



**City of Coral Gables  
CITY COMMISSION MEETING  
March 9, 2021**

**ITEM TITLE:**

**Resolution.** A Resolution pursuant to section 14-214.5 of the Zoning Code approving the Amended and Restated Dispute Resolution Agreement regarding the property located at 701 and 711 Valencia and legally described as Lots 23, 24, 25, 26, 27, and 28, Block 10, of “Coral Gables Biltmore Section,” according to the Plat thereof, as recorded in Plat Book 20, at Page 28, of the Public Records of Miami-Dade County, Florida, which provides, in part, that the owner is entitled to develop the property with a maximum residential density of 65 units per acre, consisting of 25 residential dwelling units, subject to additional terms and conditions in the dispute resolution agreement.

**BRIEF HISTORY:**

This resolution approves an Amended and Restate Dispute Resolution Agreement which clarifies the units per acre/density permitted under the Agreement. (The bold language below is the only change to the terms of the original Agreement.)

Biltmore Development, LLC (the “Owner”) owns certain real property located at 701-711 Valencia Avenue, identified by Miami-Dade County Property Tax Folio Identification Nos. 03-4117-059-0010, 03-4117-008-1780 and 03-4117-008-1790, and legally described as:

Lots 23, 24, 25, 26, 27, and 28, Block 10, of "CORAL GABLES BILTMORE SECTION", according to the Plat thereof, as recorded in Plat Book 20, at Page 28, of the Public Records of Miami-Dade County, Florida (the “Valencia Property”).

The David William Hotel Condominium Association is the association for the condominium located at 700 Biltmore Way and Jorge M. Guarch, Jr. lives and resides at 700 Biltmore Way Unit 1201 (collectively, the “700 Biltmore Way Property”).

The City Attorney’s Office has opined that the site specific regulations govern the permissible height that can be developed on the Valencia Property, such that the maximum height is 150 feet (see history of opinion at CAO 2017-13). As reconfirmed in CAO 2017-13, Owner relied on an official Zoning Verification Letter issued by the City on March 23, 2007, in purchasing the Valencia Property in 2015-16 (under the same zoning classifications as described in the Zoning Verification Letter) for an amount in excess of \$2.5 million and thereafter engaged several professionals to design an 11-story, 124-foot high condominium project based on the opinion determining a maximum height of 150 feet. The Board of Architects approved Owner’s proposed design.

Plaintiffs filed a lawsuit against the City styled David William Hotel Condominium Association and Jorge M. Guarch, Jr. v. City of Coral Gables, Case No. 2018-26167 CA 34 (the “Litigation”) regarding development approvals related to Owner’s proposed project on the Valencia Property. The City denied all of the allegations and claims made against it by Plaintiffs, but nonetheless, Plaintiffs and

the City desired to amicably resolve the Litigation to avoid the uncertainties and expense of further litigation.

Pursuant to discussions with Plaintiffs and the City, Owner agreed to redesign the proposed project to reduce the height of the building, however, Owner alleged and continues to maintain that reducing the project's height would disproportionately and inordinately burden the Owner's property rights in violation of Section 14-214<sup>1</sup> of the City of Coral Gables Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes.

City staff initiated this procedure, pursuant to Section 14-214.2(B), to settle this pending litigation and Owner agreed, as part of the settlement, to reduce the height of the building so that it will not exceed seventy-five (75) feet with a limitation of ten (10) feet for the enclosed architectural feature, in exchange for an increase in the floor area ratio ("FAR") from what is currently allowed, 2.0 to 2.7.

The City Commission found sufficient evidence in the record to justify a settlement pursuant to Section 14-214 of the City Zoning Code and the Bert J. Harris Act as codified in Section 70.001 of the Florida Statutes. Pursuant to Section 14-214 of the City of Coral Gables Zoning Code and the Bert J. Harris Act, as codified in Section 70.001 of the Florida Statutes, the parties entered into a Dispute Resolution Agreement (the "Original Agreement") which, following a public hearing, was approved by the City Commission on March 12, 2019 per Resolution No. 2019-84 and ratified on March 26, 2019, per Resolution No. 2019-95, as required by Section 14-214.5 of the City of Coral Gables Zoning Code. The Original Agreement was recorded on April 3, 2019 at Official Records Book 31388, Page 4108 of the Miami-Dade County Public Records.

Upon approval of the Original Agreement, Owner filed with the City a permit application to build a structure that is less than seventy-five (75) feet in height and with an FAR that is lower than 2.7, consisting of 25 residential dwelling units. Owner relied on various City Staff written confirmations that the Coral Gables Mediterranean Style residential density bonus of an additional fifteen (15) units was available for a total of seventy-five (75) units per acre in the MFSA (see history of City Staff communications) in accepting the Original Agreement and hiring professionals to prepare revised plans. The City Attorney and current City Staff determined that prior City interpretations were incorrect and that the applicable residential density was only sixty (60) units per acre, such that the Valencia property could only have 23 units and not the 25 units proposed by Owner. The loss of these two (2) dwelling units would significantly diminish Owner's reasonable anticipated benefits and investment-backed expectations in pursuing this investment and the Valencia Property, thereby constituting an additional claim for relief by Owner under the Bert J. Harris Act.

The proposed Amended and Restated Dispute Resolution Agreement ("Amended and Restated Agreement") would resolve this additional dispute and amend and restate the Original Agreement. It provides, among other things, that:

1. Owner agrees that the maximum height of any development on the Valencia Property shall be no greater than seventy-five (75) feet exclusive of architectural features.

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<sup>1</sup> Previously Article 3, Division 17.

2. Owner agrees that the additional rooftop architectural and features permitted by the City Zoning Code Section 5-201(B)(1) shall not be greater in height than 10 feet. This limitation shall not apply to the elevator shaft and associated equipment.
3. Owner agrees that the rooftop uses shall be limited to an enclosed cabana which shall be no more than 2,500 square feet. This enclosure shall not count as part of the building's FAR.
4. The City agrees, pursuant to Section 14-214.3(A)(2) of the Zoning Code, that Owner is entitled to develop the Valencia Property with an FAR of up to 2.7 and **a maximum residential density of 65 units per acre, consisting of 25 residential dwelling units.**
5. Owner shall not request or apply for bonuses for height, setbacks, or stepbacks pursuant to the City Zoning Code Section 5-201 or any other applicable section of the City Zoning Code.
6. Owner agrees that any proposed development on the Valencia Property shall be subject to all reviews, including review by the Development Review Committee, Board of Architects, and all other applicable reviews. The City recognizes that the Owner has experienced delays and will use its best efforts to expedite all such applicable reviews.
7. The proposed Amended and Restated Agreement settles and resolves all disputes, disagreements, claims, and conflicts relating to the Litigation and Plaintiffs agree to dismiss the Litigation with prejudice, upon approval of the Amended and Restated Agreement and expiration of applicable appeal periods.

Also, as required by Section 14-214.3(E) of the Coral Gables Zoning Code, the proposed Amended and Restated Agreement provides that Owner releases the City from any claims related to the dispute, including a Bert J. Harris Act claim or any other takings or property rights claim.

Notice was mailed to the property owners within a one thousand (1,000) foot radius of the Property. See Affidavit Attesting to Public Notice of Zoning Application and related documents.

Once approved by the City Commission, Section 14-214.5 of the Zoning Code requires that after the agreement is executed by the City Manager, the dispute resolution agreement shall be placed on the next available consent agenda of the City Commission for ratification and shall not be pulled from the consent agenda except by supermajority vote of the entire membership of the City Commission.

**ATTACHMENT(S):**

1. Draft Resolution
2. Proposed Amended and Restated Dispute Resolution Agreement
3. Dispute Resolution Agreement
4. Resolution No. 2019-84
5. Resolution No. 2019-95
6. City Attorney Opinion 2017-13
7. Staff communications
8. Affidavit Attesting to Public Notice of Zoning Application and related documents