

## **City of Coral Gables City Commission Meeting**

### **Agenda Item E-1**

**May 27, 2008**

**City Commission Chambers**

**405 Biltmore Way, Coral Gables, FL**

#### **City Commission**

**Mayor Donald D. Slesnick, II**

**Vice Mayor William H. Kerdyk, Jr.**

**Commissioner Maria Anderson**

**Commissioner Rafael “Ralph” Cabrera, Jr.**

**Commissioner Wayne “Chip” Withers**

#### **City Staff**

**City Manager, David Brown**

**City Attorney, Elizabeth Hernandez**

**City Clerk, Walter J. Foeman**

**City Clerk Staff, Billy Urquia**

#### **Public Speaker(s)**

**Gary Simon, Son/Attorney for Applicant**

**Joy Spill, Attorney for Applicant**

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E-1 [Start: 11:08:31 a.m.]

Marcia Simon Kaplan, applicant, has filed an appeal to the Coral Gables City Commission, from a decision of the Board of Architects at its regular meeting of May 1, 2008, wherein the Board denied Application AB 08.04.0829, in connection with the installation of accordion shutters on the street elevation of the residence located at 3809 Anderson Road, Coral Gables, Florida. This property is legally described as Lots 13 and 14, Block 135, Coral Gables Country Club Section 6, PB 20 / Page 1, Miami-Dade County, Florida.

Mayor Slesnick: Go back now to our first public hearing item E-1. Its an appeal from the Board of Architects, our City assigned Simon Kaplan, applicant, has filed an appeal to the Coral Gables City Commission, from a decision of the Board of Architects at its regular meeting of May 1, 2008, wherein the Board denied Application AB 08.04.0829, in connection with the installation of accordion shutters on the street elevation of the residence located at 3809 Anderson Road, Coral Gables, Florida. This property is legally described as Lots 13 and 14, Block 135, Coral Gables Country Club Section 6, PB 20 / Page 1, Miami-Dade County, Florida. Madam City Attorney is this appeal de novo or an appeal on the record.

Assistant City Attorney Alfonsin: It’s an appeal on the record, but if I may Mr. Mayor…?

Mayor Slesnick: Certainly.

Assistant City Attorney Alfonsin: First tier appeals of the City Architect decisions are made by a three panel Board of Architects, and the second tier appeal is made to a full panel of the Board of Architects, not the City Commission.

Mayor Slesnick: So what does that mean?

Commissioner Anderson: It might still get the same result though, but I understand.

Mayor Slesnick: Where do we stand?- is this appeal improperly before the Commission?

Assistant City Attorney Alfonsin: It's improperly before the Commission.

Mayor Slesnick: Then why are we sitting here?

Commissioner Anderson: Can we make it properly before the Commission?

Ms. Kaplan: I was advised the entire Board of Architects rejected the application.

Mayor Slesnick: Do we...we are going to have to have...do we know whether the entire Board voted on this?

City Manager Brown: Carlos Mindreau, City Architect.

Mr. Mindreau: Commissioners, Mayor, the entire Board was present, however not the entire Board heard their appeal for the presentation. At the point that I advised them to come before the Board, they were adamant on getting the according shutters; at that point I said to them that in order to appeal to the Commission they needed a denial from the Board; they came to the Board and the Board attempted one more time to convince them to look at a different avenue and they then denied, the first two architects that reviewed them denied them, and then a second pair came over to get the four signatures for denial which is what is required, I thought, to deny the application and allow them to come before you.

Mayor Slesnick: But the Board did not vote?

Mr. Mindreau: The Board typically a projects of this size are not heard by an entire Board, Mayor, there are projects – roof tiles, paint, shutters, windows, those things go to one of the team; I have three teams...

Mayor Slesnick: The City Attorney has advised us though, that maybe a mistake has been made, that maybe before the Commission is involved the full Board has to be involved, that's what you're saying City Attorney?

Assistant City Attorney Alfonsin: That's correct Mr. Mayor.

Commissioner Cabrera: Can we by-pass that whole thing and let this lady...

Commissioner Anderson: My feeling is...

Mayor Slesnick: By what process, Madam City Attorney, can we by-pass the procedure?

Assistant City Attorney Alfonsin: There is nothing in our Zoning Code that says that we can by-pass it; she can present it to a full panel of the Board of Architects now.

Commissioner Anderson: I don't know, I can't image what....

Ms. Kaplan: The [inaudible] is willing to waive.

Commissioner Cabrera: Ma'am, Ma'am, we are trying to help you, OK, sit tight.

Commissioner Anderson: We are trying to figure this out.

Mayor Slesnick: I don't want to go forward and then have an illegal decision by us.

Commissioner Anderson: But the thing is the chances, and I know we are talking Zoning Code and things like that, but the chances are the full Board will also deny it the homeowners, honestly.

Mayor Slesnick: I understand, Maria I understand it...

Commissioner Anderson: It just doesn't make sense to go back, but whatever...

Commissioner Cabrera: She's absolutely right, we're going to get them back again so why not...let's not waste anymore time.

Assistant City Attorney Alfonsin: Commissioner, no, you don't get it back again, they have the first tier review by a three member panel, and they have their second tier review, which is a final review by a full panel of the Board of Architects. It will not come back before the Commission at all.

Vice Mayor Kerdyk: There are no appeal rights from there to the Commission.

Assistant City Attorney Alfonsin: Not from the City Architect to the Commission, no.

Vice Mayor Kerdyk: And that's under our new Zoning Code that that's in?

Assistant City Attorney Alfonsin: That's correct.

Vice Mayor Kerdyk: So there is no appeal, they cannot come back here again?

Assistant City Attorney Alfonsin: If it's a sayer Architect decision, no.

Commissioner Anderson: I have a fundamental problem with the issue itself, I mean with the accordion shutters, we've been through this before and I generally support the Board of Architects, but on this one its just...I don't get it because its about protecting your home.

Commissioner Cabrera: Well, I concur with you, and I am prepared to listen to this lady, and I studied the item; and if this was a mistake then we should have been told Thursday, not today, during the Commission meeting, so I'm prepared to listen to it, but obviously I have to listen to our City Attorney as well, and if you are saying Madam City Attorney that this is inappropriate for us to...

Mayor Slesnick: Why weren't the applicants told of this?- were they told that there appeal here was inappropriate?

Assistant City Attorney Alfonsin: When I discussed it with the City Architect there were issues as to whether there was a determination made in writing, but he did make a verbal determination to the property owner, and that's why we are here today.

Mr. Simon: This is the determination in writing, it's on the plans. All those procedures were followed, and...

Commissioner Cabrera: Sir, who are you?

Mr. Simon: I am Gary Simon, I am the son, and I'm also an attorney of Marcia Simon Kaplan

Commissioner Cabrera: Good morning.

Mr. Simon: Good morning, this is Joy Spill, she is an attorney of Marcia Simon Kaplan, and there was a meeting of the first two architects who didn't want to pass this, and then there was a whole group of architects over on the side over there, and Mr. Mindreau got all of them to deny it, and he said this is enough because this is own entire group. So I don't understand this procedural aspect.

Assistant City Attorney Alfonsin: Mr. Mayor, that's the reason why we are here today, because the City Architect did make a determination and did deny the original application, but the City Architect himself did not put it in writing, and I think that is why we are here today. If it was a Board of Architects determination as a first determination, then it is properly before the City Commission, but it is my understanding that the City Architect did in fact deny it.

Mayor Slesnick: Let's....you know...I'm afraid to say that even if a majority of the Commission wants to proceed forward we may not be on firm legal grounds, and your decision that you are here today may not be a legal decision, and that's my problem. Now, we have a Commission meeting unfortunately in one week from today, unusual as that may seem; if we postpone this to at least get a full analyzation legally, and make sure that the City is understanding among its own components as to where we are legally, and what the procedure is and explains fully to the applicant exactly what their rights and procedures are, so that everyone heads into this, if it can be properly brought to the Commission, we'll bring it back in one week, if its not, then we'll ask

that our City Architect arrange for an expedited review by the full Board of Architects within a similar period of time, so she'll have a final decision to do with as the law allows within the weeks time.

Commissioner Anderson: This Thursday's Board of Architect, is that what you are saying?

Mr. Mindreau: I can put them on the Thursday agenda without any problem.

Commissioner Anderson: And then come back on the 3<sup>rd</sup>, would that be...?

Mayor Slesnick: If there's an appeal to us on the 3<sup>rd</sup>, if there is no appeal to us then there is no appeal to us, and they'll have to go to court, I guess.

Commissioner Withers: So if appealed from the Board of Architects, they can appeal to us?

Commissioner Anderson: From the full Board.

Commissioner Withers: Full Board...but if it's the City's Architect that denies the application, there is no appeal process.

Assistant City Attorney Alfonsin: There is an appeal process; it goes to a three member panel of the Board of Architects and then it goes to a full panel of the Board of Architects...

Commissioner Cabrera: But not us.

Assistant City Attorney Alfonsin: But not the City Commission, no.

Commissioner Withers: OK, so my question is, can the City Architect bring it to us?- not through an appeal process, but can we request the City Architect to bring it to us as an item?- I'm just throwing that out there as a way to get it to us.

Mayor Slesnick: I don't know that the City Attorney is prepared to discuss that.

City Manager Brown: I don't know that.

Commissioner Anderson: I would like to see it expedited and if you get denied come back; I have to tell you, I'll be very favorable to you because I just don't understand why we have to put impact resistant window on homes all around and not put hurricane shutters, just beyond me.

Mayor Slesnick: Ms. Anderson is speaking for herself.

Commissioner Anderson: I speak for myself, as I always do.

Mayor Slesnick: No, I know; I don't want to give the applicants some, that that's some conclusionary statement for the Commission.

Ms. Spill: Naturally, the homeowner is very disappointed, and hurricane season is upon us, and this process was started in '07.

Mayor Slesnick: I apologize personally, if there was any misunderstanding for the City's procedure and what the City – how we have gotten here, but the fact of the matter is we are bound as you to act as officers of the law and to properly proceed, and I don't want you caught up in an improper procedure if we can straighten it out within a seven day period, then that's what I'm proposing.

Ms. Spill: But I do want to point out that on the plans under Board of Architects, it says rejected and signed by the Chairperson.

Mr. Mindreau: There were four signatures which is a core and majority from my Board.

Mayor Slesnick: I'd like a motion to continue this item.

City Manager Brown: Next Thursday.

Commissioner Anderson: So moved.

Vice Mayor Slesnick: Second

Vice Mayor Kerdyk: That's up to you David.

Mayor Slesnick: David, we are not setting the Board of Architects, that's up to your administration, you've heard our desire; we are going to continue the item and that's going to relieve us from having to republicize it and republish it.

Commissioner Cabrera: You know our desire is not always carried out, I need to make sure we make it very clear what we want to do here as a group.

Mayor Slesnick: Mr. Kerdyk moves to continue the item to our next agenda and in the interim to refer to the full Board of Architects.

Vice Mayor Kerdyk: Could you also ask, well let me ask the City Attorney, Ms. City Attorney, could you prepare a memo for us so that we understand clearly what exactly the appellate rights are from the Board of Architects in general, because I still don't have a clear concise view of exactly what is right, who can appeal, what can be done. I would like that in a memo form so the next time something like this, these people, or something like this I know exactly what is in our Zoning Code, thank you.

**Mayor Slesnick: Thank you, good luck. We have a motion, do I have a second?**

**Commissioner Anderson: Second.**

**Mayor Slesnick: Moved and seconded to continue the item on the agenda, there is a continuance, it's not a new item, and we will continue it in an effort to refer back to the full Board, and maybe it won't come back, maybe it will. All those in favor please say aye.**

**All: Aye.**

**Mayor Slesnick: Opposed like sign. Thank you.**

[End: 11:20:48 a.m.]