



To: Mario Garcia-Serra

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

A handwritten signature in blue ink, appearing to be "CL", is written over the "From:" line.

RE: Legal Opinion Regarding Merrick Manor/Approval of Revised Development Plan

Date: February 24, 2016

Pursuant to section 2-201(e)(1) and (8) of the City Code authorizing the City Attorney to issue opinions and interpretations, section 2-201(e)(6) of the City Code regarding the City Attorney's authority relating to settlements, and section 2-702 of the Zoning Code regarding the City Attorney's authority to issue final zoning interpretations, and following consultation with the Planning & Zoning Director, it is my opinion/ruling that the request be allowed subject to the required mandatory conditions that there can be no increase in FAR or density, and that the modifications be presented to the Board of Architects for final design review. I would also note that the request and affidavit is received, reviewed, and approved subject to Ordinance No. 2015-32. I would also note that the height is less than what would be allowed under Ordinance No. 2015-07, which indicates the Commission's will as to the maximum height allowed in this area.

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF MIAMI - DADE

BEFORE ME, the undersigned authority, Evelio Horta, personally appeared, who, after being sworn, depose(s) and say that he has personal knowledge of the facts set forth hereinafter and further says:

I am a Florida licensed engineer with expertise in the areas of foundations and soil mechanics. The current design of the Merrick Manor project includes a basement with a floor slab at about 13 feet below existing grade. The project site presents the best bearing limestone layer within the upper 10 feet of the soil profile followed by softer limestone and loose sand. The construction of a basement for the proposed structures will remove this supporting layer. In addition, it will be necessary to excavate pile caps several feet below the groundwater elevation that is found about 10 feet below grade. Dewatering operations during foundation construction at this site require a large pumping capacity to bring the groundwater below the pile caps elevation. The abatement of the groundwater within the porous limestone tends to erode the poorly cemented areas of the limestone and forms cavities that may reach adjacent properties and utilities, and could result in surrounding lands caving in as a result of this excavation and pumping. These conditions are intensified and exacerbated during the rainy season when the water table is higher and frequent rainfall increases the pumping demands.

In summary, the construction of a basement for this project degrades the support conditions of the soils, increases the potential for deformations under adjacent properties, and poses additional challenges to construction execution of the project to a degree which, in my opinion, does not justify the benefits of having a basement level.

Ardaman & Associates Inc.
By: Evelio Horta
Print Name Evelio Horta

STATE OF FLORIDA
COUNTY OF MIAMI - DADE

Sworn to, affirmed, and subscribed before me this 17th day of December, 2015, by Evelio Horta, PhD P.E. G.E., who is personally known to me.

Notary Signature: Marta M. Capote
Print Name: Marta M. Capote

Notary Public, State of Florida
My Commission Expires: May 7, 2017



December 18, 2015

VIA ELECTRONIC MAIL AND HAND DELIVERY

Mr. Ramon Trias
Planning and Zoning Director
City of Coral Gables
427 Biltmore Way
2nd Floor
Coral Gables, Florida 33134

Re: Merrick Manor / 4111 Le Jeune Road / Re-Submittal of Schematic Plans to the Board of Architects Pursuant to Settlement Agreement

Dear Mr. Trias:

As we discussed at our meeting on December 14th with the City Attorney, a need has arisen to re-submit the schematic plans for the Merrick Manor project to the Board of Architects so as to obtain preliminary design approval of a modified design. While the overall design, look, use, and functions of the project are remaining the same, the subterranean basement level is proposed to be removed due to serious concerns regarding the structural integrity of both the proposed project and surrounding properties as detailed in the affidavit from the project's geotechnical engineer attached as Exhibit "A" to this letter. The elimination of the proposed subterranean basement level requires that each remaining story of the building be increased a certain amount varying from a few inches to a foot so that the total height of the portion of the building fronting Le Jeune Road will be eight (8) stories / 94 feet, as opposed to the previously approved eight (8) stories / 87 feet and the height of the portion of the building fronting Laguna Street and Altara Avenue will be ten (10) stories / 115'-4", as opposed to the previously proposed ten (10) stories / 100 feet. The only other proposed change to the previously approved plan is a negligible increase in the parking reduction percentage for the project from 19% to 20% which results in an additional reduction of five (5) parking spaces. These changes do not increase the previously approved floor area or density of the project which will remain the same. Instead, they are necessary to ensure the structural stability of the project and surrounding buildings, accommodate sufficient parking for the project and to enhance the living, retail, and amenity areas of the building with higher floor to ceiling heights.

As you will remember, this project is subject to a settlement agreement entered into between my client, Merrick Manor, LLC, and the City of Coral Gables, to settle a lawsuit filed by the City styled *City of Coral Gables, Florida v. Astor Trolley, LLC, and Merrick Manor, LLC, f/k/a 4111 Le Jeune, LLC*, Case No. 13-29113-CA-40 (11th Jud. Cir., Miami-Dade County, Florida.), (the "Settlement Agreement"). Section 5.2 of the Settlement Agreement, states, in relevant part, as follows:

5.2 Project Approvals / Permits. The Parties agree that the development approval process for the review and issuance of a building permit(s) will be the same as for all similar projects within the MXD zoning district of the City except that the development approval process shall commence with the Board of Architects design review of a revised set of schematic plans for the Project to be followed by final design review by the City's Board of Architects. No further approvals by the City's Planning and Zoning Board, Board of Adjustment, or the City Commission shall be required....

In addition to this special project approval process, the Settlement Agreement also provides for a "Further Assurances" provision which states in its entirety as follows:

16. Further Assurances. Each of the Parties agrees to execute such further and additional documents, instruments and take further actions as may be reasonably necessary, proper, required, desirable, or convenient for the purpose of fully effectuating the terms and provisions of this Settlement Agreement.

At this point, we are requesting to submit a new revised set of schematic plans to the Board of Architects for design review. The new revised set of schematic plans is consistent with the Settlement Agreement in that the number of stories are not being increased, the density, floor area, and architectural design of the project remain the same, and the parking reduction is only being increased by a de minimis amount of 1%. Furthermore, the minor increases in floor to ceiling height for each story and the minor increase in parking reduction are consistent with the Zoning Code amendment approved by the City Commission in May of 2015, to permit increases in floor to ceiling height for projects within the North Industrial Mixed Use Overlay District where the project is located up to a total linear foot height of 120 feet, as well as the proposed shared parking reduction ordinance which is presently under consideration. Lastly, pursuant to Section 16 of the Settlement Agreement, the City is obligated to approve these proposed modifications which, in our opinion, qualify as a "reasonably necessary" action to "fully effectuate the terms and provisions of the Settlement Agreement".

Mr. Ramon Trias
December 18, 2015
Page 3

Considering that the design review and approval of this particular project is governed by the Settlement Agreement and that the modifications proposed are relatively minor in scope and/or consistent with recent City legislative enactments and proposals, we believe that these proposed modifications may, as provided for in Section 5.2 of the Settlement Agreement, be submitted to and approved by the Board of Architects and, subject to and upon issuance of preliminary design approval by the Board of Architects, building permit plans may then be submitted to the Board of Architects for final design review and the review and approval of other City Departments and disciplines. The revised building permit plan submittal will be a revision to the currently active Building Permit Application No. BL-13-06-0931. Furthermore, we respectfully submit that these approvals should be granted "as reasonably necessary" for the purpose of fulfilling the Settlement Agreement between my client and the City which was approved by the Court.

Please advise if you agree with the conclusions of this letter and whether you are supportive of our submittal of the enclosed revised set of schematic plans to the Board of Architects for preliminary design review approval. Please contact me if you have any questions or would like to discuss these proposed changes and the process for their approval further. Thank you for your attention to this matter.

Sincerely,



Mario J. Garcia-Serra

cc: Craig E. Leen, Esq., City Attorney
Mr. Henry Torres
Mr. Phillip Parenteau
Mr. Javier Font

MGS

MIA_ACTIVE 4415892.2

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF MIAMI –DADE

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In summary, the construction of a basement for this project degrades the support conditions of the soils, increases the potential for deformations under adjacent properties, and poses additional challenges to construction execution of the project to a degree which, in my opinion, does not justify the benefits of having a basement level.

Ardaman & Associates Inc.

By: *Evelio Horta*
Print Name *Evelio Horta*

STATE OF FLORIDA
COUNTY OF MIAMI –DADE

Sworn to, affirmed, and subscribed before me this 17th day of December, 2015, by Evelio Horta, PhD P.E. G.E., who is personally known to me.

Notary Signature: *Marta M. Capote*
Print Name: *Marta M. Capote*



Notary Public, State of Florida
My Commission Expires: *May 7, 2017*

CITY OF CORAL GABLES, FLORIDA
ORDINANCE NO. 2015-07 (AS AMENDED)

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA PROVIDING FOR TEXT AMENDMENTS TO THE CITY OF CORAL GABLES OFFICIAL ZONING CODE, ARTICLE 4, "ZONING DISTRICTS", DIVISION 2, "OVERLAY AND SPECIAL PURPOSE DISTRICTS" SECTION 4-201, "MIXED USE DISTRICT (MXD)", TO ALLOW FOR PROPOSED MIXED USE PROJECTS LOCATED WITHIN A DESIGNATED MIXED USE OVERLAY DISTRICT (MXOD) WITH AN UNDERLYING ZONING DESIGNATION OF INDUSTRIAL DISTRICT (I), SUBJECT TO CITY COMMISSION APPROVAL, THE FOLLOWING: 1) UP TO AN ADDITIONAL TWENTY (20) FEET OF HABITABLE BUILDING HEIGHT ABOVE THE ONE HUNDRED (100) FOOT MAXIMUM PERMITTED BUILDING HEIGHT FOR THE PURPOSES OF INCREASED FLOOR-TO-CEILING HEIGHT AND AESTHETICS; AND, 2) INCREASE THE MAXIMUM PERMITTED HEIGHT OF NON-HABITABLE ARCHITECTURAL FEATURES BASED ON THE AESTHETICS AND DESIGN; PROVIDING FOR A REPEALER PROVISION, SEVERABILITY CLAUSE, CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, an Application was submitted requesting approval of a Zoning Code text amendment to Article 4, "Zoning Districts," Division 2, "Mixed Use District," ("MXD") to allow for additional height for the purpose of increased floor to ceiling height and aesthetics, and increased height for non-habitable architectural features based on aesthetics and design, where certain minimum criteria are met as provided in Exhibit "A," attached hereto; and,

WHEREAS, the existing Zoning Code provisions as strictly applied do not sufficiently address urban place-making, innovative mixed-use development, and excellence in architectural design and materials; and,

WHEREAS, in advance of public hearing consideration, the City's staff analysis and recommendation are available for inspection at City of Coral Gables Planning Department and City Clerk's office and available on the City's Web page at www.coralgables.com for easy retrieval; and,

WHEREAS, after notice duly published, a public hearing was held before the Local Planning Agency (Planning and Zoning Board) of the City of Coral Gables on March 11, 2015, at which hearing all interested parties were afforded the opportunity to be heard; and,

WHEREAS, the Planning and Zoning Board, which is the Local Planning

Agency, on March 11, 2015 was presented with the text amendments to the Official Zoning Code, and after due consideration, recommended approval (vote: 7 – 0) of the text amendment with the amendment that it be limited to the North Industrial Mixed-Use District; and,

WHEREAS, after notice duly published, a public hearing for First Reading was held before the City Commission on May 12, 2015, at which hearing all interested parties were afforded the opportunity to be heard; and

WHEREAS, the City Commission was presented with a text amendment to the Zoning Code, and after due consideration and discussion, approved the amendment on First Reading (vote: 5 – 0).

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

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

SECTION 2. The Official Zoning Code of the City of Coral Gables is hereby amended as shown in Exhibit “A,” attached hereto and incorporated herein by this reference.

SECTION 3. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 5. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of Ordinance No. 2007-01 as amended and known as the “Zoning Code” of the City of Coral Gables, Florida, which provisions may be renumbered or re-lettered and the word ordinance be changed to “section”, “article”, or other appropriate word to accomplish such intention.

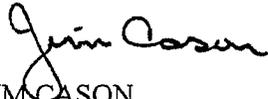
SECTION 6. If the Official Zoning Code of the City of Coral Gables Tables of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

SECTION 7. This Ordinance shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS TWENTY-SIXTH DAY OF MAY, A.D. 2015.

Moved: Quesada / Seconded: Lago
Yeas: Lago, Quesada, Slesnick, Keon, Cason)
Unanimous: 5-0 Vote
Agenda Item: E-8

APPROVED:



JIM CASON
MAYOR

ATTEST:



WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY

Exhibit "A"
Zoning Code Text Amendment

Section 4-201.E.6. Height

The maximum allowable building height(s), subject to satisfying Article 3, Division 4, Conditional Uses, for habitable space for the following underlying zoning designations and uses may be granted as follows:

- Commercial Limited District: Up to and including seventy-five (75) feet.
- Commercial District: Up to and including one-hundred (100) feet.
- Industrial District: Up to and including one-hundred (100) feet.
- Manufacturing uses: Up to and including forty-five (45) feet.

For properties within the North Industrial Mixed-Use District which have an underlying zoning designation of Industrial, the City Commission may approve up to an additional twenty (20) feet of habitable building height upon finding that the proposed building complies with the following criteria:

1. The building has no more than ten (10) stories.
2. The additional building height is for the purpose of providing increased floor to ceiling height in residential units.
3. The additional building height enhances the building's aesthetics and the aesthetics of the surrounding area.
4. The additional building height does not result in increased density or floor area.

Section 4-201.E.7. Heights of architectural elements, etc.

The maximum allowable height(s), subject to satisfying Article 3, Division 4, Conditional Uses, of architectural elements, spires, bell towers, elevator housings or similar non-habitable structures for the following underlying zoning designations and uses may be granted as follows:

- Commercial Limited District: Up to and including fifteen (15) feet.
- Industrial and Commercial Districts: Up to and including twenty-five (25) feet.
- Manufacturing uses: Up to and including ten (10) feet.

For properties which have an underlying zoning designation of Industrial and obtain approval from the City Commission for additional habitable space height pursuant to Section 4-201(E)(6), the City Commission may approve architectural elements not to exceed a height of 190'6" from established grade, upon finding that the proposed architectural element enhances the building's aesthetics and the aesthetics of the surrounding area.

Section 4-201.E.8. Height adjoining residential uses.

Properties which are adjacent to residential district designations shall be limited to a maximum height (habitable space) of forty-five (45) feet within one hundred (100) feet of the adjacent right-of-way line. Ten (10) additional feet are permitted for roof top architectural elements, etc. above the habitable height.

For properties that obtain approval from the City Commission for additional habitable space height pursuant to Section 4-201(E)(6), the City Commission may approve rooftop architectural elements not to exceed twenty-five feet (25') beyond habitable height for that portion of the property which is adjacent to residential district designations, upon finding that the proposed rooftop architectural element enhances the building's aesthetics and the aesthetics of the surrounding area, and that such increased height will not have a negative impact on adjacent residential uses.

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2015-32

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, CREATING A FALSE CLAIMS AND PRESENTATIONS ORDINANCE TO PROHIBIT FALSE OR INCOMPLETE PRESENTATIONS TO OR FALSE OR FRAUDULENT CLAIMS AGAINST THE CITY OF CORAL GABLES, PROVIDING FOR ENFORCEMENT; PROVIDING FOR A REPEALER PROVISION, SEVERABILITY CLAUSE, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Coral Gables wishes to insure that individuals presenting before the City Commission or a City Board, or providing information to City Staff, are truthful and forthcoming in the information they provide and which is relied upon by the City; and

WHEREAS, the City Commission of the City of Coral Gables wishes to deter persons from causing the City to pay claims that are false, fraudulent, or inflated; and

WHEREAS, the City Commission of the City of Coral Gables wishes to provide remedies for obtaining damages and civil penalties for the City, when false or incomplete information is provided by an individual, during a presentation to the City Commission or a City Board or Committee, that is relied upon by the City; and

WHEREAS, the City Commission of the City of Coral Gables wishes to provide remedies for obtaining damages and civil penalties for the City when money is sought or obtained from the City by reason of a false claim;

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

SECTION 1. That the foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance upon adoption hereof.

SECTION 2. That Chapter 39 “False Claims and Presentations Ordinance” of the Code of the City of Coral Gables, Florida, be hereby created to read as follows:

CHAPTER 39. FALSE CLAIMS AND PRESENTATIONS ORDINANCE

Sec. 39-1. Definitions.

The following terms when used in this Chapter shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

- (1) *Presentation* means any presentation made by an individual to the City Commission, or a City Board, whether during a legislative item or a quasi-judicial proceeding, as well as any request made to City Staff.
- (2) *City* is the City of Coral Gables and includes the City Commission, City Boards, and City Staff.
- (3) *City Board* includes all City Boards and Committees.
- (4) *City Staff* includes the City Manager, City Attorney, and City Clerk, as well as all other employees, officers, and agents of the City.
- (5) *Claim* means any invoice, statement, request, demand, lawsuit, or action under contract or otherwise, for money, property, or services made to any employee, officer, or agent of the City, or to any contractor, grantee, or other recipient if any portion of the money, property or services requested or demanded was issued from, or was provided by, the City.
- (6) *Claimant* means any person who brings, submits, files, maintains, or pursues a claim.
- (7) *City* means the government of the City of Coral Gables or any department, division, commission, planning agency, board or instrumentality of the City.
- (8) *Knowing or knowingly* means that a person:
 - (a) Has actual knowledge of the information;
 - (b) Acts in deliberate ignorance of the truth or falsity of the information;
 - (c) Acts in reckless disregard of the truth or falsity of the information;
 - (d) Provides incomplete information by omitting pertinent facts in an attempt to deceive.
- (9) *Person* means any natural person, corporation, firm, association, organization, partnership, agency, limited liability company, business, or trust.

Sec. 39-2. Presentation.

- (1) Persons presenting before the City Commission, City Board, or City Staff, are duty-bound to be truthful.
- (2) In no event may a person presenting before the City Commission, City Board, or City Staff knowingly make a false or incomplete statement to the Commission, Board or City Staff member.
- (3) If the City relies on those statements to its financial detriment, the City Attorney may initiate an action against said person as delineated herein.

Sec. 39-3. Certification of claims.

- (1) Upon the request of the City, the person submitting the claim shall, within thirty (30) days, including Saturdays, Sundays, and legal holidays, submit a certified claim as

defined by this section. A “certified claim” shall be made under oath by a person duly authorized by the claimant and shall contain a statement that:

- (a) The claim is made in good faith;
 - (b) The claim’s supporting data are accurate and complete to the best of the person’s knowledge and belief;
 - (c) The amount of the claim accurately reflects the amount that the claimant believes is due from the City; and
 - (d) The certifying person is duly authorized by the claimant to certify the claim.
- (2) Failure to provide the requested certification within the prescribed thirty (30) day period shall constitute a forfeiture of the entire claim.

Sec. 39-4. Liability for false presentation; penalties.

- (1) The following action(s) shall constitute a violation of this article:
 - a. Any person who knowingly presents false information to the City Commission and on which the City relies to its financial detriment;
 - b. Any person who knowingly omits pertinent information resulting in incomplete information being given to the City Commission and on which the City relies to its financial detriment;
 - c. Any person who knowingly presents false information to a City Board or City Staff and on which the City relies to its financial detriment;
 - d. Any person who knowingly omits pertinent information resulting in incomplete information being given to a City Board or City Staff and on which the City relies to its financial detriment.
- (2) Any beneficiary of an inadvertent falsity or incomplete information to the City, who subsequently discovers the falsity or incompleteness of the information, and who fails to disclose the same to the City within thirty (30) days of discovering the error, shall also be found to have submitted a false presentation to the City.
- (3) Any person found to have made a knowingly false or incomplete presentation to the to the City Commission, City Board, or City Staff shall:
 - a. Be liable to the City for an amount equal to three (3) times that part of the financial detriment suffered by the City;
 - b. Be liable to the City for all costs and fees (including, without limitation, reasonable legal, expert, and consulting fees) incurred by the City to review and defend any claim resulting from the falsity or incomplete information; and
 - c. Be subject to debarment from City lobbying or contracting for a period not to exceed five (5) years.
- (4) Liability under this section shall be joint and several for any act committed by two (2) or more persons.

Sec. 39-5. Liability for false claims; penalties.

- (1) The following action(s) shall constitute a violation of this article:
 - (a) Any person who knowingly presents or causes to be presented to the City, or to any officer, employee, agent, or consultant of the City, a false or fraudulent claim for payment or approval;

- (b) Any person who knowingly makes, uses, or causes to be made or used, a false record or statement to get a false, fraudulent, or inflated claim paid or approved by the City;
 - (c) Any person who conspires to defraud the City by facilitating the payment of a false, fraudulent, or inflated claim allowed or paid by the City;
 - (d) Any person who delivers, with the intent to defraud the City, goods or services of different quality or quantity than that specified in the applicable contract or specification;
 - (e) Any person who is authorized to make or deliver a document certifying receipt of property used, or to be used, by the City and, intending to defraud the City, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - (f) Any person who knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer, employee, or agent of the City who lawfully may not sell or pledge the property; or
 - (g) Any person who knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City.
- (2) Any beneficiary of an inadvertent submission of a false claim to the City, who subsequently discovers the falsity of the claim, and who fails to disclose the falsity of the claim to the City within thirty (30) days of discovering the error, shall also be found to have submitted a false claim to the City.
- (3) Any person found to have submitted a false claim to the City shall:
- (a) Be liable to the City for an amount equal to three (3) times that part of the claim which is false, fraudulent, or inflated;
 - (b) Immediately, fully, and irrevocably forfeit the entire amount of the claim;
 - (c) Be liable to the City for all costs and fees (including, without limitation, reasonable legal, expert, and consulting fees) incurred by the City to review, defend, and evaluate the claim; and
 - (d) Be subject to debarment from City contracting for a period not to exceed five (5) years. Additionally, any person who certified a claim later found to be false shall be subject to debarment from City contracting for a period not to exceed five (5) years.
- (4) Liability under this section shall be joint and several for any act committed by two (2) or more persons.

Sec. 39-6. Civil actions for false claims.

If the City Attorney finds that a person has violated or is violating these provisions, a civil action may be brought against the person on behalf of the City consistent with the City Attorney's authority to bring civil actions in sections 2-201(e)(2) of the City Code.

Sec. 39-7. Expenses; attorney's fees and costs.

The City shall be entitled to an award of its attorneys' fees and costs for enforcement of this ordinance, including for any civil suit in which it is the prevailing party.

Sec. 39-8. Innocent claimant affirmative defense.

The provisions of this article shall not apply if the claimant can demonstrate by a preponderance of the evidence each of the following facts:

- (1) During a presentation, the claimant did not *knowingly* give false or incomplete information to the City Commission, City Board, or City Staff;
- (2) The City did not suffer a financial detriment as a proximate result of the false or incomplete information given during a presentation;
- (3) The claimant submitted or caused to have submitted the claim to or against the City reasonably believing that such claim was free of any material misstatements, or exaggerated, inflated, or unsubstantiated assertions or damages;
- (4) The claimant had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted;
- (5) Prior to submitting the claim, the claimant diligently investigation the facts underlying such claim and prepared the claim in a reasonable manner given all the relevant information available; and
- (6) When information indicating that any element, statement, or allegation in the claim was false or misleading first became available, such claimant, within five (5) business days of discovering the falsity of the claim, took immediate steps to modify, correct, or withdraw such claim and provided the City with immediate notice thereof.

Sec. 39-9. Other Remedies

- (1) A violation of this Chapter may be remedied in the manner provided in this Chapter. This remedy is cumulative with other remedies, however, and is not intended to be the exclusive remedy that can be used to address conduct that violates this Chapter.
- (2) A violation of this Chapter also constitutes a Code Enforcement violation and may be prosecuted as such.
- (3) This Chapter does not limit the authority of law enforcement to enforce criminal law in any manner.

Sec. 39-10. Immunity

The City and its officers, employees, and agents have immunity for any actions taken in accordance with this ordinance.

SECTION 3. SEVERABILITY.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith, are hereby repealed.

SECTION 5. CODIFICATION.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions. Specifically, the addition of Chapter 39.

SECTION 6. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

PASSED AND ADOPTED THIS TENTH DAY OF NOVEMBER, A.D., 2015.

(Moved: Quesada / Seconded: Keon)

(Yeas: Quesada, Slesnick, Keon, Lago, Cason)

(Unanimous: 5-0 Vote)

(Agenda Item: E-3)

APPROVED:



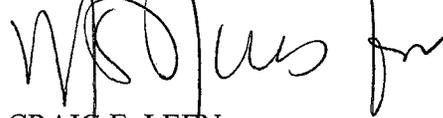
JIM CASON
MAYOR

ATTEST



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: Merrick Manor / Approval of Revised Development Plan
Date: Wednesday, February 24, 2016 3:15:41 PM
Attachments: [A&A SWORN Affidavit Geotech recd 12-17-15.pdf](#)
[Letter to Ramon Trias resubmittal of schematic plans to board.pdf](#)
[Signed Ordinance 2015-07.pdf](#)
[image002.png](#)
[image003.png](#)
[Signed Ordinance 2015-32.pdf](#)

Please publish with attachments.

Craig E. Leen, City Attorney

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



CORAL GABLES
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Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Wednesday, February 24, 2016 3:15 PM
To: 'Garcia-Serra, Mario'
Cc: Trias, Ramon
Subject: RE: Merrick Manor / Approval of Revised Development Plan

[City Attorney Opinion](#)

Pursuant to section 2-201(e)(1) and (8) of the City Code authorizing the City Attorney to issue opinions and interpretations, section 2-201(e)(6) of the City Code regarding the City Attorney's authority relating to settlements, and section 2-702 of the Zoning Code regarding the City Attorney's authority to issue final zoning interpretations, and following consultation with the Planning & Zoning Director, it is my opinion/ruling that the request be allowed subject to the required mandatory conditions that there can be no increase in FAR or density, and that the

modifications be presented to the Board of Architects for final design review. I would also note that the request and affidavit is received, reviewed, and approved subject to Ordinance No. 2015-32. I would also note that the height is less than what would be allowed under Ordinance No. 2015-07, which indicates the Commission's will as to the maximum height allowed in this area.

Craig E. Leen, City Attorney

*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
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CORAL GABLES
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From: Garcia-Serra, Mario [mailto:MGarcia-Serra@gunster.com]
Sent: Tuesday, February 23, 2016 10:35 AM
To: Leen, Craig
Cc: Trias, Ramon
Subject: RE: Merrick Manor / Approval of Revised Development Plan

Dear Craig,

As we discussed yesterday, the purpose of the modifications to the Merrick Manor site plan are to address the structural safety concerns arising from the excavation of a basement parking level. Those concerns are summarized in the attached Affidavit from the project's Geo-Technical Engineer which was an exhibit to my original letter to Ramon regarding this issue dated December 18, 2015, (copy attached). In short, if my client were to excavate a basement level, the best bearing layer of limestone which is within the upper 10 feet of the soil profile would be removed. This combined with the extensive dewatering which would be necessary to construct a foundation at this level would likely create cavities that could cause cave ins on the project site as well as adjacent properties thereby posing a threat to public safety and potentially causing damages to both surrounding properties and utilities. Additionally, please note that the project's new proposed

maximum height of 115'-4" does comply with the criteria for increased height found in Ordinance No. 2015-7 (copy attached) which permitted an additional 20 feet of habitable height for properties within the North Industrial Mixed-Use District. Those criteria are below and I can confirm that the new Merrick Manor project complies with all of them:

1. The building has no more than 10 stories.
2. The additional building height is for the purpose of providing increased floor to ceiling height in residential units. (All residential levels of Merrick Manor will now have increased height.)
3. The additional building height enhances the building's aesthetics and aesthetics of the surrounding area. (The proposed new design for Merrick Manor was already approved by the City's Board of Architects on January 14, 2016.)
4. The additional building height does not result in increased density or floor area.

Please advise if you require any additional information so as to issue your final response. Thank you for your attention to this matter.

Best regards,

Mario



Mario Garcia-Serra | Shareholder
600 Brickell Avenue
Brickell World Plaza
Suite 3500
Miami, Florida 33131

P 305-376-6061 F 786-425-4104
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From: Leen, Craig [mailto:cleen@coralgables.com]
Sent: Sunday, February 14, 2016 9:57 PM
To: Garcia-Serra, Mario
Cc: Trias, Ramon
Subject: RE: Merrick Manor / Approval of Revised Development Plan

Mario,

I have carefully reviewed your letter and it reflects the discussion we had at our meeting. I would note that the changes are meant to address structural safety concerns, and that the height is lower than what is potentially allowed in this area based on a subsequent change in the law (120 feet maximum). I have a few points I wish to discuss with you on Tuesday, but am in general agreement with the letter. Once we have a chance to speak on Tuesday, I will issue a final response pursuant to sections 2-201(e)(1), (6), and (8) of the City Code.

Craig E. Leen, City Attorney

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From: Garcia-Serra, Mario [<mailto:MGarcia-Serra@gunster.com>]
Sent: Friday, February 12, 2016 9:49 AM
To: Leen, Craig
Cc: Trias, Ramon
Subject: RE: Merrick Manor / Approval of Revised Development Plan

Craig,

Please remember to send us your formal response letter on the Merrick Manor plan revisions and advise if there is any way in which I can assist. Thanks.

Best regards,

Mario



Mario Garcia-Serra | Shareholder
600 Brickell Avenue
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Miami, Florida 33131

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gunster.com

From: Garcia-Serra, Mario
Sent: Thursday, February 04, 2016 5:40 PM
To: Leen, Craig
Cc: Trias, Ramon
Subject: Re: Merrick Manor / Approval of Revised Development Plan

Craig,

Hope that the week has been treating you well thus far. What is your ETA on the formal response mentioned below?

Best regards,

Mario

Sent from my iPhone

On Jan 30, 2016, at 12:18 AM, "Leen, Craig" <cleen@coralgables.com> wrote:

Good evening, Mario. The letter reflects what we discussed in the meeting. I will finish my review and email a formal response soon. I am copying Ramon as well.

Have a nice weekend,
Craig

Craig E. Leen, City Attorney

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Coral Gables, Florida 33134
Phone: (305) 460-5218
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Email: cleen@coralgables.com

<image002.png>

From: Garcia-Serra, Mario [<mailto:MGarcia-Serra@gunster.com>]

Sent: Friday, January 29, 2016 4:29 PM
To: Leen, Craig
Subject: FW: Merrick Manor / Approval of Revised Development Plan

Craig,

Have you been able to review the attached yet? If not, do you think that you can review early next week? My client would like some comfort that he can move forward with the project's building permit plans.

Thanks,

Mario

<image003.png>
Mario Garcia-Serra | Shareholder
600 Brickell Avenue
Brickell World Plaza
Suite 3500
Miami, Florida 33131

P 305-376-6061 F 786-425-4104
gunster.com

From: Garcia-Serra, Mario
Sent: Friday, January 22, 2016 1:02 PM
To: Leen, Craig
Cc: Trias, Ramon; Henry Torres; 'Philip Parenteau'; Javier Font
Subject: Merrick Manor / Approval of Revised Development Plan

Dear Craig,

Hope that you are well and looking forward to the weekend. Please review the attached letter summarizing the conclusions reached at our meeting last week regarding approval of the modifications to the Merrick Manor project plans. Please review the letter and confirm if you agree with how I have summarized the approval process for the modifications to the project design.

Best regards,

Mario

<image003.png>
Mario Garcia-Serra | Shareholder
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