 CHAIRMAN AIZENSTAT: Okay.
 18 MR. GARCIA-SERRA: 24,000 square feet of
 19 office.
 20 CHAIRMAN AIZENSTAT: And in 2008, you had
 21 the same?
 22 MR. MATEU: We had more floors. I don't
 23 remember the exact amount.
 24 CHAIRMAN AIZENSTAT: But your component,
 25 you had about 25 percent more office back then?

1 You had another floor?
 2 MR. WU: Mr. Chair, if I can, the '08
 3 project --
 4 CHAIRMAN AIZENSTAT: Okay.
 5 MR. WU: -- has 46,150 square feet.
 6 CHAIRMAN AIZENSTAT: Okay.
 7 MR. WU: The project today in front of you
 8 is 55,178 square feet.
 9 CHAIRMAN AIZENSTAT: Okay.
 10 MR. WU: The old project has four dwelling
 11 units. Today's project has eight dwelling
 12 units.
 13 CHAIRMAN AIZENSTAT: Okay. What about
 14 offices?
 15 MR. WU: Offices, I included that as all
 16 the nonresidential space together.
 17 MR. BELLIN: Open space.
 18 CHAIRMAN AIZENSTAT: So they're doing it as
 19 open space. What about commercial?
 20 MR. MATEU: The ground floor was commercial
 21 on that project, except the work -- the
 22 live/work units were on the ground floor on
 23 that one.
 24 CHAIRMAN AIZENSTAT: Okay.
 25 MR. MATEU: But that building was also

1 higher.
 2 CHAIRMAN AIZENSTAT: Right. That's why I
 3 was -- To me --
 4 MR. MATEU: Was taller.
 5 MR. GARCIA-SERRA: Actually, I found
 6 something in my binder that would help you. On
 7 3C, you'll see the breakdown of the 2008
 8 project, and right there, office was 36,000
 9 square feet. Residential units was four.
 10 CHAIRMAN AIZENSTAT: That's what I was
 11 looking at.
 12 MR. GARCIA-SERRA: Right. Total square
 13 footage of the building was the 46,000 that
 14 Charles mentioned, 46,150.
 15 MR. WU: And again, it's a larger piece of
 16 property --
 17 CHAIRMAN AIZENSTAT: Understood.
 18 MR. WU: -- with more parking.
 19 CHAIRMAN AIZENSTAT: To me, I have always
 20 viewed that projects that come before us are
 21 individual projects. They're independent
 22 projects. They come before us on their own
 23 merit. This is a -- Although this is a unique
 24 situation, what happened in 2008 and what
 25 happened back then with the Zoning Code may not

1 apply to what is going on today, as far as the
 2 project.
 3 I'm not so worried, in my mind, that you
 4 got a permit or you didn't get a permit. To
 5 me, either way, if you didn't exercise -- if
 6 you got your permit and didn't exercise it
 7 within your allotted time -- they give you an
 8 extension, let's say it's six months, and then
 9 you can extend it another six months and so
 10 forth. After that time, your right goes away,
 11 and anything you want to do, you have to
 12 reapply. And if anything changes in the Code
 13 or there's anything different, then you have to
 14 meet those changes. And in my mind, that's
 15 what I'm seeing here on this. That's why I'm
 16 asking some of these questions. You're a
 17 larger project, not larger in height, but, you
 18 know, you have more land now. You're a
 19 different project than you were.
 20 MR. MATEU: But the Code hasn't changed.
 21 CHAIRMAN AIZENSTAT: I understand, but you
 22 have to go back in and --
 23 MR. MATEU: Right.
 24 CHAIRMAN AIZENSTAT: And you have to --
 25 MR. MATEU: This is what we're doing.

Page 77

1 MR. GARCIA-SERRA: And, you know, when we
2 talk about the previous approval in 2008, it's
3 not like we're waving it as a flag, saying,
4 "This is a vested right, don't take it away
5 from us." Why we're pointing -- The reason why
6 we're pointing to the 2008 reviews and
7 approvals is that it's the best evidence we
8 have of how the Zoning Code has been
9 interpreted, a Zoning Code that hasn't changed,
10 and indeed, that's how it was interpreted back
11 then. Somehow this got approved. It wasn't by
12 mistake. These things don't happen by mistake.
13 And we should be entitled to rely upon it, and
14 even through this process, at 2014, we were
15 still getting zoning analysis indicating that
16 we complied with setback, as we have pointed
17 out, not once but twice.

18 MR. LEEN: Mr. Chair, if I could say
19 something. If I were a judge, looking at this
20 case, and this provision had not been applied,
21 ever, in the past, I would tend to agree with
22 Staff, that because the word setback is used,
23 as opposed to stepback, you're talking about a
24 10-foot setback, just on the plain meaning.
25 The issue, though, is that a court is likely to

Page 78

1 look at three or four different -- what they're
2 called is Canons of Construction, in
3 determining what this means, because there
4 is -- there's an argument that there's an
5 ambiguity here, both in the way it's been
6 applied in the past and also in the fact that
7 it seems like the purpose of the provision --
8 and I'm not a planner, but this is just what
9 I've heard, and this is what a court will look
10 at, they'll hear evidence from different
11 planners -- but it's basically what Mr. Mateu
12 said, is the 10-foot setback, is that the
13 purpose when it goes above 45 feet, is to have
14 a 10-foot setback, or is it to have the
15 stepback because of the reasons that were
16 stated? And you have to determine that, or
17 ultimately the Commission, but with your
18 recommendation, will have to determine what was
19 the intent of this provision, which is not the
20 best worded provision in the world and which
21 has been interpreted differently in the past by
22 the City than it's being interpreted today.

23 So, when I look at Tab -- you know, the tab
24 with the -- I guess it was 3, with the six
25 projects -- pardon me, seven projects, and I

Page 79

1 think it's important to look at that, because
2 another thing a court will look at is, what is
3 the course -- It's similar in contract
4 interpretation to what's called the Course of
5 Performance, but how has this been interpreted
6 in the past, and is that evidence of the best
7 interpretation?

8 So that's why I feel this is a tough
9 situation, because I do think Staff has the
10 correct interpretation, if it was just done on
11 a blank slate. But it's not being done on a
12 blank slate, and I have to tell you, based on
13 the whole history of it, at the very least, I
14 think there's a good argument that the City
15 Commission should, when they rule on this
16 issue, eventually, decide that there is
17 something akin to an estoppel here, because of
18 the history, and that if it's going to be
19 changed, the interpretation, it shouldn't be
20 done in this case, at the very least.

21 Honestly, the City Commission may decide
22 that it should go with the old interpretation,
23 even if it's not the best interpretation on a
24 blank slate, simply because of the past
25 practice, and if there's going to be a change,

Page 80

1 there should be a change in the Code or a
2 formal interpretation issued, and that's why,
3 in terms of what the interpretation eventually
4 will be, as I mentioned, I'm going to meet with
5 Staff and we'll probably draft an
6 interpretation of how this should be done,
7 going forward. We very well may bring that to
8 the City Commission and ask for their view, but
9 I do think that it's a complicated matter, but
10 ultimately, I stand by my opinion that this
11 could be approved, both recommended by you and
12 approved by the City Commission.

13 CHAIRMAN AIZENSTAT: When this was brought
14 about in 2008, it was brought about as 4311
15 Ponce de Leon, right, not two addresses?

16 MR. GARCIA-SERRA: Right. And if I could
17 summarize my legal argument, after you heard
18 that explanation from Craig, the two
19 interpretations that have previously been done
20 in the past on that regulation, again, we would
21 comply with either of those interpretations
22 today. What we don't comply with is this most
23 recent interpretation, that has come up
24 literally within the last, I believe, two
25 months.

1 MS. ALBERRO MENENDEZ: The only problem I
 2 have, though, with this is that we are assuming
 3 that the zoning was approved when, in fact, we
 4 have no evidence of that --
 5 MR. BELLO: Well --
 6 MS. ALBERRO MENENDEZ: -- not for -- Please
 7 let me finish, Tony.
 8 Not for the 2008, and not for the one
 9 that's being presented today, obviously, or not
 10 even for the one that was in review, in the
 11 process, I haven't seen that evidence. I mean,
 12 I wish I could see it so that I can agree with
 13 you, but I just don't see it.
 14 MR. GARCIA-SERRA: Remember, there's two
 15 levels of zoning approvals. There's the level
 16 of zoning approvals that you get at public
 17 hearing, like we're going through right now,
 18 and the zoning sign-off that you get as part of
 19 a building permit. From as best I can tell,
 20 the zoning sign-off for building permit did not
 21 happen in 2008. Who knows, we might have more
 22 investigation and find other notes and other
 23 files that might prove us wrong.
 24 MS. ALBERRO MENENDEZ: Right.
 25 MR. GARCIA-SERRA: But the public hearing

1 levels of approval on zoning, there's no doubt
 2 that it happened in 2008, and as you know, we
 3 sometimes are months going back and forth on
 4 zoning analysis and so forth and making sure
 5 we've gotten it right. So, again, it's not
 6 something that I think can just say we
 7 haven't --
 8 MS. ALBERRO MENENDEZ: But then we refer
 9 back to the 2008, when it's a completely
 10 different project.
 11 MR. GARCIA-SERRA: In regard to this
 12 important issue of the setback and the
 13 stepback, it's exactly the same.
 14 MS. ALBERRO MENENDEZ: I understand that,
 15 but it's a different project.
 16 MR. GARCIA-SERRA: It's slightly bigger.
 17 MS. ALBERRO MENENDEZ: And that's --
 18 MR. GARCIA-SERRA: It's slightly bigger.
 19 MR. BELLO: Mr. Chairman?
 20 CHAIRMAN AIZENSTAT: Mr. Bello.
 21 MR. BELLO: Did the project go to the City
 22 Commission?
 23 MR. GARCIA-SERRA: Yes, the 2008 project.
 24 MR. BELLO: Did the City Commission approve
 25 it?

1 MR. GARCIA-SERRA: Yes.
 2 MR. BELLO: So all the disciplines were
 3 met.
 4 MS. ALBERRO MENENDEZ: It's a different
 5 project. The one we have before us today is a
 6 different project.
 7 MR. BELLO: But you were saying that the
 8 approval wasn't in here, the document, the
 9 actual --
 10 MS. ALBERRO MENENDEZ: It's a different
 11 project.
 12 CHAIRMAN AIZENSTAT: Well, that's --
 13 MS. ALBERRO MENENDEZ: It's not this
 14 project.
 15 CHAIRMAN AIZENSTAT: Okay, that's --
 16 MS. ALBERRO MENENDEZ: This is not the one
 17 that has the resolution tied to it.
 18 CHAIRMAN AIZENSTAT: Any other comments?
 19 MR. BELLIN: Yeah.
 20 CHAIRMAN AIZENSTAT: Marshall?
 21 MR. BELLIN: What we're trying to determine
 22 now is if this project is going to go forward
 23 to the Commission for approval of an MDX (sic)
 24 overlay.
 25 MR. GARCIA-SERRA: Correct.

1 MR. BELLIN: To me, the --
 2 MR. GARCIA-SERRA: For the site plan
 3 approval.
 4 MR. BELLIN: The site plan approval.
 5 MR. GARCIA-SERRA: Right, mixed use site
 6 plan approval.
 7 MR. BELLIN: To me, the whole issue of 45
 8 feet really needs to go away, anyway, because
 9 it really makes no sense. It's a different
 10 issue if it's a five-story building than it is
 11 if it's a 16-story building, and it's very
 12 arbitrary, and, you know, it kills parking
 13 efficiency, when you have to step back, if it
 14 happens to be a parking level.
 15 I think what the City needs to do is fix
 16 the problem, and maybe 45 feet is not the
 17 correct height. Maybe it is. Maybe it should
 18 be lower. I don't know. But we'll let Staff
 19 figure that one out.
 20 I think that if that's what we're here to
 21 do, is approve a site plan approval, I think we
 22 ought to approve it, let it go on, while all
 23 these issues are being taken care of, so --
 24 CHAIRMAN AIZENSTAT: Any other comments?
 25 MR. BELLIN: I'll rely on Craig's opinion.

Page 85

1 CHAIRMAN AIZENSTAT: Anybody want to make a
 2 motion?
 3 MR. BELLIN: I'll make a motion to approve.
 4 MR. PEREZ: I'll second it.
 5 CHAIRMAN AIZENSTAT: Any conditions?
 6 MR. WU: Mr. Chair, we do have, on Page --
 7 the last month's report, we have on Page 26, if
 8 we can just reference Page 26 of the previous
 9 report as draft conditions, as well as on Page
 10 20 of today's report, we have six additional
 11 landscape conditions for your consideration, as
 12 part of the motion, please.
 13 MR. BELLIN: I'll change my motion to
 14 approve with the conditions as laid out in the
 15 Staff Report.
 16 CHAIRMAN AIZENSTAT: So, even though Staff
 17 is denying, it's saying that if the Board
 18 wishes to go forward with an approval, it's
 19 with these recommendations?
 20 MR. WU: Yes, because you have to prepare a
 21 resolution for the Commission to approve or
 22 deny.
 23 CHAIRMAN AIZENSTAT: Understood.
 24 MR. GARCIA-SERRA: And those conditions are
 25 acceptable to us.

Page 86

1 MR. BELLIN: Yeah, I'd like to change
 2 my --
 3 CHAIRMAN AIZENSTAT: So your recommendation
 4 is for approval --
 5 MR. BELLIN: Approval with the
 6 recommendations as per Staff.
 7 CHAIRMAN AIZENSTAT: As noted by Staff.
 8 MR. BELLIN: Yes.
 9 CHAIRMAN AIZENSTAT: Is there a second?
 10 MR. PEREZ: And so the applicant does --
 11 MR. GARCIA-SERRA: Those conditions, I've
 12 reviewed them and they're acceptable.
 13 MR. PEREZ: Okay, I second.
 14 CHAIRMAN AIZENSTAT: Any comment? No?
 15 Call the roll, please.
 16 MS. MENENDEZ: Maria Menendez?
 17 MS. ALBERRO MENENDEZ: No.
 18 MS. MENENDEZ: Alberto Perez?
 19 MR. PEREZ: Yes.
 20 MS. MENENDEZ: Marshall Bellin?
 21 MR. BELLIN: Yes.
 22 MS. MENENDEZ: Anthony Bello?
 23 MR. BELLO: Yes.
 24 MS. MENENDEZ: Eibi Aizenstat?
 25 CHAIRMAN AIZENSTAT: Because I see this

Page 87

1 project as now having different addresses, and
 2 not as originally submitted, my vote is no.
 3 MR. LEEN: As a three-two vote, it will go
 4 to the Commission without a recommendation.
 5 MR. GARCIA-SERRA: Is that the -- Let's
 6 take five minutes, maybe, to take a look at it,
 7 because I'm not sure if it goes to the
 8 Commission without a recommendation or whether
 9 it has to go to the next meeting.
 10 MR. WU: It's a negative recommendation.
 11 MR. GARCIA-SERRA: Can we take five
 12 minutes?
 13 MR. LEEN: I think it was negative. Unless
 14 there's a vote of no, I mean, unless four of
 15 them agree to vote no, but right now, it's a
 16 three-two. One thing you can do is, you can
 17 have it come back, but this has already come
 18 before this Board twice.
 19 MR. GARCIA-SERRA: Right, but we're just --
 20 MS. ALBERRO MENENDEZ: He moves forward
 21 without a recommendation, that's fine.
 22 MR. GARCIA-SERRA: Without a
 23 recommendation.
 24 MS. ALBERRO MENENDEZ: Yeah.
 25 CHAIRMAN AIZENSTAT: You can still move

Page 88

1 forward.
 2 MR. LEEN: With a vote of three to two.
 3 MR. GARCIA-SERRA: Okay.
 4 MR. LEEN: I mean, do you want to take a
 5 look at the Code and talk about it for a
 6 moment? I don't mind.
 7 MR. GARCIA-SERRA: I think that would be a
 8 good idea, for the sake of also conferring with
 9 my client, and I apologize --
 10 CHAIRMAN AIZENSTAT: Do you want to take
 11 just a five-minute recess?
 12 MR. GARCIA-SERRA: I'd take two or five
 13 minutes. Thank you.
 14 (Thereupon, a brief recess was taken.)
 15 MR. LEEN: Okay. So, Mr. Chair, we looked
 16 at the Code, and what it indicates is that, of
 17 course, four of you are a quorum and four votes
 18 are required for the passage of any motion. It
 19 does say that if there's a tie vote, it's
 20 automatically continued.
 21 CHAIRMAN AIZENSTAT: Correct.
 22 MR. LEEN: In a situation where it's not a
 23 tie vote, but it's three to two, it's my
 24 interpretation that it goes forward to the City
 25 Commission without a recommendation, and that

1 it's noted that it's a three-to-two vote.
 2 Also, we have done that in the past, so
 3 there is precedent.
 4 CHAIRMAN AIZENSTAT: Yeah, we have. We've
 5 done that quite a bit, actually.
 6 MR. GARCIA-SERRA: I just wanted to make
 7 sure of the legalities before we actually did
 8 it. We're fine with that. That's the decision
 9 of the Board.
 10 CHAIRMAN AIZENSTAT: Yeah. That's why, at
 11 the very beginning, I read --
 12 MR. GARCIA-SERRA: Right.
 13 CHAIRMAN AIZENSTAT: Thank you.
 14 MR. GARCIA-SERRA: I believe the votes were
 15 taken already, right, so we move forward to the
 16 City Commission with no recommendation.
 17 CHAIRMAN AIZENSTAT: Thank you. Good luck.
 18 MR. GARCIA-SERRA: Thank you.
 19 CHAIRMAN AIZENSTAT: Any other comments,
 20 any questions? Our next meeting is dated for
 21 when?
 22 MS. MENENDEZ: December --
 23 MR. PEREZ: The 10th of December?
 24 MS. MENENDEZ: The 10th.
 25 CHAIRMAN AIZENSTAT: December 10th? Okay,

1 Happy Thanksgiving to everybody. Thank you
 2 for coming. The meeting is adjourned.
 3 (Thereupon, the meeting was adjourned at
 4 7:35 p.m.)
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CERTIFICATE
 2
 3 STATE OF FLORIDA:
 4 SS.
 5 COUNTY OF MIAMI-DADE:
 6
 7 I, JOAN L. BAILEY, Registered Diplomate
 8 Reporter, Florida Professional Reporter, and a Notary
 9 Public for the State of Florida at Large, do hereby
 10 certify that I was authorized to and did
 11 stenographically report the foregoing proceedings and
 12 that the transcript is a true and complete record of my
 13 stenographic notes.
 14 I also certify that all public speakers were
 15 duly sworn by me.
 16
 17 DATED this 19th day of November, 2014.
 18
 19 SIGNED COPY ON FILE
 20
 21 _____
 22 JOAN L. BAILEY, RDR, FPR
 23 Notary Commission Number EE 083192.
 24 My Notary Commission expires 6/14/15.
 25