Exhibit F

PZB Minutes re: DYL Merrick with Attachments A thru H

City of Coral Gables
Planning and Zoning Board Meeting
December 10, 2008
Coral Gables City Commission Chambers
405 Biltmore Way, Coral Gables

Members:	J9	F13	M12	A9	M14	M28	A13	O8	N12	D10	Appointed by:
Eibi Aizenstat	P	E	P	P	P	E	P	E	P	P	City Manager
Robert Behar	P	P	P	E	P	P	P	P	P	P	Commissioner Rafael "Ralph" Cabrera, Jr.
Jack M. Coe	E	P	P	P	P	P	P	P	P	E	Mayor Donald D. Slesnick, II
Jeffrey Flanagan	X	X	X	X	X	X	X	P	P	P	Commissioner Maria Anderson
Pat Keon	P	P	E	P	P	P	P	P	E	P	Planning & Zoning Board
Tom Korge	P	P	P	P	P	P	P	P	P	P	Commissioner Wayne "Chip" Withers
Javier Salman	P	P	P	P	P	P	P	P	P	P	Vice Mayor William H. Kerdyk Jr.

P = Present
E = Excused

City Staff:
Eric Riel, Jr., Planning Director
Walter Carlson, Asst. Planning Director
Scot Bolyard, Planner
Jill Menendez, Adm. Assistant
Elizabeth Hernandez, City Attorney
Lourdes Alfonsin, Asst. City Attorney
Ed Weller, Building & Zoning Director
Martha Salazar-Blanco, Zoning Official
Carlos Mindreau, City Architect
Dulce Conde, Zoning Technician
Alberto Delgado, Public Works Director
Kevin Kinney, Parking Director

Court Reporter:
Joan Bailey

(See attached Verbatim Transcript of Planning and Zoning Board Meeting prepared by Joan L. Bailey & Associates)

Attachments:

A. 12.10.08 Planning and Zoning Board Meeting - Verbatim Minutes.
B. 12.10.08 Attendance/Speaker Sign In Sheets.
C. Letter to Elizabeth Hernandez from Vincent E. Damian, Jr. dated 12.05.08.
D. Letter to Elizabeth Hernandez from Mario Garcia Serra dated 12.05.08.
E. Document entered into the record by Eric Riel: Miami Daily Business Review - Notarized copy of the Notice of Public Hearing published on 11.25.08.

F. Document entered into the record by Jose Gelabert Navia, Perkins & Will – Building Setback 8'-0" from property line at south LeJeune and façade stepping at corner of LeJeune and Granello.
G. 10.08.08 / 11.12.08 Planning Department DYL PowerPoint Presentation.
H. 10.08.08 / 11.12.08 Applicant DYL PowerPoint Presentation.

(Note: Attachments I thru M are related to Agenda Item # 6 – Menoyo).

I. Document entered into the record by Eric Riel – 11.08.06 City Commission matrix request for additional information/further review pursuant to 10.17.06 meeting.
J. Document entered into the record by Eric Riel - 12.12.06 City Commission matrix request for further review.
K. Document entered into the record by Eric Riel – Zoning Map: 50' Setback from SFR and/or MF1 Properties.
L. Document entered into the record by Bob de la Fuente and Santiago Echemendia (A thru L).
M. Document entered into the record by Bob de la Fuente and Santiago Echemendia – Drawings prepared by de la Guardia Victoria Architects & Urbanists, Inc./Menoyo Properties, dated 12.10.08.

MR. BOLYARD: Yeah.
MR. AIZENSTAT: I'm sorry?
MR. BOLYARD: Yeah, that's correct. We're just increasing the amount of required architects.
MR. BEHAR: I think that's a great idea. I make a motion to approve.
MR. AIZENSTAT: It makes a lot of sense.
MR. FLANAGAN: Second.
CHAIRMAN KORGE: A motion and a second. Any discussion?
None?
Call the roll, please.
MS. MENENDEZ: Eibi Aizenstat?
MR. AIZENSTAT: Yes.
MS. MENENDEZ: Robert Behar?
MR. BEHAR: Yes.
MS. MENENDEZ: Jeff Flanagan?
MR. FLANAGAN: Yes.
MS. MENENDEZ: Tom Korge?
CHAIRMAN KORGE: Yes.
MR. BEHAR: Those architects are very valuable.
CHAIRMAN KORGE: Item Number 12,

Zoning Code Text Amendment, Article 5, Division 8, "Docks, Wharves, Mooring Piles and Watercraft Moorings."
MR. BOLYARD: This request -- sorry. This request is for a text amendment to permit an additional set of davits for single-family or duplex properties that have a minimum water frontage of 200 feet. This item was first approved by the Planning and Zoning Board on November 14, 2001, and was approved on first reading by the City Commission on January 9, 2002.
However, the item was inadvertently omitted from the second reading, as it was grouped with nine other text amendments. We're just trying to get it to proceed forward now.
CHAIRMAN KORGE: Is there a motion on this?
MR. AIZENSTAT: Well, just a question, if I may. How do you treat properties that might have currently, let's say, davits and some kind of a floatation system for another boat?

MR. BOLYARD: Well, currently, you're only permitted one set of davits, watercraft lifts or floating watercraft lifts, and that's it.
MR. AIZENSTAT: So it's currently that. Have you had a lot of problems with that issue?
MR. RIEL: No.
MR. AIZENSTAT: No?
CHAIRMAN KORGE: I doubt if anybody notices.
CHAIRMAN KORGE: Is there a motion?
MR. AIZENSTAT: Just a boater.
CHAIRMAN KORGE: Is there a motion?
MR. AIZENSTAT: Yes, I make a motion.
CHAIRMAN KORGE: There's a motion.
MR. BEHAR: Second.
CHAIRMAN KORGE: Seconded. Any discussion?
Let's call the roll, please.
(Thereupon, Ms. Keon arrived.)
MS. MENENDEZ: Robert Behar?
MR. BEHAR: Yes.
MS. MENENDEZ: Jeff Flanagan?

MR. FLANAGAN: Yes.
MS. MENENDEZ: Eibi Aizenstat?
MR. AIZENSTAT: Yes.
MS. MENENDEZ: Tom Korge?
CHAIRMAN KORGE: Yes.
For the record, Pat Keon has arrived.
Pat, we have approved Items 7 through 12, and we were waiting for you to start on Old Business, which are Items 5 and 6, the development on LeJeune and Ponce.
So we're going to proceed to Items 5 and 6. Are we taking these together?
MR. RIEL: No, they're separate.
CHAIRMAN KORGE: Oh, I'm sorry, 6 is the proposed settlement agreement.
MR. RIEL: Yes.
CHAIRMAN KORGE: And 5 is the site plan review and vacation of public alleyway. So we'll start with Number 5?
MR. RIEL: Yes.
CHAIRMAN KORGE: Application Number 06-08-074-P.
MR. RIEL: As you know, Mr. Chair,

this was considered at the last meeting. We did include public input at the last meeting. The Board, at nine o'clock, adjourned. Therefore, the item was continued to this evening's meeting.

So Staff is prepared to answer any questions you may have, however you would like to proceed.

CHAIRMAN KORGE: Well, if there's a motion, one way or another, I'll take the motion. If not, we'll open it for Board discussion and questions.

MR. BEHAR: Mr. Chairman, if I recall, in the last meeting, the Board had expressed some concerns with the project. I just want to bring up the architect to find out if anything has been done since the last meeting, and I remember that one of the issues that came up was the setback on LeJeune Road, and I want to see if they have addressed -- if anything has been done in regards to that matter.

MR. AIZENSTAT: Or even if there's any changes.

CHAIRMAN KORGE: Or any other changes, for that matter, I guess, yes.

MR. DAMIAN: Mr. Chairman, if I might, I have a point of order that I'd like to address before any testimony is taken from any witnesses.

CHAIRMAN KORGE: Well, we're not taking any more testimony. We really wanted to hear if there were any proposed changes, in light of what had been presented, and then we would open it up again if there are changes. So we're not -- I'm not -- we're not interested in taking any more testimony at this time.

MR. DAMIAN: The point of order is this.

CHAIRMAN KORGE: Okay.

MR. DAMIAN: At the end of the last meeting, when the meeting was adjourned because of time and it was to be reset on December the 10th, I had requested at that time that notice of this meeting be mailed, published and posted, just in case there was going to be anything

further, and so that the residents of the affected area would have an opportunity to be here during the public hearing.

We were told two things: First, that there was no need to do publishing, posting or noticing, because this was not the kind of hearing that required it, that previously it was done just as a matter of consideration and it was optional and didn't need to be done, and in fact, we are here today at this meeting and no publishing has taken place, no posting has taken place, no letters to the affected residents has taken place, and if you'll notice, there's nobody here.

The statement -- the information you received as to the requirement for posting of a public hearing was incorrect. The Code does require any public hearing to have a publishing and a posting. It is not optional; it's mandatory. And I think that the decision made, not to republish and not

to post, was incorrect. This is a public hearing and it continues, and it is not an optional point. It is one that is required by the Code.

The importance of this comes up because the public hearing continues. The very fact, Mr. Chairman, that you would call upon the applicant again, to clarify, make a statement of any sort whatsoever, shows that the public hearing portion, that the public -- the right to talk is continuing here, right now, and I think it was improper --

MR. BEHAR: Very simple, Mr. Chairman, then, excuse me. Then I will retract the request to get the applicant to come up, and I will make a motion based on the last meeting that we had, a motion to approve the project as presented then.

CHAIRMAN KORGE: But before I take your motion and see if we have a second --

Liz, do we have any -- What is your position or where do we stand respecting

notice?

MS. HERNANDEZ: We received the positions of all the parties, including the Planning Department, and it was the position of our office that there was no legal requirement for additional publication or posting.

However, that always leaves the Chair and the Board, if you decide that it is in the interests of due process or you feel that it is appropriate, you can always direct the Director to continue this matter and publish notice, if you feel it's appropriate, under the circumstances. It is absolutely within your province, because there is, as far as my office is concerned, no legal issue, and all the objections are preserved in the event of an appeal.

MR. RIEL: And just for a matter of record, the agenda was published two weeks in advance. The agenda was posted at City Hall, the agenda was posted online, as well as all the information presented to the Board is posted online,

as well.

CHAIRMAN KORGE: And at the last meeting, everybody was told that we would continue it at the next meeting.

MR. RIEL: At the last meeting, the public hearing was continued to this point, this meeting specifically, and the Department policy is, on continued meetings, we do not renotice, repost. If the item is deferred, we do, because if the item is deferred, it's not considered that evening. So our opinion is, the hearing was continued, therefore, we do not send out notice.

CHAIRMAN KORGE: Okay. Well, I'll accept your motion, if there's a second.

MR. DAMIAN: I haven't finished my point of order, if I may.

CHAIRMAN KORGE: Okay, go ahead.

MR. DAMIAN: First, the comment by Mr. Riel that the agenda was posted here at City Hall does not answer the requirements of the Code. The Code only has three requirements that's in the Code for Planning and Zoning hearings:

Posting on the property, mailing to the affected persons, and publication in a newspaper. None of those things were done, so the fact that you may have done it online or anywhere else does not satisfy any of those requirements.

The second thing is that Mr. Riel made a statement to this Board which also affects the public hearing point, and the statement that he made -- and it was in direct response to one of the questions, and that is, does the applicant, as a matter of right, have the right to do a mixed-use development on this property, and is this just site plan approval?

This is not site plan approval. If somebody has the zoning and the right to build, they go to the Building Department, they get site plan approval. The ordinance that adopted the mixed-use overlay on this industrial property -- and that's what this is, is industrial property, zoned industrial and commercial. The ordinance that adopted

the mixed-use overlay on this says, Section 8(e), that approval, site plan approval by the City Commission, and that ultimately is who's going to do the site plan approval, is not mandatory, it is discretionary, and you are bound by the same requirements that the City Commission is here. It is not mandatory. They do not have a right to this. It is purely discretionary.

The fact that it is a discretionary -- that you're in a discretionary point here is why the publication was necessary the first time. It was not optional, and it wasn't done as a matter of courtesy, it was done because it was required, and the fact that it's stated that we don't have to do it -- we didn't have to do it the first time, and therefore, we're not redoing it, is incorrect, and in order to satisfy the requirements of the Code, and more importantly, Mr. Chairman, in your discretionary role, to assure that the citizens, who are the affected

citizens, are here when discussion of this matter is before this Planning and Zoning Board, I think that you should continue this meeting, send out a mail to the affected residents, and there were loads of them here the last time and they're not here tonight -- send out by mail notice to the affected residents, post the property, and publish it as required by the ordinances of the City of Coral Gables.

CHAIRMAN KORGE: Do you have a copy of the ordinance you're referencing?

MR. BEHAR: Mr. Chairman, a quick question and just clarification.

CHAIRMAN KORGE: Yeah.

MR. BEHAR: And the information that Mr. Damian is providing us today, is this part of the public hearing that was closed last meeting? You know --

MS. HERNANDEZ: This is a point of -- no, this is -- he's preserving legal arguments --

MR. DAMIAN: This is a point of order.

MS. HERNANDEZ: -- and he has the right to do so.

MR. BEHAR: Okay.

MR. DAMIAN: Liz, do you have a copy -- or actually, Eric, I believe you provided to Liz and Liz provided to me a copy of Section -- Ordinance Number 02-004-04. Do you have a copy of that?

MR. RIEL: No, I don't.

MR. GARCIA-SERRA: Mr. Chairman --

MS. HERNANDEZ: I didn't print it.

MR. DAMIAN: I can state to you, Liz sent it to me, Section 8(e).

MS. HERNANDEZ: Right, I know, but I didn't print it.

MR. DAMIAN: Do you agree with me, Liz, that it is not mandatory, that it's discretionary with the Commission, and Section 8(e) --

MS. HERNANDEZ: I would have to --

MR. DAMIAN: -- specifically says that?

MS. HERNANDEZ: I would have to -- I would have to -- Vince, I would have to --

CHAIRMAN KORGE: I'm not -- That's

not what I'm -- I'm interested in the ordinance that relates to the notice requirements.

MR. RIEL: Mr. Chair, I have a certified copy of the notice published in the Daily Business Review, if Mr. -- would like to see it.

CHAIRMAN KORGE: Yeah, that would be helpful.

MR. GARCIA-SERRA: And Mr. Chair, if I could assert the point of privilege of procedure so I can respond, perhaps, to some of these comments.

CHAIRMAN KORGE: Yes.

MR. GARCIA-SERRA: My client does have an interest in this.

My name, again, Mario Garcia-Serra, with offices at 1221 Brickell Avenue, representing the applicant, the DYL Group, and I would just, in response to Mr. Damian's points of procedure, want to go over the procedure that's taken us up until tonight.

If you remember right, we were scheduled for our first public hearing

at the October meeting. That meeting was deferred because it was a Jewish holiday, it was Yom Kippur. That meeting had been fully noticed. Advertised notices had gone out to all the neighbors. That meeting -- that hearing never started. The matter was deferred, before it even started, to the November meeting.

For that reason, Staff sent out notices again, advertised and did everything that's required for the November hearing.

At the November hearing, the hearing was actually conducted. Public comment was taken. You remember that the hearing was closed. The Board was actually in Board discussion when the time came to adjourn at 9:00 p.m. and it was adjourned, and clearly, on the record, in the transcript, it's indicated Mr. Riel saying that this matter was continued to a date certain of December 10th. So everyone that was at that hearing was on actual notice

that the hearing was being continued to December 10th.

Because the hearing was continued to December 10th and the public hearing aspect had already actually been closed, there was no need -- and consistent with Staff's policy all along, as long as I've been practicing -- to send out any additional notices or anything else, because every interested party that was at that hearing had actual notice that the hearing was going to be continued to December 10th.

I researched, also, case law, and the case law is pretty clear on this, too. The notice that has to be provided for this sort of hearing is a reasonable notice. Keep in mind that an advisory board isn't even, under the case law, necessarily required to provide notice, because you are here in an advisory capacity, you're not making a final decision. There will be two more public hearings on this matter before the City Commission.

At the same time, there's an interesting other aspect of the case law which provides that parties that are present at a hearing can be found to have waived the claim of defect in notice if they're actually there at the hearing. You know, their presence here at the meeting indicates that they did have actual notice of this hearing going on today, so they can be construed as having potentially waived that claim of a defect.

And most importantly, please keep in mind that if we were to sincerely think that there was any problem with notice in this hearing, we would be the first to be telling you that it should be deferred, because we don't want to give Mr. Damian the ideal opportunity to just shoot down our project, once it's approved, in court, with a notice defect.

The appellate division of my firm has reviewed this issue. We're confident that there was no defect in

notice and that this hearing could proceed, as Robert's Rules of Order require. The meeting should start up at right where it was at, at the point at which it was adjourned, which is after the public hearing being closed, and the Board discussion, which is what you're proceeding to do.

CHAIRMAN KORGE: Okay.

Anything further, anybody?

MR. AIZENSTAT: I would tend to agree with that, only because we had closed the public hearing. If we had not closed the public hearing, then I would agree with Mr. Damian's point. That's my comment.

CHAIRMAN KORGE: Right. We're not taking any more testimony or evidence. So, at this point, we're just continuing the hearing, the hearing that occurred last month, and in the absence of some clear statement in the ordinance prohibiting us from continuing this meeting without an additional written notice being mailed out to all the

residents, in light of all of that, I'll just go ahead and accept your motion, if there's a second.

The motion was for approval of the project.

MR. BEHAR: Correct.

MR. FLANAGAN: Second, for discussion.

CHAIRMAN KORGE: Second, for discussion. Let's take some discussion now. Do you want to start for us, Jeff?

MR. FLANAGAN: Are we allowed to ask questions now of the applicant?

CHAIRMAN KORGE: Well, I --

MR. FLANAGAN: It's not a public hearing, it's --

CHAIRMAN KORGE: I can tell you -- I'll start.

MR. FLANAGAN: I think if I have questions, I mean, I'm probably going to ask, I just want to make sure I'm not stepping out of bounds.

CHAIRMAN KORGE: Why don't I start?

MR. FLANAGAN: Okay.

CHAIRMAN KORGE: I can tell you

what my concerns are, right away. The project is very massive for the site, and there is -- I've been thinking about this a little bit, and there is -- you know, there's -- we're vacating the alleyway, and I don't have any problem in principle with vacating the alleyway and substituting a different alleyway. However, in the process of vacating the alleyway, we're increasing the FAR for the project, which, yes -- because that FAR is calculated based on the land that is owned by the developer after the alleyway is vacated.

As a result, the FAR and density can increase as what it would be and the site can be increased -- excuse me, not the site, the project itself can be increased as a result of that, and I have some problems with that.

In addition, you know, it's an incredibly massive project. It's nice, and I don't have an issue with mixed-use development in this location, but it's right on top of LeJeune Road, and those

are my big concerns with the project. I don't know if anybody shares those concerns.

I think, overall, it's good to have a development here at this location, and it will benefit the entire neighborhood in the long run to have a mixed-use development at that location, but this is a very massive project and I have some serious misgivings about that, especially in light of the additional massing made possible by vacating the public alleyway.

MR. AIZENSTAT: I agree with you. For me, I also think that this project is too massive. I understand your point about the FAR being allowed for the alleyway. I would feel more comfortable if that FAR was not given.

But there's also a give-and-take, in that the developers are going to be paying property taxes to the City on that portion that was not being paid for before, so I would have to weigh those two things. But I would like the

developer to reduce the FAR or not use the FAR for the alley that is being given.

I, too, feel that the property, to me, is very massive. I feel it's abutted too close to LeJeune, where the sidewalk is and so forth, among some other complaints, but that's mainly my point.

MR. BEHAR: Mr. Chairman, on that point, I remember last -- that's why I asked earlier today if that was -- we expressed some concern, and I wanted to know, to find out if something had been done, you know, to remedy that concern.

Apparently, we are not -- we cannot ask the applicant to come back and tell us --

MS. HERNANDEZ: Yes, you can.

MR. BEHAR: -- if something was to be, you know, done or not to that effect, on the setback on LeJeune.

MR. AIZENSTAT: Why can we not -- are we not allowed to?

MS. HERNANDEZ: You can.

Mr. BEHAR: Liz -- then I would --

MS. HERNANDEZ: No, you can. You absolutely can. Mr. Damian has voiced his objections. The applicant is proceeding at their own risk. You can -- This Board is free to conduct the activities of the Board as it deems appropriate.

MR. BEHAR: Then I have a couple -- you know, a couple points of clarification. One, I want to ask the Planning Department to make sure that everything that you have reviewed complies with all the Code requirements.

MR. RIEL: The Building and Zoning Department has the responsibility of interpreting the Zoning Code. They complete a zoning analysis. Yes, they have indicated that it does comply with the Code.

The Planning Department, as a part of our review, also kind of look over the shoulder of Building and Zoning. We also agree with the interpretation that it does comply with the Code.

MR. BEHAR: Then what I would do, since I know that one of the -- a member of the Zoning Department, Dulce, is here, I would like to bring her up to make sure that, you know, she confirms that everything has been reviewed and they meet all the Code requirements. Can we do that?

MR. RIEL: I think it would probably be more appropriate for Ms. Salazar.

MR. BEHAR: Oh, I see her, I'm sorry, seated behind her.

Ms. Salazar, could you please -- I apologize. You were behind --

MS. SALAZAR-BLANCO: That's okay. I was hiding.

MR. BEHAR: I'm glad to see you here.

MR. AIZENSTAT: She was hiding.

MS. SALAZAR-BLANCO: Martha Salazar-Blanco, Zoning Official for the City. I do want to introduce Dulce Conde. She is the zoning technician that did the zoning analysis and knows

the project up and down, and she can answer any questions that you might have, okay?

MR. BEHAR: Okay. Thank you, and once again, I apologize.

MS. BOLTON: I have a point of personal privilege.

CHAIRMAN KORGE: Ma'am?

MS. BOLTON: Yes, sir?

CHAIRMAN KORGE: Ma'am, what?

MS. BOLTON: I want to ask a point of privilege, personal privilege, please.

CHAIRMAN KORGE: What's that?

MS. BOLTON: Sir?

CHAIRMAN KORGE: What do you want?

MS. BOLTON: I want -- I have two statements to make that's crucial to this.

CHAIRMAN KORGE: Come up and make your statements, but please make them as short as you can.

MS. BOLTON: Yes, sir.

Good evening. My name is Roxcy Bolton. I live at 124 Cadima Avenue.

Number one, as I look at the audience, sir, I do not see a single face from that community that will be impacted by this tremendous project.

If you would be kind enough, sir, to ask anyone from that community that's being affected to stand, I think you'll find there's no one here. They were not noticed. This is very --

CHAIRMAN KORGE: Yes, that point has already been made, ma'am. Any other point you wanted to make?

MS. BOLTON: The second point I want to make is about preserving the alley. When we give away the people's alley, we're -- that is a very serious thing.

CHAIRMAN KORGE: Yes, ma'am. You made that point in the last hearing, and I tend to agree with you and I've already expressed that, so we don't need to repeat that at this time, but I appreciate your bringing that back to our attention.

MS. BOLTON: And I appreciate you

allowing me to come and address the point. Good evening.

CHAIRMAN KORGE: Thank you.

MS. BOLTON: I'm glad to see you back.

MR. BEHAR: Can we get Dulce to come up again, please? Thank you.

Dulce, in your review, has the applicant complied with all the requirements necessary for this project?

MS. CONDE: Yes. There are a couple things that, you know, we need to still work on and address, but however, yes, they have met -- it's a very lengthy review, due to the mixed-use component, and they have met the requirements of that review.

MR. BEHAR: Okay. Thank you.

MS. CONDE: Any question in particular?

MR. BEHAR: No, I just want to make sure that everything had been, you know, confirmed, verified and they do comply with all the requirements.

MS. CONDE: Yes. What I would like

to do is make a clarification on the requirement for being so close to LeJeune. The reason why this project, which is different than Gables Gateway, is close to LeJeune, is because of the facing of the lots. In the Gables Gateway project, the front facing, which is your front setback, is on Greco and Granello. However, on this project, since it's parceled with lots facing LeJeune and then a big tract behind it, LeJeune becomes a front setback instead of a side setback, and that's why the difference in the setbacks, that, you know, I hear a lot of discussion, and I just wanted to point that out so that you would be aware why, in comparing the two projects, one has a 15-foot setback and one is literally at zero. So I just wanted to point that out, so that --

MR. BEHAR: Let me, then, clarify that point. The Gables Gateway project had a self-imposed 15-foot setback. You could bring the arcade to the property line, as long as the building -- the

step-back --

MS. CONDE: Then everything had to -- right, then you had to comply, but --

MR. BEHAR: So it's a little different.

MS. CONDE: Right, but it was because of facing, and I just want to clarify that, because all the lots on the Gateway project face --

MR. BEHAR: But that was a self-imposed setback.

MS. CONDE: None of them face LeJeune. It's a side setback on LeJeune.

MR. AIZENSTAT: So the Gables Gateway, if I understand this correctly, could have been brought up to LeJeune?

MR. BEHAR: The arcade.

MS. CONDE: With --

MR. AIZENSTAT: Or a section?

MS. CONDE: With step-backs --

MR. BEHAR: Yes.

MS. CONDE: -- correct.

MR. AIZENSTAT: Okay.

MS. CONDE: But not in order to do step-backs, they complied with the required setback of 15 feet --

MR. AIZENSTAT: Understood.

MS. CONDE: -- as a side setback, not as a front setback.

MR. AIZENSTAT: Thank you.

MR. BEHAR: Now -- thank you, Dulce -- I'd like to call the architect or the applicant to see if anything was made, any attempt made to address our concern from the last meeting.

MR. DAMIAN: Excuse me, I have to rebring my point of order. This is opening up the public hearing again. The point that was made by the Chairman was -- and by other members was, the reason I go along with this, that we didn't need to do another publication, was the public hearing is over, there is no more testimony. It's over.

MR. AIZENSTAT: I was actually going to ask that question to the City Attorney, that if there are any changes in the project, does that then open up

the public hearing again, if there's changes from the last time?

MS. HERNANDEZ: Again, as I indicated previously when you asked the question as to whether or not you can inquire, you can ask questions of any of the individuals who have testified on this project, of the Planning Director. The applicant proceeds at their own risk. Mr. Damian has issued an objection, saying, "By doing so, I believe you are reopening the public hearing process and you are therefore not just continuing the deliberations of the Board."

As you know, the deliberations of the Board have always included questions and answers. So that is an issue that's going to be decided between the parties at a later date in a court of law, you know.

MR. AIZENSTAT: No, I understand about the questions and answers, but I'm just wondering if you actually -- if there is a change, and I don't know that

there is, but if there is a change, then --

MS. HERNANDEZ: Well, once you get your answer, you may decide that you want to continue this or not, I mean, you know --

MR. DAMIAN: My point is -- my point of order is made.

CHAIRMAN KORGE: Yes, thank you.

MR. GELABERT-NAVIA: Can you hear me?

MR. AIZENSTAT: Yes.

CHAIRMAN KORGE: Yeah.

(Thereupon, Mr. Salman arrived.)

MR. GELABERT-NAVIA: As you can imagine, you know, we've been working on this project now for about a year and a half, and we've examined a lot of alternatives, and frankly, after the last meeting, even though we had not had the opportunity to hear your concerns as we have today, our client came to us and said, "If this comes up, you know, what could we do? If this -- "

CHAIRMAN KORGE: Excuse me for

interrupting you.

For the record, Javier Salman has arrived. Continue.

MR. GELABERT-NAVIA: So our client has kept us busy since the last meeting, trying to anticipate any concerns that you might have.

Laura -- maybe I should -- One of these days, the architect will be able to talk.

If Laura can speak about the alley, please.

MS. RUSSO: Good evening, Mr. Chair, Members of the Board.

For the record, Laura Russo, with offices at 2655 LeJeune Road. What I had just written in a note was to ask Jose to allow me to clarify the question you had asked regarding the FAR and the alley. And you may or may not have noticed this package that Staff gave you, we do not use the total 3.5 FAR that would be allowed on the project. We're under the FAR.

And your answer is, we used some of

the alley. The alley is 6,000 square feet. It could go to 3.5 times 6,000, for about 21, 22,000 square feet. We only used six.

CHAIRMAN KORGE: So it adds an extra 6,000 square feet?

MS. RUSSO: Excuse me?

CHAIRMAN KORGE: It adds an extra 6,000 square --

MS. RUSSO: Adds an extra 6,000, not the potential -- whatever 6,000 times 3.5 -- I think it's twenty-one five.

CHAIRMAN KORGE: Right.

MS. RUSSO: So it does not use its entire potential.

So, yes, we did use some, but we did not use the entire amount, so we're leaving FAR on the table in what would have been the scenario that you proposed.

CHAIRMAN KORGE: Right.

MS. RUSSO: So I just wanted that -- because it isn't clear-cut and, you know, it may work into some of the

things that Jose is going to discuss.

MR. GELABERT-NAVIA: I'm actually not upset about the attorneys taking all the attention. I'm married to one, and I can't get a word in edgewise, anyway, at home or other places.

Basically, there are two issues that have been brought up, the -- whether we are using -- you know, Mr. Korge is concerned about using the additional FAR, and I know that, again, there is a concern about the presence of the building over on LeJeune Road, and again, like I was saying before, we've examined a number of alternatives, and I brought in a number of boards just in case there might be an opportunity to present what -- what we can show you today, addressing those concerns.

MR. RIEL: You're going to -- you need to bring the mike.

MR. GELABERT-NAVIA: Our -- again, from Day One, we really have tried to be a good neighbor. Our client would be willing to move the whole building back

eight feet, which would align the building exactly with the way one building that is there already, which is Village of Merrick Park -- the Nieman Marcus and Village of Merrick Park has this kind of section.

So, by moving the building back, we actually lose close to 9,000 square feet of area. So, if that is a condition that you would like to, you know, impose on the project, hopefully for a positive recommendation, again, our client would be willing to move the whole building back the eight feet, and also on the top floors -- I'm sorry, I can't -- I've got to take the mike.

Can you hear me?

UNIDENTIFIED MAN: Go to the easel.

MR. GELABERT-NAVIA: Okay.

The other thing that again -- again, we would be willing to move the whole building back, and also, we would be willing to cut the building back on the fourth floor and the fifth floor. So the building would be cut next to the

area -- next to Gables Gateway, which has been a concern in terms of the massive -- massiveness of the project. So we would be willing to do both things, if that, you know --

MR. BEHAR: And by doing that, you eliminate the arcades, what appears to be eliminating the arcades, correct?

MR. GELABERT-NAVIA: We would have to eliminate the arcade.

MR. AIZENSTAT: Is that all you'd eliminate?

MR. GELABERT-NAVIA: Well, we eliminate the arcade, and we actually have, on top of the arcade, a whole floor of offices.

MR. AIZENSTAT: Correct.

MR. GELABERT-NAVIA: By pushing the thing back the eight feet, we're losing eight feet times the whole length of the building that we previously had in offices.

MR. AIZENSTAT: Are you then stepping -- are you then going to step back, also?

MR. GELABERT-NAVIA: Right. So then what -- the reason we're not pushing it back further, we're allowing those two feet --

MR. AIZENSTAT: Right.

MR. GELABERT-NAVIA: -- those two feet are critical, because the elevation that was approved by the Board of Architects, which we felt was -- you know, again, we went to the Board of Architects, you know, a couple of times, showed them that on that second floor there was a step-back, there was a trellis, which would allow for landscaping to exist at that point, and then the step-backs continue.

What we're, in essence, doing by pushing the whole thing back is that instead of having a balcony on that third floor, we now have a planter, because --

MR. BEHAR: But there's a break in that facade. There is --

MR. GELABERT-NAVIA: There is -- it goes again there and then it breaks

back --

MR. AIZENSTAT: Okay.

MR. GELABERT-NAVIA: -- moves back, and then the step-backs continue the same way they were before, but then in addition, we would cut the building off on the corner and then step it back on that direction, as well.

MR. AIZENSTAT: But you're not illustrating that on here.

MR. GELABERT-NAVIA: Yeah.

MR. BEHAR: Yeah.

MR. AIZENSTAT: Where is it cut on the corner?

MR. GELABERT-NAVIA: Right here.

MR. BEHAR: Right here.

MR. FLANAGAN: When you're cutting the corner on the south side, how far back, how deep in the project is that?

MR. GELABERT-NAVIA: That is 10 feet.

MR. BEHAR: Have you -- Let me ask a question. Have you had an opportunity to meet with either the City Architect or the Board of Architects to show

them --

MR. GELABERT-NAVIA: Well, we have not met with the Board of Architects, because, again, we wanted to see which, you know, direction you wanted us to go, but we have met with the City Architect, and we showed the City Architect four different options, again hopefully anticipating that we could move past the meeting today, and again, whatever recommendation you give us, Mr. Mindreau told us that we then have to take it to the Board of Architects, to make sure that it is consistent with what they had approved before, so we don't want to override their approval.

MR. AIZENSTAT: By doing these cutbacks, how many square feet are you cutting back on your project, or what percentage of your project are you cutting back?

MR. BEHAR: You stated 9,000 square -- is that right?

MR. GELABERT-NAVIA: There's about 9,000 square feet that we --

MR. AIZENSTAT: Out of -- Your project is how many square feet?

MR. GELABERT-NAVIA: There's about 280,000.

MR. AIZENSTAT: It's a very small percentage.

MR. SALMAN: Four and a half percent.

MR. AIZENSTAT: What?

MR. SALMAN: Four and a half percent.

Now, you are leaving the colonnade as part of the facade and still installing the awnings?

MR. GELABERT-NAVIA: We are putting the awnings, but what we have done is, we have pushed it back, but now -- we have a deep elevation -- actually, in a way, I'm copying myself, because that's what we had done in the Village of Merrick Park in the office building that we did a number of years ago, that we had a sort of similar situation, because we actually had a parking garage behind, and the -- in that case, the Rouse

Company and the City did not want to shorten the retail spaces too much or else they wouldn't work.

So what we did is what we're proposing here, is that on the ground floor, the building comes out several feet, so that as you're walking past the street, what you experience is that first plane.

MR. SALMAN: The articulation.

MR. GELABERT-NAVIA: And then it's deep enough so that we can actually grow things on it, although Rouse has never planted anything on it, but that was the idea, and then the trellis still exists. So you would still have the landscape -- in essence, it's the same elevation, except it's been pushed back, and as you can see in the plan, what we are able to do now is, instead of having the five feet of landscaping, we would have 13 feet.

MR. BEHAR: For the back of the curb, the street curb, you have 13 feet to the front -- to the face of the

building --

MR. GELABERT-NAVIA: Right.

MR. BEHAR: -- which now gives you an adequate area to grow some plants.

MR. GELABERT-NAVIA: To grow, yeah.

MR. BEHAR: Yeah. You're showing here a continuous green space on LeJeune Road.

MR. GELABERT-NAVIA: Yeah.

MR. BEHAR: Let me ask you a question. Do you really think that -- When I -- My office is very close to here. As a matter of fact, I come through here to walk to Havana Harry. To cross the street here, you're going to force me to go or force the pedestrians to go to the corners.

MR. GELABERT-NAVIA: Yeah.

MR. BEHAR: You don't think that interrupting that continuous landscape may be, urbanistically, a better solution?

MR. GELABERT-NAVIA: Then we'd be, you know -- whatever, you know, you would like us to do there, we'd love to

do it. At this point, we tried to do as much landscaping as we could on LeJeune to soften that side.

MR. SALMAN: Yeah, but I think Robert's comment had to do with crossing, crossing LeJeune Road.

MR. GELABERT-NAVIA: No, it would be cutting -- cutting this part, you mean?

MR. BEHAR: Yeah. It shows to be an entrance.

MR. SALMAN: Uh-huh.

MR. BEHAR: I mean, you're not emphasizing -- you've got -- you can't even access it, so it's really a symbolic entrance there, because you've got to come around the side.

MR. AIZENSTAT: Is there a light there presently?

MR. BEHAR: No, there's -- the only --

MR. AIZENSTAT: Then let me ask you a question. LeJeune is a State highway?

MR. BEHAR: Yes, it is.

MR. AIZENSTAT: That means it's

controlled by the DOT --

MR. BEHAR: Definitely.

MR. AIZENSTAT: -- as far as the light? Then would you want pedestrians crossing a busy street like LeJeune when there's not a light?

MR. BEHAR: But it's not so much for crossing; it's just the visibility. It's not the crossing. I'm not encouraging the crossing.

MR. AIZENSTAT: Oh, okay.

MR. BEHAR: Just the visibility.

MR. GELABERT-NAVIA: We can take it off. Actually, the entrance, even though there's not a crossing there, actually lines up with Vilabella. If you look down Vilabella, that's where the entrance is.

MR. BEHAR: You did say you met with the architect, with the City Architect?

MR. GELABERT-NAVIA: Yes, and he's here and maybe --

MR. BEHAR: Can I -- Mr. Mindreau, can I ask you a question, please?

Good evening. How are you?

MR. MINDREAU: Good evening.

MR. BEHAR: Having had, maybe, an opportunity to review this proposed or possible solution, how do you feel about the fact that the applicant is setting the building back in order to address some of the concerns that I particularly had and now today we hear that other Board members have had, as well, where you get a relief on LeJeune Road? What's your position?

MR. MINDREAU: For the record, Carlos Mindreau, City Architect, for the City of Coral Gables.

I met with Jose Gelabert-Navia earlier this week. In my opinion, the solutions, the alternate solutions that they are considering in response to your desires are all three very, very appropriate solutions for the problem.

My thought, personally, and I think that the Board would respond in the same way to all three solutions, those being -- pushing the building back being

one, the second one being removing the corner, the upper corner of the fourth and fifth floors, to lessen the mass of the building and the impact of that building on LeJeune, and the third one, a combination of those in some way.

I think the Board would respond favorably in terms of both the approval for the solution as well as the Mediterranean bonus issue that the project requires.

My personal feeling was that the arcade was a nice relief, although it keeps the building very close to LeJeune Road, at the zero lot line. I really feel that all three solutions are equitable and they respond well to the idea.

If the Board, if your Board -- if you feel very strongly about the separation, the distance of the building between the building and the curb at LeJeune, I would be very favorable to that solution, as well.

MR. BEHAR: Thank you.

I -- Mr. Chairman, I feel that the applicant has a solution here, a proposed solution, that will -- will address some of my concerns, particularly the setback on LeJeune Road. If they feel that they could make this doable, I would amend my motion for approval to incorporate moving the building back the eight feet from the east -- from the west property line, from LeJeune Road, in order to accommodate this setback.

I would ask the applicant to look at the landscape area, just to possibly introduce a break where that element, the entrance element, occurs, at least to visualize that all the way through the building and the ground, not necessarily to promote a crossing there, but just visible -- you know, the aesthetics, take that piece all the way down. But that's -- that's at their discretion, to work with Staff on that.

CHAIRMAN KORGE: Does the second -- Does the second of the --

MR. DAMIAN: Excuse me. Is the public hearing closed yet?

MR. BEHAR: The public hearing was closed already, last --

MR. DAMIAN: Excuse me. We had the attorney for the applicant up here, making argument. We had --

CHAIRMAN KORGE: Mr. Damian, is there something else you'd like to add? Go ahead.

MR. DAMIAN: Yes. Yes, I would. I believe, in fact, that we have reopened testimony by the applicant, and what we find is, in response to the concerns of this Board of the massiveness of this project in that area, that the applicant is willing to make certain changes to the project, all well and good.

The notice -- we'll go back to your notice. The notice that was sent out to the residents of the area was based upon a plan which no longer is the one that the applicant is now presenting to the Board. Therefore, the notice that was given to the residents is inadequate, in

that it is not the plan that's coming before this discretionary Board -- the Board for discretionary review, and that's what we have, is discretionary review.

It ought to be renoticed with the new plan, number one.

Number two, the order presented in the zoning ordinance of the manner in which a discretionary review takes place requires Board of Architect review prior to presentation to this Board. Again, there has been changes to the project that require architectural approval, Architectural Board approval. Having the City Architect say he thinks that the Board of Architects will approve it is not approval. We have a very specific procedure for discretionary review. The Board of Architects must approve. They have not approved this project as now being presented.

I would respectfully request again that this project be sent to the Board of Architects for approval in the manner

that has been suggested, in which the applicant has said they will do it. The Board of Architects, if they should approve it, it would then come back to this Board. This Board would advertise the project as it is being proposed to be permitted, and then there would be public comment on the project as it is being presented to this Board.

CHAIRMAN KORGE: Thank you.

Yes, sir.

MR. GARCIA-SERRA: Okay, just a quick response to Mr. Damian's points here.

Again, the public hearing was noticed. The continuation was noticed. Everybody who was at the November hearing had actual notice of this hearing taking place now on December 10th, and the public will have again even another opportunity to present any comments that they might have on any plan that's proposed or recommended for approval by this Board at the City Commission, at the public hearings that

are going to happen there.

As far as procedure is concerned, the Board of Architects did previously approve this application. What's being discussed is a revision to one elevation. It's possible, if this Board so deemed, to recommend approval of the application as modified with a condition that that elevation be approved by the Board of Architects prior to it going to the City Commission.

We have ample opportunity, several Board of Architects meetings between now and the next City Commission meeting.

And, of course, in fairness, this is the third time we've been up here before this Board, and we would just like to proceed and be able to go on to the City Commission.

MR. AIZENSTAT: Eric, can I --

MS. RIVERON: So, excuse me, does the public now have an opportunity to respond to the proposed changes at all?

CHAIRMAN KORGE: If you'd like to respond, I'll --

MR. BEHAR: No --

MR. PLANAGAN: Can I --

MR. BEHAR: No.

MR. AIZENSTAT: You're going to open up the --

MR. PLANAGAN: Can I ask a question?

CHAIRMAN KORGE: Hold on.

MR. PLANAGAN: I'm sorry.

CHAIRMAN KORGE: Hold on a second. First of all, as far as I'm concerned, if there are going to be architectural changes, it's going to have to go back to the Board of Architects, and I don't know if I'm speaking for everybody here, but I suspect that I am.

MR. AIZENSTAT: That was the question I had.

CHAIRMAN KORGE: So -- and we're really not in a position to make -- although we have two very fine architects on our Board, we're not in a position to make, you know, these types of determinations respecting the architectural integrity and the

conformity to the Mediterranean Ordinance. There have been changes or proposed changes that may affect Mediterranean bonus, for all I know. I don't know.

So I would expect that if you're going to modify your motion, it's going to, at a minimum, provide architectural review, go back to the Board of Architects. Is that --

MR. AIZENSTAT: If I may, before you answer that --

Eric, are we -- on a procedural basis, do we need to go back to the Board of Architects' approval before we approve this?

MR. RIEL: Let me answer that by telling you what the Board has done in the past. You have recommended approval of projects subject to changes in architecture or landscaping or other matters, subject to further review by City Staff or the Board of Architects.

MR. AIZENSTAT: Correct. Okay, so --

MR. RIEL: So, for instance, if you wanted a different plant material, it would go to the Public Service Department, they would provide comments, and that approval would be secured by, you know, the Public Service Department and then it would go forward to the Commission.

Now, in the past, also, if the Board has felt that they wanted to see the project again, they've continued it to the next meeting, allowing the plans to be revamped and then brought back to this Board.

So, basically, it's up to the Board, but for the most part, in my opinion, they can proceed forward, go to the Board of Architects. Obviously, your recommendation and the Board of Architects plan will go to the Commission when this is scheduled.

MR. AIZENSTAT: And then, Liz, if I can --

MS. HERNANDEZ: Yes, sir.

MR. AIZENSTAT: -- as far as the

City Attorney is concerned, or the position of the City, they're satisfied with the procedure that has gone on? I understand that it would be up to either attorney, if they want to appeal it or not appeal it; that's between themselves.

MS. HERNANDEZ: Right.

MR. AIZENSTAT: But from the City's point of view, the City is okay?

MS. HERNANDEZ: It is the determination of our office that we have proceeded in accordance with our rules and with statutory requirements.

MR. AIZENSTAT: Thank you.

MS. HERNANDEZ: Okay.

CHAIRMAN KORGE: So, procedurally, I guess we are -- You were going to amend your motion to accommodate the proposed revisions to the architecture, the setback in particular.

MR. BEHAR: That's correct.

CHAIRMAN KORGE: And did you want to make it subject to further approval by the Board of Architects or --

MS. RIVERON: I'm sorry, excuse me. I believe my question wasn't answered. I think we kind of got off track. So my question was, now that there is a proposed change, will it be open to the public again or not, before we take the -- the proposed motion?

MR. BEHAR: Mr. Chairman, I don't think it needs to be opened to the public again, based on what I'm hearing from our attorney. I think that we make a recommendation --

MS. HERNANDEZ: Right.

MR. BEHAR: -- that we pass it on, it goes forward, if we decide that it goes to the Board of Architects, and then it moves with that recommendation. But I do not personally feel that it has to be opened to the public again.

MS. BOLTON: It's essential to be opened to the public, essential.

MS. RIVERON: I would like an opportunity to be heard on what was just said. It's going to take me five minutes.

CHAIRMAN KORGE: Take your five minutes, please.

MS. RIVERON: Okay. My name is Adis Riveron, and I live at 426 Alminar Avenue.

The proposed changes, the setback, the eight feet, the cutting the building here and there, I mean, I'm not an architect and it doesn't mean a whole lot to me. I'm a resident that lives half a block away from this area, and this is a massive, massive project. What I've heard the architect say doesn't change that at all.

When I stand in front of my house with my kids, I'm going to see this massive structure, and this is not going to change. The fact that it's going to be cut here or there is not going to change that. It's going to change the property value of my home. People are not going to want to buy this house. This area is a single-family area, and the LeJeune area, I understand, is different, but there's single-family

homes there, and this massive building is going to obstruct my view, the view of everyone from my block, and the view of anyone who may, at some point in the future, want to buy my home or any of the other homes in this neighborhood.

The changes that are being proposed don't, in any way, affect that situation and it doesn't change the concerns that I had from the last meeting at all. I don't know if it changes your concerns, I know that you raised that, as well, but I just wanted to point that out.

Thank you.

CHAIRMAN KORGE: Thank you.

MR. BEHAR: Mr. Chairman, I made a motion and I amended my motion.

CHAIRMAN KORGE: Yes.

MR. BEHAR: And I don't know if it was seconded or not.

CHAIRMAN KORGE: What was the amendment, again?

MR. BEHAR: For -- to accept the proposed setback of the building, of the eight-foot setback --

CHAIRMAN KORGE: Uh-huh.
MR. BEHAR: -- contingent that it go to the Board of Architects, and get it -- between today and the time it goes to the Commission, and get the approval of the Board of Architects.
CHAIRMAN KORGE: Uh-huh.
MR. RIEL: Just two questions, Mr. Chair. Subject to Staff's conditions that --
MR. BEHAR: Yes.
MR. RIEL: -- we've recommended?
MR. BEHAR: Yes, correct.
MR. RIEL: Okay. And then just one other clarification. You had -- The architect had indicated to cut back the building on the fourth and fifth floor corner. Was that included in your motion or not?
MR. BEHAR: Yes.
MR. RIEL: I just wanted to make sure, make sure we're all clear.
MR. BEHAR: Yes.
CHAIRMAN KORGE: The second, does the second accept --

MR. SALMAN: I'll second it.
CHAIRMAN KORGE: No --
MS. MAROON: Excuse me. I sat here very calmly, Mr. Korge --
MR. FLANAGAN: I seconded it earlier. I seconded the motion earlier.
MS. MAROON: Excuse me. I sat here very calmly, Mr. Korge. I've been --
My name is Shirley Maroon. Since this is a public hearing which was never supposed to take place here, and that's why my neighbors aren't here -- so now, if everyone is going to speak, it's turned into a circus, and then I intend to speak, too. I have a few things to say.
First of all, this lovely lady, Pat Keon, one of your Board members, wasn't even here at the last meeting. Is she going to be voting or is she not going to be voting? Because she was not privy to any of the information. She didn't see the concerned neighbors. She didn't hear about the 300 signatures that I and along with my other neighbors and my

daughter over there, in the heat of the summer, went to notify our neighbors --
CHAIRMAN KORGE: Ms. Maroon, she's got the transcript of the prior --
MS. MAROON: That's not good enough. I serve on a Board, also, and I don't think it's fair. I don't think it's fair.
CHAIRMAN KORGE: Well, let's calm down, now, okay? Because you need to calm down.
MS. MAROON: I'm going to calm down. I just want to express my feelings. I sat here very patiently. We pay an attorney, and my neighbors have a right to be here, because they're paying for this man. They have hired him, along with myself, and they deserve to be here, first of all. Second of all --
CHAIRMAN KORGE: Well, they were -- ma'am, ma'am, you know, everybody was noticed at the last meeting. I don't understand this. Everybody was noticed at the last meeting that at the next

meeting we're going to hear this and finish it.
MS. MAROON: Okay, fine.
CHAIRMAN KORGE: It was cut short. Now --
MS. MAROON: But that wasn't their understanding.
CHAIRMAN KORGE: Well, then, they didn't listen very closely.
MS. MAROON: So that's why we're here to discuss it. That's why we're here calmly to discuss it.
CHAIRMAN KORGE: We can't -- but we can't hold up public business every time somebody is upset or every time that we get a continuance on a hearing, because somebody wasn't paying attention. You're here, Mr. Damian is here, and we've heard all their concerns.
MS. MAROON: Well, I was waiting until --
CHAIRMAN KORGE: I can tell you -- I can assure you that I heard all their concerns. I saw all of them. They spoke very forcefully, they made some

very good points --

MS. MAROON: But Pat Keon didn't. Is she voting today?

CHAIRMAN KORGE: I'm not here to speak for Mrs. Keon, she's got --

MS. MAROON: Well, what are the rules of order? Is she allowed to vote or not, because she was not here for the public hearing, and that's my question.

MS. HERNANDEZ: She is absolutely allowed to vote on the matter.

MS. MAROON: Well, I sit on a Board, and I would be very uncomfortable if I had to vote, not hearing the concerns of everyone. This is only half of the concerns, and it's mainly that half. They've got about 15 people over here, to two of us, or three. Roxcy Bolton was kind enough to come.

I didn't even know that this meeting was going to take place until 3:30 this afternoon.

CHAIRMAN KORGE: Well, weren't you at the last meeting?

MS. MAROON: I was waiting for an

answer, and I spoke to Mr. Riel last Thursday and I asked him what was going on, and he told me that he was waiting to hear from the City Attorney, then she told me she was waiting to hear from you, and everybody seems to be passing the buck.

I don't want to be -- I don't want to be ugly up here. I really want to be calm. It's just that I have a responsibility, because I have 300 neighbors and I'm telling you they signed petitions and they have a right and they've hired an attorney and they have a right to come back and hear this.

MR. AIZENSTAT: Can I --

MS. MAROON: And the fact that you're going to send this project, this massive, 200,000-square-foot project that is going to disrupt our neighborhood, then these people have a right to come, and you people have a right and should ask for this project to come back to you, not to send it for Staff to approve it or this one or that

one. It's only your right and duty as Board members to ask it to come back, and they have a right to bring it back, but what I'm asking you today is to, please, if you want to hear it again, make a motion to bring it back after the architects' approval.

MR. AIZENSTAT: I just want --

MS. MAROON: And that's only fair.

CHAIRMAN KORGE: All right. But we have a motion on the floor now.

MS. MAROON: And that's what my request is.

CHAIRMAN KORGE: It's been -- it's been seconded. It's not out of order, and we're going to hear -- we're going to discuss and hear that motion, and Pat will vote however she chooses to vote. I don't control her vote.

MR. BEHAR: Mr. Chairman, we had a motion and a second. You should call the roll.

CHAIRMAN KORGE: There's a motion and a second, and I'm going to call the roll. Now we have more discussion, if

anybody wishes to discuss.

MS. MAROON: No, I don't even know what it was that --

CHAIRMAN KORGE: The motion was to approve this project, subject to all the conditions imposed by the City and including the additional setbacks and cut-backs and so forth or the architectural changes that were proposed by the applicant to address some of our concerns, subject to Board of Architecture approval.

MS. MAROON: Well, why can't you ask it to come back again? Bring it back and let the neighbors see it. This woman just told you it's not fair.

CHAIRMAN KORGE: Because that's not the motion on the table right now.

MS. MAROON: Well, I'm asking, then, please, as a request.

CHAIRMAN KORGE: I don't --

MS. MAROON: My plea is to --

CHAIRMAN KORGE: The motion is not -- but the motion --

Ma'am, the motion is not out of

order. It's not for me --
MS. MAROON: Okay, and I'm not out of order by asking.
CHAIRMAN KORGE: Actually, you are out of order, but I'm letting you, anyway, because I understand that you're --
MS. MAROON: Frustrated.
CHAIRMAN KORGE: I understand your frustration and your concern.
MS. MAROON: That's right.
CHAIRMAN KORGE: The point is, the point is, the motion is not out of order. I don't have the power to kick his motion off, when it's been seconded, because I may or may not disagree -- may or may not agree with it. So the motion's in order. We're going to take discussion on the motion, and after the discussion on the motion, we'll take a vote, and the motion will pass or fail on its merits. That's the best I can do.
MS. MAROON: But when I --
CHAIRMAN KORGE: It may not be what

you want, but it is the best I can do.
MS. MAROON: But the objection by my attorney was that this was a meeting that was supposed to be voted on, on the original site plan, and now everything has been changed, without a public hearing to the neighbors to understand what you people are voting on today.
This is not right.
MR. FLANAGAN: Can I --
MS. MAROON: It's unconstitutional, in fact.
MR. FLANAGAN: Can I just ask --
MS. MAROON: It's unconstitutional.
MR. FLANAGAN: In regards to --
CHAIRMAN KORGE: Jeff.
MR. FLANAGAN: -- modifying the site plan, procedurally, or under the City Code, the applicant is allowed to modify a site plan, I imagine, especially because this is less intense --
MS. HERNANDEZ: Absolutely.
MR. FLANAGAN: -- than the site plan that was advertised for the

hearing?
MS. HERNANDEZ: The intensity of original application. It's absolutely within the powers of this --
MR. FLANAGAN: And going to the motion, Robert, if we could also include -- at the last hearing there was, I think, a decent amount of discussion regarding the alleyway, and the applicant offered to include a restrictive covenant --
MS. HERNANDEZ: Right.
MR. FLANAGAN: -- that would ensure that the alleyway would remain open to the public -- I mean, it's under private ownership, but that it won't be gated, it won't be closed. It would effectively serve like a public alley that we all know within the City.
So I just want to make sure, because there was a lot of concern from the neighbors, and the applicant agreed to it, that that -- if it's appropriate to be --
MS. MAROON: But the neighbors

aren't here. The neighbors aren't here to discuss it with you.
MR. FLANAGAN: I'm sorry, it was discussed last meeting at length --
MS. MAROON: But not this plan, not this plan.
MR. FLANAGAN: -- their concern about the alleyway. And so --
MS. MAROON: You can't change things in midstream, I'm sorry.
MR. FLANAGAN: It's appropriate as a condition to the approval --
MR. BEHAR: I'll accept a friendly amendment.
MR. RIEL: And just for a matter of record, the applicant agrees? Just a simple yes or no.
MR. GARCIA-SERRA: Yes, we reviewed the properties and went over the new -- right.
CHAIRMAN KORGE: And did the second agree with the --
MR. FLANAGAN: Yes.
CHAIRMAN KORGE: Yes, okay. Thank you. Discussion on this?

MS. KEON: May I ask a question?
CHAIRMAN KORGE: Yeah, by all means.
MS. KEON: With respect to the changes that you are proposing for this, those are the changes along LeJeune Road that you're -- that you will move this back, but you're also eliminating the arcade; is that -- is that correct? That's correct, you're omitting the arcade but you're going to push it back?
MS. RUSSO: That is correct.
MS. KEON: All right. When the zoning -- when they spoke about the review of the project and you questioned what the setback on LeJeune was, I think we were told that they were able to bring it closer to LeJeune because that was a front setback; is that right?
MS. CONDE: Yes.
MS. KEON: But yet you've also raised the concern about the entrance to this building, that it doesn't actually act as the entrance to the building. It isn't the entrance to the building? It

is --
MR. BEHAR: No, Pat, I wasn't referring to the entrance. I was just referring to a small portion of the landscape that appears to be a green space, but it's a matter -- all I asked was a consideration to look at that.
MS. KEON: Because that is the entrance to the building -- if that is the front setback, you would assume that that would be the front of the building. Is that -- I mean, I would assume that that -- I would assume that that's what it was and you've taken advantage of that setback and moved it closer, yet I think when the architect spoke, he said to you, when you asked him about that -- I thought he said that that wasn't really the entrance to the building, that the entrance was on the side.
MS. RUSSO: It is a real entrance. It serves as an entrance.
MS. KEON: It serves as an entrance --
MS. RUSSO: It serves as an

entrance.
MS. KEON: -- but it's really not the front of the building; is that right?
MS. RUSSO: It's a focal entrance --
MS. KEON: I thought that's what you said.
MR. GELABERT-NAVIA: The building -- there's several entrances to the building, because the building takes over what is, in essence, a very large block. So there's an entrance from LeJeune, there's an entrance from Greco, and there's an entrance from a future City park which will be at the intersection of Greco and Granello.
MS. KEON: Right.
MR. GELABERT-NAVIA: And there's vehicular entrance from Granello. So there's actually an entrance from every street that the project faces.
MS. KEON: But then just -- I mean, then, because of the site plan and then with the application of the Code to the

site plan, you have to set one as a front setback, and that's the one that is chosen to be the front setback, I'm assuming, LeJeune? That would appear, because if that wasn't -- if that wasn't the front, then it would have to be -- you would require that it be pushed back the same as the sides, right? Isn't that --
MS. CONDE: Right, and the front setback is determined by the facing of the lots.
MS. KEON: The facing.
MS. CONDE: Right.
MS. KEON: Okay.
MR. BEHAR: Essentially, what they're doing, Pat, they're self-imposing, with this proposal, a setback which is not required. The required setback is zero. They're proposing to have an eight-foot setback.
MS. KEON: No, I understand that, but I think as a -- as a -- from -- if I, as a resident, were looking at this -- and I think that the size of

this project is of grave concern, and I did read the transcript, because, no, I wasn't here, but I did read the transcript, and I will agree with you, it probably does not give you the same flavor in reading it as you would have if you were here and participated in it, but I did read it, and I did read the documents that came with it, but -- and the thing that concerned me was truly -- was the size of it, and particularly this on LeJeune Road, and wondered, you know, as long as -- you know, when you have -- when it fronts on something and the rationale for that setback being different from side setbacks is because it is your entry, it is forward, it is where you face, it is all those reasons, and yet, you know, that isn't the case with this. It's -- it's -- that isn't the case. Every side of this is really the front of this building. It appears that every side is the front.

So that doesn't do anything for the concerns that I have about that, even if

they move it back, because I think that the loss of the arcade is a tremendous loss for the people that use this and use those sidewalks and everything else, and yes, I think it should go back, I don't think we should lose the arcade, and I think that the concern, the point that was brought up that when we vacate an alley you have a parcel of land that people aren't paying taxes on and now you do -- I'll tell you that there are a lot of people in this community that would prefer not to pay taxes and maintain their public space. They don't mind giving up that tax dollar, not for one minute, as long as they can maintain their public space and their alleys and all of those other things.

So I -- I -- and like Ms. Maroon said, I really was very troubled with my being able to vote on this project, because I wasn't here for that public hearing, but -- and nothing I've heard has made me feel more comfortable that the size of this project doesn't -- is

not more -- more than I think would be a good thing for the City to be here.

So, you know, I'm still troubled whether I abstain, because I wasn't here for it, or I just say no.

MR. AIZENSTAT: Could I just ask a question, maybe, to City Staff?

One thing -- this is not indicative of whether I agree or don't agree with the motion, but I think that you should include, also, in the motion -- I don't know if we need to, as far as the land swapping for a park. I don't know if that has to be anywhere in ours.

And then my other question would be, as far as the park and the swapping of land, is the square footage that's being swapped the same? Is one greater, one smaller?

MS. RUSSO: The land swap is identical in terms of square footage.

MR. AIZENSTAT: Thank you.

MS. RUSSO: It's square foot for square foot.

MR. AIZENSTAT: Thank you.

MS. RUSSO: The park will be bigger than the lot, than the land swap, but that is because the City has requested a reconfiguration of the Greco-Granello intersection that will enlarge the park area, but it will be public right-of-way, and the park will be public, but the actual land swap is square foot by square foot.

CHAIRMAN KORGE: Javier, do you have any comments, any questions?

MR. SALMAN: My comment is that -- it addresses the concern of the Board of Architects review. Although the change is substantial from a square footage point of view and from a massing point of view, in my opinion, the architectural elevation has been preserved and it is -- from an elevational point of view, will be identical in that although the setbacks have been reduced a little bit within the building, the imposition of the building on the street addresses all the concerns that I have with regards to

this project.

The reintroduction of green and green surface area in front of the building between LeJeune Road and the building will go a long way to bringing back the building in line with the surrounding proposed structure.

This section of LeJeune is -- is an area that is in transition. We are in an overlay district. The intent of that overlay district is to promote a certain level of density, which the LeJeune right-of-way has to separate between the remnants of single-family behind commercial and these properties.

Now, you've exercised your right to not build as much as you wanted to or you could, and I think that that is a neighborly issue and I think that given the fact that you're going to allow the alleyway to be and remain, for all intents and purposes, public, you've addressed all of my concerns.

CHAIRMAN KORGE: I still have some concerns about the massing, and it's

hard for me to judge, from the picture, the differences. I can see some of the differences. I'm really like sitting on the fence on this one, mainly because of the massive size of the structure at that location. I mean, I -- I'm -- It's a coin toss for me. The fact that you'll move it back moves me a little bit. I was going to vote definitely no. I mean, there was no question in my mind, because it was just -- not only too massive, but too close to the street. You've moved that back and you've addressed some of the other concerns regarding green space. I still have the concerns that Pat expressed about the -- what do they call that?

MS. KEON: The arcade.

CHAIRMAN KORGE: The arcade, and I don't know if losing that arcade costs you points on the Mediterranean Ordinance such that you would lose that, but that's what causes a lot of the massing to begin with, which is not the fault of the developer; that's the fact

of the Mediterranean Ordinance, by --

MS. RUSSO: Well, and also the MXD, which the purpose of the MXD is to internalize, and when you internalize your service, when you internalize the alley -- In essence, the idea of the MXD was to create interesting, friendly, usable streets on all sides of a building and have the ugly stuff hidden inside, which is what we've done, and the alley that we're giving, or the easement, whatever mechanism the City Attorney determines to be the best to effectuate the public access through the alley, is twice the size of the alley that it has now.

And I think what's also being lost a little bit is that this site is developable, with only Board of Architects review. It would be a different project. We've shown some examples of it, not that -- what it would be, but it would be a building on the south side of the park -- I mean, on the south side of the surface lot, and a

separate building that would take the remainder of the block as a triangle, and the square footage would be very -- just a little bit less than the square footage being proposed now, and the height would be identical, with 75 feet, or 77 on LeJeune and a hundred feet for the rest of the block.

So what we're here -- and I think what's being lost is that the MXD, when you go through the MXD, which if we went the other way -- the City benefits from the Streetscape Master Plan, which if we were to build the other way, there would not be an implementation of a Streetscape Master Plan.

In addition, one of the conditions that Staff has put in is an implementation of the Streetscape Master Plan on property that doesn't even abut our property, that isn't even across the street from our property, but it's across from Gables Engineering, from the point where our property ends all the way to Ponce Circle and on the other

side.

There will also be an entire repaving of the street, which would not occur if this were to be built as of right. There will be a public park which will be maintained in perpetuity, at the expense -- so I think what's being lost here, too, is that a building of very close to this mass, which would look identical to the naked eye, to the untrained eye, can be built on this site in a slightly different configuration, which will leave a hole on LeJeune Road and will be built out to the other end.

At the end of the day, it's a balancing act as to whether or not this project is bringing to the neighborhood benefits that exceed the detriments to the community, because the zoning is there to do this, okay?

And with respect to the alley vacation, under the new Code, the criteria for vacating an alley has been met. You know, the criteria for vacating an alley has been changed under

the new Code, and it's whether or not there's specific plans that the City has for the use of that property, whether it meets the Comprehensive Plan, whether it meets the Zoning Plan, and whether or not it's a necessary part and whether or not what the alley's purposes are served, are being served by the new project. And if the MXD wants you to internalize, then by vacating the alley, allowing public access and internalizing all your service uses, you're accomplishing that.

So I think this project tries to do what's best for everyone that's concerned, in view of what's allowed under the Code, and is trying to give the most beautiful face to everything surrounding it and offer the public a benefit, as well.

CHAIRMAN KORGE: Okay.

MS. LISA MAROON: May I take a minute?

CHAIRMAN KORGE: Any further discussion?

MR. AIZENSTAT: Yeah.

MS. LISA MAROON: May I say something?

MR. AIZENSTAT: The way I see it is, while I do feel that in this neighborhood a mixed-use project is needed and it is correct -- I also feel that this neighborhood does need a park, which it does not have, for the development that is going on, so I favor that. I just --

MS. BOLTON: What's the amount of the park?

MR. AIZENSTAT: Please let me finish.

MS. BOLTON: What's the size of the park?

MR. AIZENSTAT: While I disagree with what Laura said, that -- with the fact that this brings a benefit to the neighborhood -- from what I've heard from the neighbors, they're actually in disagreement. I think the project, the size and the massing, is very big.

While I agree that a project of a

mixed-use should go in that area, I think the project which is presented today, to me, is just too large for where it is. I just want you to know that feeling. I don't disagree with the project. I think it needs it. I think the swapping between the park and the parking lot, I think that's good. All that is great, and you're creating an open park.

I don't have a problem, myself, with the alley, because of the fact that whether you have an alley that goes straight or you have an alley that zigzags, as long as you meet Fire Code for the fire trucks, as long as it's open 24 hours, I'm fine with it, plus the fact that the property owner is paying taxes on it, which is a benefit to the City, I like that even better as a resident. So, in that way, I don't have a problem.

Where I do have a problem, I just think that the entire structure is just very massive.

CHAIRMAN KORGE: Pat, do you have anything else?

MS. KEON: I wanted to ask the architect again, you believe that your project couldn't be built by -- if you maintain the arcade and pushed it back, too? You said you would give up too much space to do that?

MR. GELABERT-NAVIA: No --

MS. KEON: Is that what you said?

MR. GELABERT-NAVIA: No. The -- When we did Village of Merrick Park, I think we did a lot of good things and we did a lot of right things, but I can tell you one thing that we did wrong, and that was -- and this was something that the Rouse Company, which is no longer in existence, was a specialist in, which was retail. And when we did the housing in Village of Merrick Park, the depth of that retail is only 35 feet. This was done against the better judgment of the Rouse Company, but they needed to do it because the original DRI said that there was going to be retail

all around it. They also -- We tried to put the parking inside. That depth does not work, and if you go to Village of Merrick Park, you will notice that almost all those stores are vacant. They don't work.

One of the things that we tried to do here, as Laura said before, is, we've internalized all the parking, so that this building that we're talking about is actually a liner, so that you don't see the parking.

We put all the services inside, and we have also created and we've worked -- the owner has had a separate broker that just does retail, to make sure that those stores are not empty, that those stores are places that they will have a use for.

If we cut 10 feet from those stores, they will not work, and what we will have is another Village of Merrick Park housing project with retail around it that will be open.

Again, this is something that we

actually discussed with the Board of Architects, should we have the arcade, and we said to them, "Do you want the arcade or do you want the additional setback?" And we went back and forth, and at the end of the day, they said, "Okay, we want the arcade."

But from the sentiment of the Board here, it seems that you'd rather have the setback, rather than the arcade, and again, we've discussed it with the owner, and we said, "Okay, fine, we won't have the arcade."

MS. KEON: And there's no way to be able to achieve both --

MR. GELABERT-NAVIA: No.

MS. KEON: -- some sort of additional setback from what it is now and to preserve the arcade?

MR. BEHAR: Ideally, we would have both.

MR. GELABERT-NAVIA: Ideally -- ideally, we would have both, but this site, even though it looks big and all that, it's triangular.

MS. KEON: Uh-huh.

MR. GELABERT-NAVIA: It's very, very difficult, and has been very, very difficult to try to do all these things, so --

MR. BEHAR: What is the depth of those retail spaces now, the way you -- the way it was originally --

MR. GELABERT-NAVIA: They're about 60 feet.

UNIDENTIFIED MAN: 45.

MR. AIZENSTAT: What?

UNIDENTIFIED MAN: 45.

MR. GELABERT-NAVIA: 45.

MR. BEHAR: 45 with the -- with this proposal?

MR. GELABERT-NAVIA: With that, it's 45. So, if we cut it, we're at 35, and we're back to Merrick Park, and the owner, you know, said that they won't do it, because they're not going to have, you know, the ground floor empty.

MS. KEON: I'm sorry, with the setback that you have proposed now to move it back, the retail space is what depth?

MR. GELABERT-NAVIA: No, it remains at 45.

MS. KEON: At 45?

MR. GELABERT-NAVIA: The problem is, if we put the arcade beyond that, then it becomes 35.

MS. RUSSO: You have to take the arcade off of the front of that.

MS. KEON: Right, and there's not a way -- I mean, I'll ask you as an architect. There's not a way to figure out between all of that space, a way to accomplish some setback and maintain some arcade?

MR. BEHAR: Pat, off the top of my head, no. You have to sit down and --

MS. KEON: You would have to come back and take a look at it and maybe redo it; is that right?

MR. AIZENSTAT: You'd have to redo the project.

MR. GELABERT-NAVIA: Well, we have -- we have, obviously -- we've been doing this for about a year and a half, and it simply -- it's an either/or

situation.

In Village of Merrick Park, in the office building, there is no arcade, but actually, except for The Palm, which went black now, all the other retail spaces are rented. And at the end of the day, I think what you want is the life there. You want a store that is viable.

Personally, we would -- you know, that's why we put the arcade in the first place, but you also have to think how many people are going to walk down LeJeune Road.

MS. KEON: I just -- you know, I have a very strong feeling that that arcade affects the street experience, and I think that's what we all have tried so hard to do with the new Zoning Code and with so many of the things we've done, is to really affect the street experience. I think that really -- that makes such a difference.

MR. GELABERT-NAVIA: We feel -- I mean, again, it's an either/or. If you

go to the Colonnade, the arcade goes all the way to the street. If you go to the new Bacardi building, it goes -- also on LeJeune -- it goes all the way to the street.

I mentioned it before, and I -- not all the neighbors agreed with me -- in Paris, the arcades go all the way to the street. But at this point, the owner has said, "We need to move on, so stop arguing that point."

So, if it is your preference to move it back, we'll move it back.

CHAIRMAN KORGE: Any further discussion on the motion?

MR. RIEL: Just a point of clarification. I want to make sure the motion included it was approval for a mixed-use site plan and also vacation of the public alleyway.

MR. BEHAR: Yes.

CHAIRMAN KORGE: Yes, I understood it to be approval of the entire project, subject to the various conditions that have been mentioned previously.

MR. BEHAR: That's correct.

CHAIRMAN KORGE: Is there any further discussion?

Would you call the roll, please?

MS. MENENDEZ: Robert Behar?

MR. BEHAR: Yes.

MS. MENENDEZ: Jeff Flanagan?

MR. FLANAGAN: Let me just put on the record a real quick comment. It is a bit of a massive project. I do have that concern, but I do appreciate that they -- the applicant has come back, has agreed to step it back eight feet, has shaved off the corner on the south side a little bit -- I think it's a bit of a minor concession on that one, but I appreciate that it's done -- and I'm cognizant of the fact that they could build a similar or I think even larger project under the Code, as of right. It seems as though what they're coming in for today is actually less than what they're entitled to come in with.

It's an interesting architectural detail. I appreciate the effort that's

gone into it. I was torn, coming in tonight, but the concessions that were done, and I think really stepping it back, has helped to change my mind to vote yes on it.

MS. MENENDEZ: Pat Keon?

MS. KEON: No.

MS. MENENDEZ: Javier Salman?

MR. SALMAN: I would beg the applicant to look at the possible exploration of reintroduction of that arcade for that section of LeJeune. You have an arcade all the way around the building, and the affected area for that limit is fairly limited that you would bring back down to 35 feet, so I would strongly suggest that you look at that as a possibility.

The loss of square footage is not horrible, it's not that substantial, and it doesn't have to be the full 10 feet on this elevation, it could be something less. But notwithstanding, I'm going to go ahead and vote yes on it.

MS. MENENDEZ: Eibi Aizenstat?

MR. AIZENSTAT: While I feel that the project, a mixed-use project, is what should belong there, and as I stated before, I feel that the park is a plus, I do feel that the massing and the size of the project is quite large, and that's why I would say no.

MS. MENENDEZ: Tom Korge?

CHAIRMAN KORGE: I'll agree with the nos. It's a close one for me, and I have some hesitation about voting no, because possibly, by right, they could build a similar massive project --

MR. SALMAN: As of right.

CHAIRMAN KORGE: And that would probably be less advantageous to the neighborhood. I mean, this is just a -- it's a coin toss for me, but I'm going to have to go no on this, for the reasons that were expressed. It's just a close call.

MR. RIEL: Just for a matter of the record, so the vote is three-three. That's considered a no recommendation. That recommendation will go forward to

the City Commission on January 13th, 2009.

MS. RUSSO: Thank you very much.

MS. KEON: So the record will show the concerns over the arcade?

MR. RIEL: We provide a verbatim record to the Commission.

MS. KEON: Thank you.

MR. RIEL: Can we take a five-minute break?

MR. SALMAN: Sure.

CHAIRMAN KORGE: We've got something left?

MR. RIEL: Yes.

CHAIRMAN KORGE: Oh, yes, we've got the settlement.

MR. RIEL: Can we take a five-minute break?

CHAIRMAN KORGE: Five? We'll have a five-minute -- we'll be back here in five minutes.

Item Number 6 is next on our agenda.

MR. BEHAR: Mr. Chairman, I have to excuse myself.

(Thereupon, there was a recess, during which Mr. Behar left the meeting.)

CHAIRMAN KORGE: We're ready. Call the meeting back to order.

The next item on the agenda is Item Number 6, proposed Zoning Code text amendment pursuant to a proposed settlement agreement with Fernando Menoyo and Almeria Row, LLC, represented by Tew Cardenas, LLP.

How are we proceeding with presenting this?

MR. RIEL: I believe the City Attorney wanted to make a couple comments, and then I'll give a brief presentation.

CHAIRMAN KORGE: Liz?

MS. HERNANDEZ: This application comes to you as a result of a Bert J. Harris claim that was filed by the applicant. The City has -- My office is taking no position with regard to whether or not the applicant can successfully win on the merits of their

Planning & Zoning Board Meeting
Attendance/Speaker Sign In Sheet – December 10, 2008

	Name	Mailing Address	Phone	(If you wish to be a speaker, please check the appropriate box)
1.	Roxcy O'Neal Bolton	124 Coderon Ave Coral Gables, Fla 33134		☒ Item # 5 (DYL Merrick MXD) ☐ Item # 6 (Proposed Settle Agreement w/Menoyo) ☐ Items # 7 – 12 (Various ZC Text Amendments)
2.				☐ Item # 5 (DYL Merrick MXD) ☐ Item # 6 (Proposed Settle Agreement w/Menoyo) ☐ Items # 7 – 12 (Various ZC Text Amendments)
3.	Adis Riveron	426 Alminar Ave.		☒ Item # 5 (DYL Merrick MXD) ☐ Item # 6 (Proposed Settle Agreement w/Menoyo) ☐ Items # 7 – 12 (Various ZC Text Amendments)
4.				☐ Item # 5 (DYL Merrick MXD) ☐ Item # 6 (Proposed Settle Agreement w/Menoyo) ☐ Items # 7 – 12 (Various ZC Text Amendments)
5.				☐ Item # 5 (DYL Merrick MXD) ☐ Item # 6 (Proposed Settle Agreement w/Menoyo) ☐ Items # 7 – 12 (Various ZC Text Amendments)
6.				☐ Item # 5 (DYL Merrick MXD) ☐ Item # 6 (Proposed Settle Agreement w/Menoyo) ☐ Items # 7 – 12 (Various ZC Text Amendments)
7.				☐ Item # 5 (DYL Merrick MXD) ☐ Item # 6 (Proposed Settle Agreement w/Menoyo) ☐ Items # 7 – 12 (Various ZC Text Amendments)

Attachment B

Attachment C

SALOMON, KANNER, DAMIAN & RODRIGUEZ, P.A.

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CITY OF CORAL GABLES
2008 DEC -3 AM 10:05

December 5, 2008

VIA EMAIL ehernandez@coralgables.com

Elizabeth M. Hernandez
City Attorney
City of Coral Gables
City Hall
405 Biltmore Way, 1st Floor
Coral Gables, Fl 33134

Re: DYL Application Public Hearing
Application No. 06-08-070P

Dear Ms. Hernandez:

The Application of DYL respecting its plans for a mixed use development has been set for public hearing on December 10, 2008. The Coral Gables Charter and Code require that public hearings be appropriately advertised and that mailed notices go to affected residents within the designated perimeter and that the property be posted. We have checked for public advertising and posting and none has taken place. The residents of the affected area have not received mailed notices. I have checked the Code and I find no exception for the public notice requirements for public hearings which are continued. If there is not a specific exemption then a public hearing must have such publication, notice and posting.

It is requested that this hearing be continued to another date after the Christmas holidays and that the hearing be properly advertised, noticed and posted. If this hearing should go forth without appropriate advertisement, notice and posting, then whatever the outcome, the hearing procedure will be challenged on appeal by one party or the other. It would be a terrible waste of the Boards time, the staff's time, the applicant and the public if this hearing is not cancelled and reset.

My client made this request upon Mr. Riel and he said that you should be the person to make that decision.

A copy of this letter is also sent to Mr. Korge, the Chairman of the Planning and Zoning Board.

Please respond as soon as possible so that we will know what action to take.

Yours very truly,

Vincent E. Damian, Jr.

VED/rrs
cc: Eric Riel, Director, Planning (via email, eriel@coralgables.com)
Tom Korge, Chairperson, Planning and Zoning Board (via mail)
Laura Russo, Esq. (via email, laura@russobaker.com)
Client (via U.S. Mail)

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Attachment D 31

Greenberg Traurig

Mario J. Garcia-Serra
Tel. (305) 579-0837
Fax (305) 961-5837
garcia-serram@gtlaw.com

December 5, 2008

Elizabeth Hernandez, Esq.
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

Re: DYL / Planning Department Application No. 06-08-07P / Response to Mr. Vincent Damian's Letter of December 5, 2008

Dear Ms. Hernandez:

We are in receipt of a letter which was delivered to you and dated today from Mr. Vincent Damian, counsel to Ms. Shirley Maroon, regarding the above referenced project. In that letter, Mr. Damian asserts that the continuation of the Planning and Zoning Board's discussion of the above referenced application requires the mailing of another courtesy notice to neighboring properties and the re-posting of a notice on the subject property. Mr. Damian also requests that this matter be scheduled for another meeting of the Planning and Zoning Board "after the Christmas holidays". For the reasons stated below, we disagree with Mr. Damian's assertions and his recommended course of action.

The public hearing portion of this quasi judicial matter was already opened, conducted, and closed at the November 12, 2008, meeting of the Planning and Zoning Board. As the attached excerpts of the verbatim transcript of the November Planning and Zoning Board indicate, the Chairman of the Planning and Zoning Board had closed the public hearing, the Applicant had concluded its rebuttal, and the Board was well into its discussion of the application when the meeting was adjourned at 9pm in compliance with the City's rules of procedure. Robert's Rules of Order specifically provides that

> "the effect of an adjournment on a pending motion or an uncompleted order of business...When the adjournment closes the session in an assembly having its next regular business session within a quarterly time interval and having no members whose term of membership expire before the next regular session..." is that, "The complete order of business is followed at the next regular session. If a question was pending at the time of adjournment, it is taken up as the first item under unfinished business...resuming the question at exactly where it was previously interrupted." (copy attached).

In compliance with this rule, the Planning Department staff has listed the subject application as "Old Business" on the December 10th agenda of the Planning and Zoning Board. Since the Board will resume its discussion of this matter at the point where it was previously interrupted, which is after the closing of the public hearing, there is no need to send or post notices of a public hearing which has already taken place. At the December 10th meeting, the Board will conclude its discussion and entertain Board member's motions as to what the Board's recommendation should be. The members of the public who participated in the November 12th public hearing were already on notice that the public hearing had been closed and that the Board's discussion would be concluded at the December 10th meeting.

Mr. Damian's claim that public hearing notices are required for the conclusion of the Board's discussion is not supported by fact, law, or the rules of procedure. We respectfully submit that Mr. Damian's request that this matter be continued to a later meeting of the Planning and Zoning Board is inappropriate, unnecessary, inconsistent with the applicable law, rules of procedure, and past City policy and practice and should not be granted. If you would like to discuss this issue further, please contact me at 305-579-0837. Thank you for your attention to this matter.

Best regards,

Mario J. Garcia-Serra

cc: Mr. Eric Riel, Planning Director
Vincent Damian, Esq.
Laura Russo, Esq.
Clifford A. Schulman, Esq.

ENTERED AS EXHIBIT Eric Riel, Jr A1
by NUMBER
THE PLANNING AND ZONING BOARD
ON 12/10/08 JM
DATE INITIALS

Attachment E

MIAMI DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and Legal Holidays
Miami, Miami-Dade County, Florida

STATE OF FLORIDA
COUNTY OF MIAMI-DADE:

Before the undersigned authority personally appeared SOOKIE WILLIAMS, who on oath says that he or she is the VICE PRESIDENT , Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

PLANNING AND ZONING BOARD OF THE CITY OF CORAL GABLES - PUBLIC HEARING - DECEMBER 10, 2008

in the XXXX Court,
was published in said newspaper in the issues of

11/25/2008

Affiant further says that the said Miami Daily Business Review is a newspaper published at Miami in said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida, each day (except Saturday, Sunday and Legal Holidays) and has been entered as second class mail matter at the post office in Miami in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sookie Williams

Sworn to and subscribed before me this

25 day of NOVEMBER A.D. 2008

Veronica Perez

(SEAL)

SOOKIE WILLIAMS personally known to me

NOTARY PUBLIC STATE OF FLORIDA
Notary Public State of Florida
Veronica Perez
My Commission DD819771
Expires 09/03/2012

NOTICE OF PUBLIC HEARING

All interested persons are hereby notified that the Planning and Zoning Board of the City of Coral Gables, Florida, will conduct the following public hearing at its meeting scheduled for Wednesday, December 10, 2008, City Commission Chambers, City Hall, 405 Biltmore Way, Coral Gables, Florida, commencing at 6:00 p.m.

Public Hearing Item(s) — Planning and Zoning Board

Old Business:

1. **Application No. 06-08-070-P. Mixed-Use (MXD) Site Plan Review and Vacation of Public Alleyway.** Planning and Zoning Board review of a development proposal which includes two (2) separate applications for the proposed project referred to as "DYL Merrick MXD" on property legally described as all of Block 16, Industrial Section (4601 LeJeune Road), bounded by LeJeune Road, Greco Avenue and Granello Avenue, Coral Gables, Florida, as follows:
   1) Mixed use (MXD) site plan review for the proposed mixed use project.
   2) Vacation of public alleyway.

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

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

3. **Zoning Code Text Amendment — Article 5, Division 16, "Roofs", and Article 8, "Definitions".** An Ordinance of the City of Coral Gables amending the text of the Official Zoning Code, Article 5, Division 16, providing for clarification of the permitted roofing material of copper roofs, and Article 8, providing for a definition of "copper," providing for repeal, providing severability, providing for codification thereof, and providing for an effective date.

New Business:

4. **Zoning Code Text Amendment — Article 2, Division 7, "Administrative Decision Makers and Enforcement fficers".** An Ordinance of the City of Coral Gables amending the Zoning Code, Article 2, "Decision Making and Administrative Bodies", Section 2-702, entitled "City Attorney", to provide the proper procedures to follow to review rulings of the City Attorney; and providing for severability, repealer, codification, and an effective date.

5. **Zoning Code Text Amendment — Article 8, "Definitions".** An Ordinance of the City of Coral Gables amending the Zoning Code, Article 8, entitled "Definitions" to amend the definition of "Family" to reflect the appropriate constitutional requirements; and providing for severability, repealer, codification, and an effective date.

6. **Zoning Code Text Amendment - Article 5, Division 19, "Signs".** An Ordinance of the City of Coral Gables amending Zoning Code Article 5, Division 19, entitled "Signs", Section 5-1909, "Campaign", by providing for the allowance of campaign or political signs in residential districts, providing the size of campaign and political signs in residential districts, providing for the length of time campaign or political signs are allowed in the City of Coral Gables following elections; and, Article 8, "Definitions", by adding a definition for "political signs" and "campaign signs"; and providing for severability, repealer, codification, and an effecive date.

CITY OF CORAL GABLES
2008 JAN -1 PM 3:44

7. **Zoning Code Text Amendment — Article 2, Division 5, "Historic Preservation Board".** An Ordinance of the City of Coral Gables amending Zoning Code Article 2, Division 5, "Historic Preservation Board", Section 2-502, entitled "Membership; Terms; Vacancies; Removal", to amend the current membership to require two architects on the Historic Preservation Board; and providing for severability, repealer, codification, and an effective date.

8. **Zoning Code Text Amendment — Article 5, Division 8, "Docks, Wharves, Mooring Piles and Watercraft Moorings".** An Ordinance of the City of Coral Gables amending Zoning Code Article 5, Division 8, Section 5-805, entitled "Davits, watercraft lifts and floating watercraft lifts", to amend the number of davits permitted on a property; and providing for severability, repealer, codification, and an effective date.

Discussion:

9. **Comprehensive Land Use Plan "Evaluation and Appraisal Report (EAR) Based Amendments" (Update of Comprehensive Land Use Plan pursuant to the Department of Community Affairs comments on the EAR).** An Ordinance of the City of Coral Gables amending the text of the City's Comprehensive Land Use Plan (CLUP) pursuant to the findings and recommendations of the City's adopted 2006 Evaluation and Appraisal Report (EAR) and State of Florida growth management statutes and requirements, providing for repeal, providing severability, providing for codification thereof, and providing for an effective date.

   (This is an introduction and discussion of update to the CLUP; a recommendation for approval is not being sought at this time.)

10. **Adjournment.**

Planning Department
City of Coral Gables
Eric Riel, Jr.

Next Meeting: January 14, 2009, 6:00 p.m.

All meetings are telecast live on Channel 77.

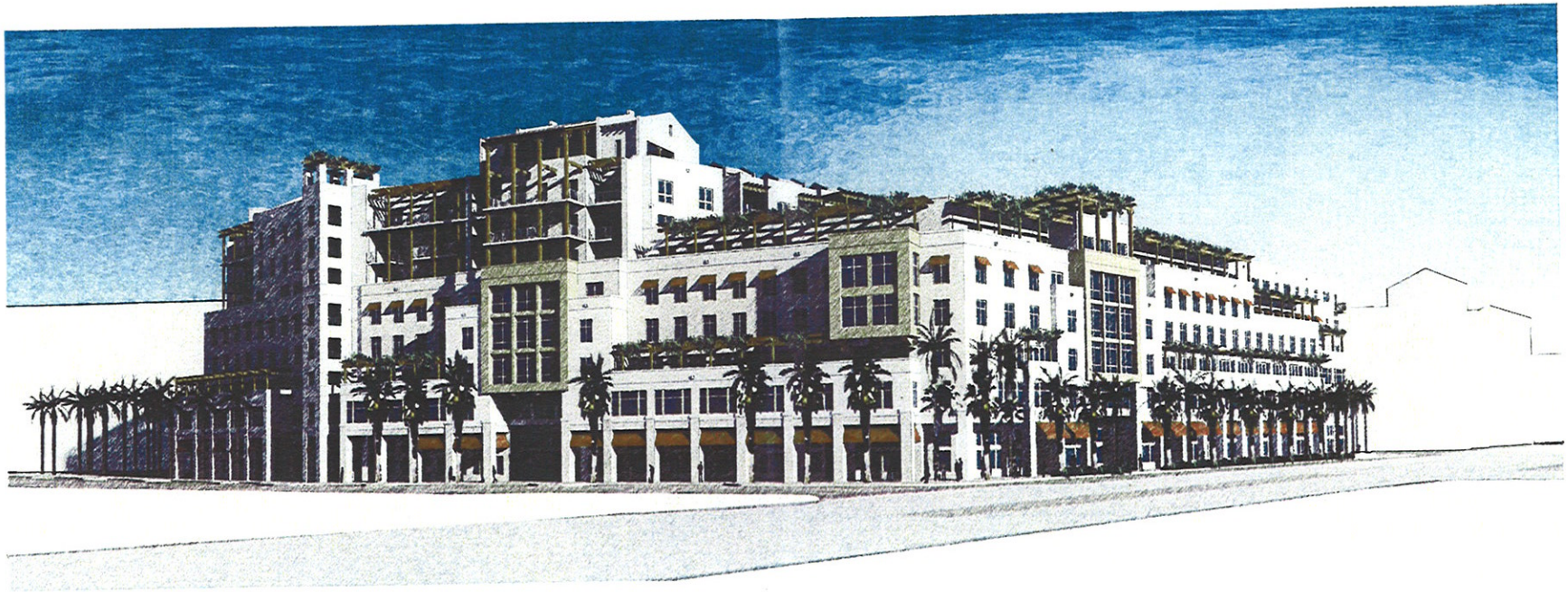
Any person, who acts as a lobbyist pursuant to the City of Coral Gables Ordinance No. 2006-11, must register with City of Clerk, prior to engaging in lobbying activities before City Staff, Boards, Committees and/or the City Commission. A copy of the Ordinance is available in the Office of the City Clerk, City Hall.

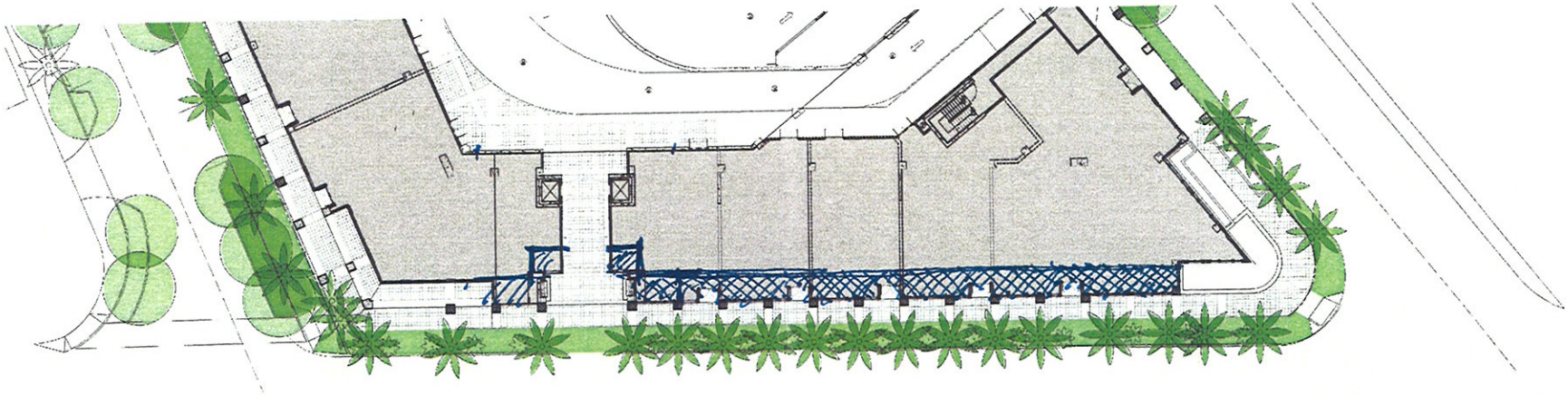
If a person decides to appeal any decision made by a Board/Committee with respect to any matter considered at a meeting or hearing, that person will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

A copy of the Planning Department staff reports for each item will be available for review in the Planning Department office the Friday before the meeting as well as on the Planning Department's web page at ***www.coralgables.com***.

Any person requiring special accommodations for participation in the meeting should call Walter Carlson, Assistant Planning Director (305) 460-5213, no less than three working days prior to the meeting.

ENTERED AS EXHIBIT A1
BY NUMBER
THE PLANNING AND ZONING BOARD
ON 12/10/08
DATE
Jose Gelabert Azcuna
Jm
INITIALS





BUILDING SETBACK 8'-0" FROM PROPERTY LINE AT SOUTH LE JEUNE
FACADE STEPPING AT CORNER OF LE JEUNE AND GRANELLO

DYL GROUP

Coral Gables Mixed-Use Development

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Attachment F

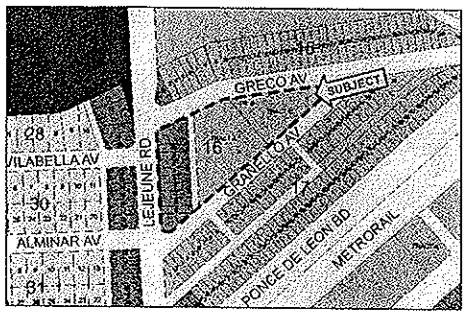
"DYL Merrick MXD"

Mixed Use (MXD) Site Plan Review
and Vacation of Public Alleyway

Background

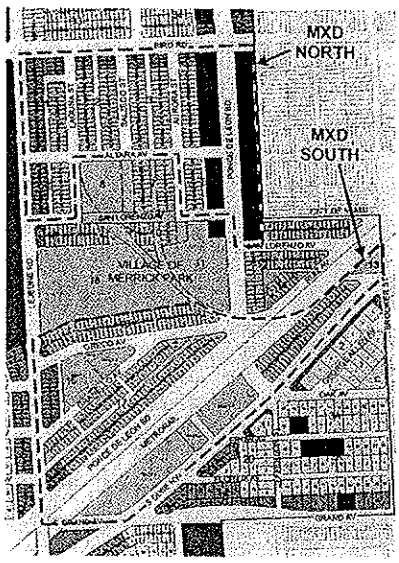
- Project located in Industrial District, 1 block south of Village of Merrick Park.
- Property zoned "C", Commercial along LeJeune Road and "I", Industrial along Granello and Greco Avenues.
- Within Mixed Use Overlay (MXD) District.
- Project site is 2.3 acres in size.
- Public alleyway bisects block from north to south.
- Site occupied by low-rise commercial buildings and surface parking.

Land use designations



- "Commercial Low-Rise Intensity"
  - Along LeJeune Road
- "Industrial Use"
  - Along Granello and Greco Avenues

MXD overlay districts



- "North Industrial MXD District"
- "South Industrial MXD District"

Proposed project

- Mixed-use (MXD) project consisting primarily of office use (187,000 SF), retail and restaurant uses (42,000 SF) and 42 residential units.
- Maximum 3.5 FAR is permitted – 3.35 FAR
- 1,081 parking spaces are required and 1,083 spaces are provided (not including 34 public replacement parking spaces for a total 1,117 parking spaces).
- Proposed public park is not a part of the MXD site plan review.

Project height

Permitted by Comprehensive Plan	Permitted by MXD Overlay District	Proposed DYL Merrick Project
"Commercial Low-Rise Intensity" • 6 stories* • Max. 77 feet • +25 feet architectural features	"Commercial Low-Rise Intensity" • No max. stories • Max. 77 feet • +25 feet architectural features	"Commercial Low-Rise Intensity" • 6 stories • 77 feet • +15 feet architectural features
"Industrial Use" • 8 stories* • Max. 99 feet • +25 feet architectural features	"Industrial Use" • No max. stories • Max. 100 feet • +25 feet architectural features	"Industrial Use" • 8 stories • 99 feet • +25 feet architectural features

*with Mediterranean design bonuses

MXD objectives

- Current MXD provisions originally adopted in 2004, and revised in 2006 with Zoning Code rewrite, are intended to:
  - Promote unified "planned" developments.
  - Encourage public realm improvements.
  - Utilize physical characteristics of the site.
  - Create diversity of uses and a "walk-able" pedestrian environment.
  - Promote public transit.
  - Strong emphasis on Med. architectural design.

Issues and analysis

- Detailed analysis and discussion of the following issues are provided in Staff's report (page numbers indicated):

1. Compliance with the Zoning Code (page 7).
2. Mixed Use District (MXD) purpose and objectives (page 7).
3. Site plan review criteria (pages 8-10).
4. Street and alley vacation requirements (pages 10-12).

Issues and analysis

5. City Commission identified issues (pages 12-14).
6. Traffic study (pages 14-15).
7. Proposed public City park (page 15).
8. Concurrency management analysis (page 15).
9. Public school concurrency review (page 15).
10. Attainable housing (pages 15-16).
11. Compliance with Comprehensive Plan goals, objectives and policies (pages 16-20).

Findings of fact

- Consistent with Comprehensive Plan's goals, objectives and policies.
- Satisfies site plan review criteria for a proposed MXD project.
- Satisfies standards for review for the vacation of a public alleyway.
- Property owner shall provide two signalized pedestrian crosswalks.
- Public ROW improvements are provided in compliance with City's Master Landscape Plan.

Findings of fact

- Additional off-site improvements are provided, including landscaping, lighting, street re-paving, curbing, crosswalks, drainage and under-grounding of utilities along both sides of Granello and Greco Avenues between LeJeune Road and Ponce de Leon Boulevard.
- Provides residential component and pedestrian environment in accordance with MXD objectives.
- All delivery services, trash pick-up and valet parking are contained within the building.

Findings of fact

- Satisfies all City concurrency standards.
- Secured Board of Architects review and approval for Mediterranean design.
- No variances are requested/required.
- Satisfactorily addressed all City Department comments via the Development Review Committee (DRC) process.
- Assists City efforts in the promotion of attainable housing as mandated by the State.

Recommendation

- The Planning Department recommends approval of the MXD site plan and vacation of the public alleyway with conditions of approval, as follow (condition numbers referenced):

Conditions of approval

3a. All valet stations, stacking and vehicular circulation must be contained entirely within building.

3b. Payment for 13 lost on-street parking spaces.

3c. Provide directional signage plan for on-site and off-site vehicular circulation.

3d. No signage permitted above the second floor facing onto LeJeune Road.

3e. No building lighting permitted above the second floor facing onto LeJeune Road.

Conditions of approval

3f. No building encroachments permitted onto LeJeune Road.

3g. All off-site landscaping shall be irrigated, and shall be supplied and controlled from the ROW.

4b. Two signalized pedestrian crosswalks shall be provided. One across LeJeune Road, and the other across Ponce de Leon Boulevard.

4c. FDOT approval is required for the proposed landscaping/pedestrian easement along LeJeune Road.

Conditions of approval

5. Site plan for the public park shall be subject to future City review and approval.

6. Any private use of the public park shall require City review and approval.

7. As proffered by the property owner, funds are being contributed to assist the City in its efforts to promote attainable housing.

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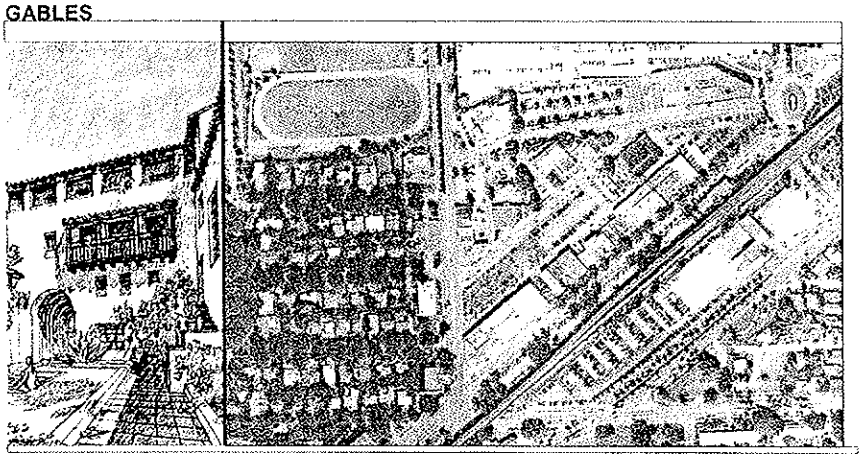
DYL MIXED USE DEVELOPMENT AT THE VILLAGE OF MERRICK PARK, CORAL GABLES



Planning Board Presentation 11/12/08

DYL
GROUP

Agenda

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- Introduction
- Site Analysis
- Precedents
- Project Presentation
- Discussion

Site

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Fact and Fiction

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- Streets that are currently closed will be opened.
- *Not true.No existing street closures are being touched.*

- The current height limitations is being exceeded.
- *Not true. Project conforms to 77 foot code limit.*

- The project will have subsidized housing.
- *Not true. The project has 42 units of luxury housing.*

- The alley is being eliminated completely.
- *Not true. The service alley is being relocated & enlarged.*

Fact and Fiction

PERKINS WILL

- **The City is giving away the surface parking lot.**
- ***Not true.*** ***The lot is being replaced with a public park.***

- **The City is losing parking spaces.**
- ***Not true.*** ***There will be over 280 spaces available to the public.***

- **The Developer is going to damage existing utilities.**
- ***Not true.*** ***All utilities will be buried and modernized.***

- **The Project will add a financial burden to the City.**
- ***Not true. The project will add a multi-million tax***

PERKINS WILL

ZONING COMPARISON INDUSTRIAL, LIMITED COMMERCIAL & MXD OVERLAY
LEVEL 2 MEDITERRANEAN BONUS

PERKINS WILL

ZONING REQUIREMENTS	INDUSTRIAL ZONE	LIMITED COMMERCIAL	MXD OVERLAY DISTRICT
MAXIMUM HEIGHT	99'	77'	INDUSTRIAL 99'
FAR ALLOWABLE	3.5	3.5	3.5
SETBACKS (SETBACKS CAN BE REDUCED TO ZERO IN ALL DISTRICTS PER THE MEDITERRANEAN DESIGN STANDARDS TABLE 3, NO. 1)			
FRONT	NONE W/ 10' SETBACK @ 40'	NONE	NONE W/ 10' SETBACK AT 45'
SIDE	INTERIOR SIDE - NONE STREET SIDE - NONE	INTERIOR SIDE - NONE STREET SIDE - NONE	INTERIOR SIDE - NONE STREET SIDE - 15'
REAR	ALLEY/STREET - NONE NOT ALLEY/STREET - 10'	ALLEY - 5' NO ALLEY - 10'	ALLEY/STREET - NONE NO ALLEY/STREET - 10'
PARKING REQUIRED (SPACES)			
RETAIL	1/250	1/250	1/250
RESTAURANT	12/1000	12/1000	10/1000
OFFICE	1/300	1/300	1/250
RESIDENTIAL	NA	PER ARTICLE 5, DIV 14	PER ARTICLE 5, DIV 14

Location Map

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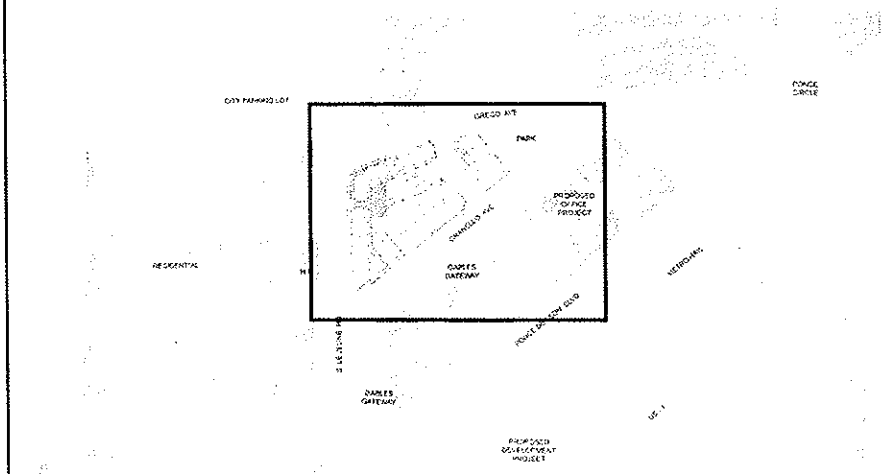

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Precedents: Coral Gables

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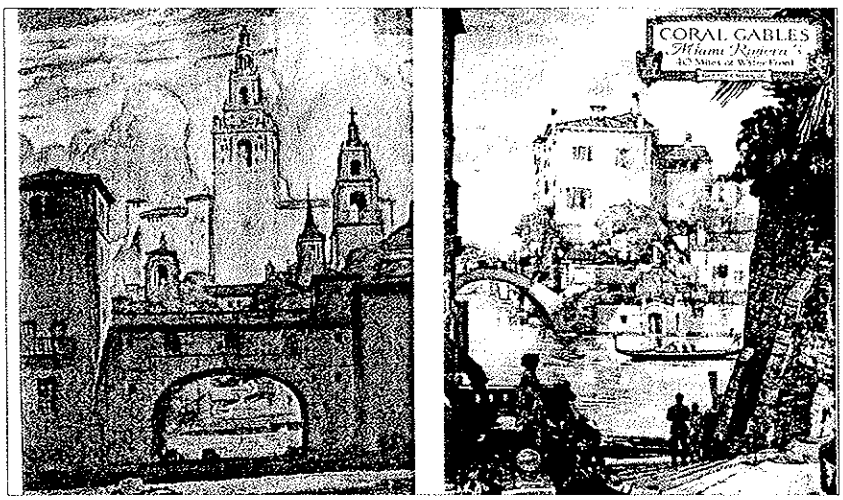

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Precedents: Coral Gables

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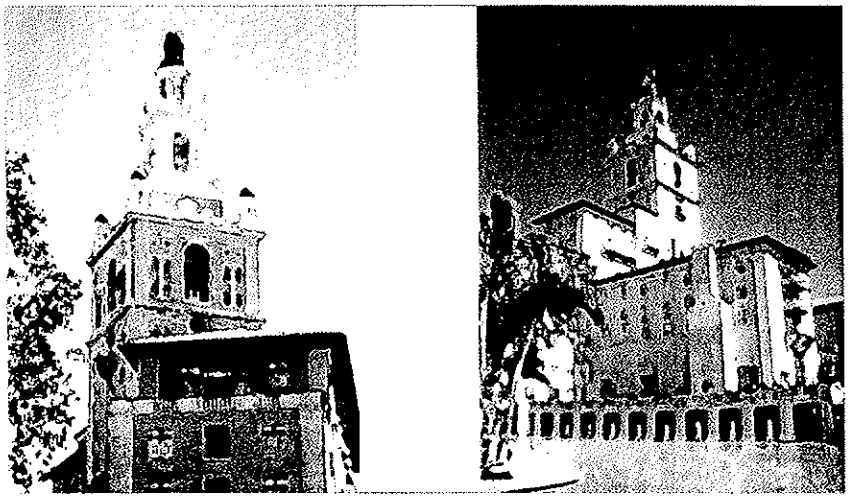

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Precedents: Coral Gables

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Precedents: Coral Gables

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Precedents: Coral Gables

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Precedents: California

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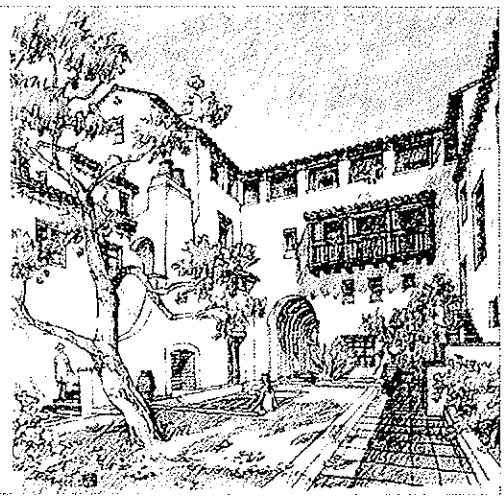

Alley Vacation

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Site Conditions

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Location Map

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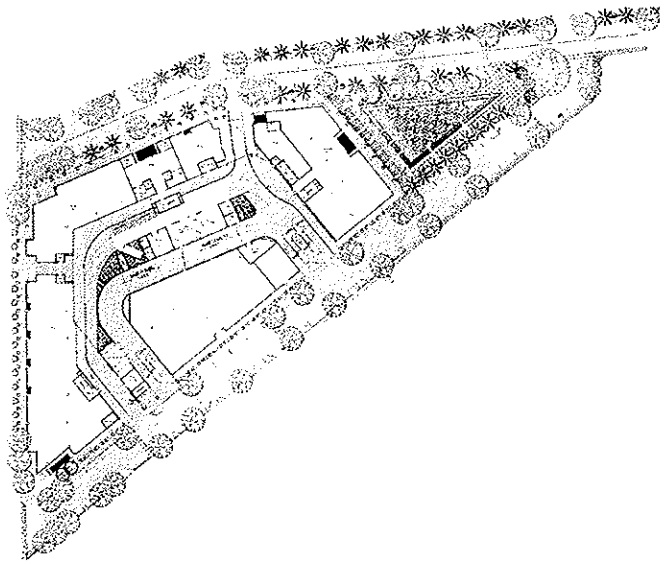

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Alley Comparison

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View from Le Jeune-Greco

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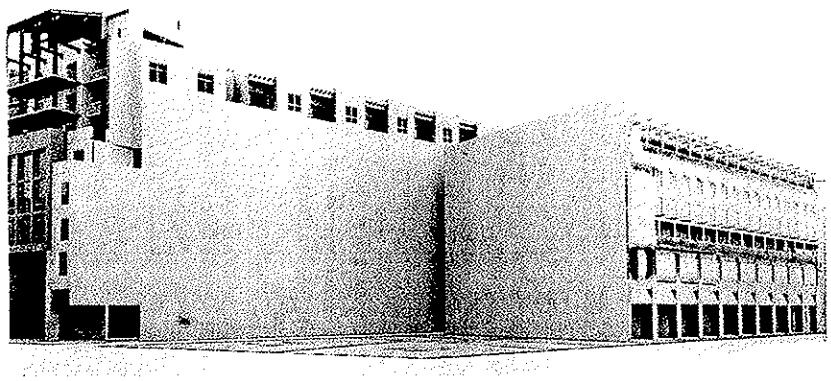

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View from Le Jeune-Greco

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View from Le Jeune-Greco

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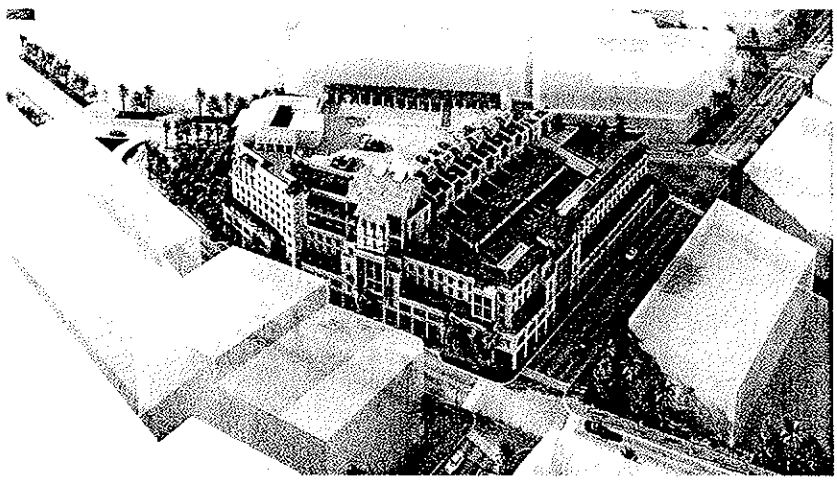

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View from Le Jeune-Greco

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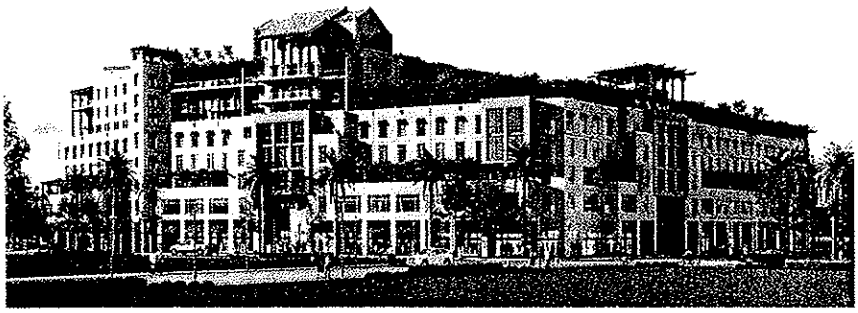

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View from Ponce Circle

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Project Presentation: Level - 1

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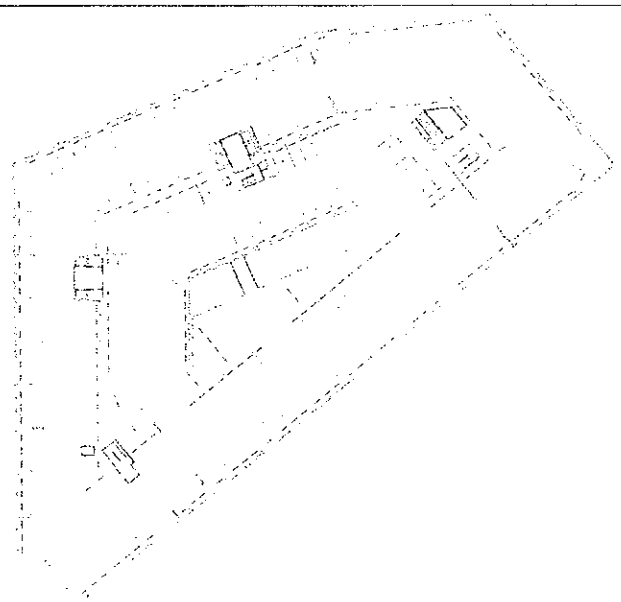

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Project Presentation: Level + G

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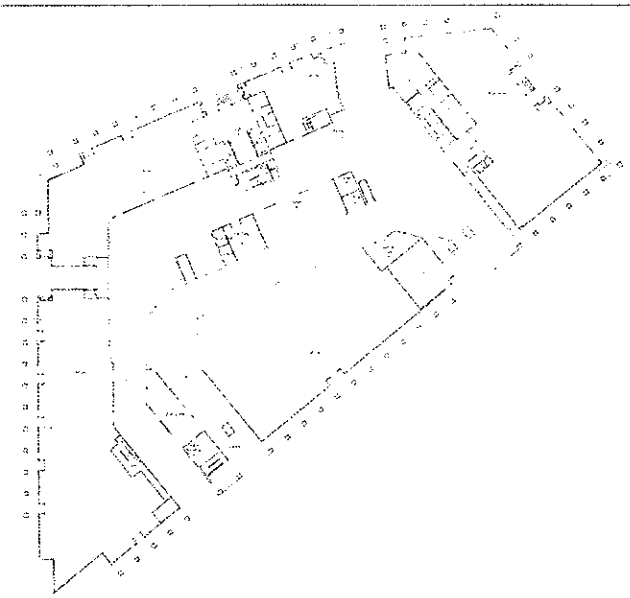

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Project Presentation: Level + 2

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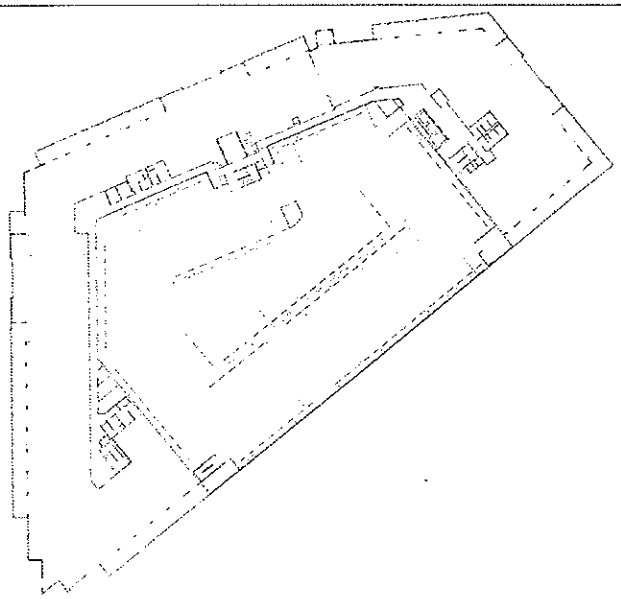

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Project Presentation: Level + 7

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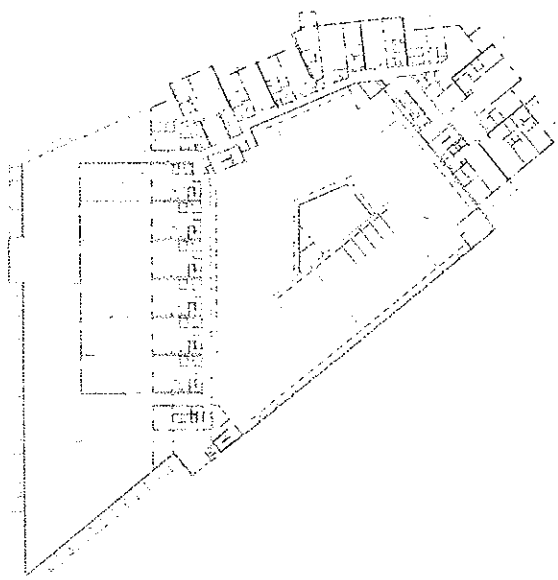

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Project Presentation: Level + 8

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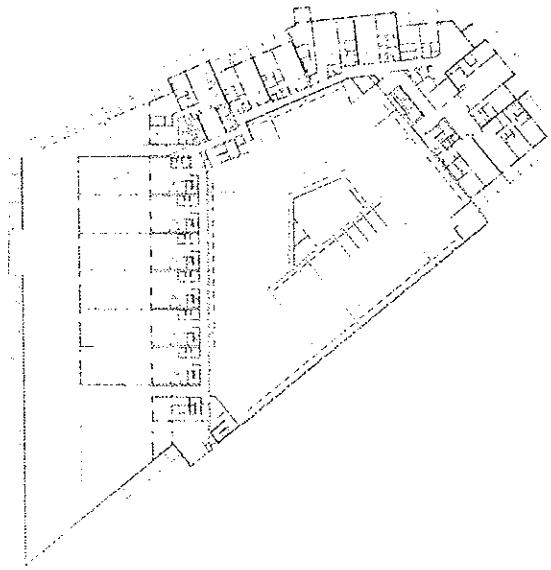

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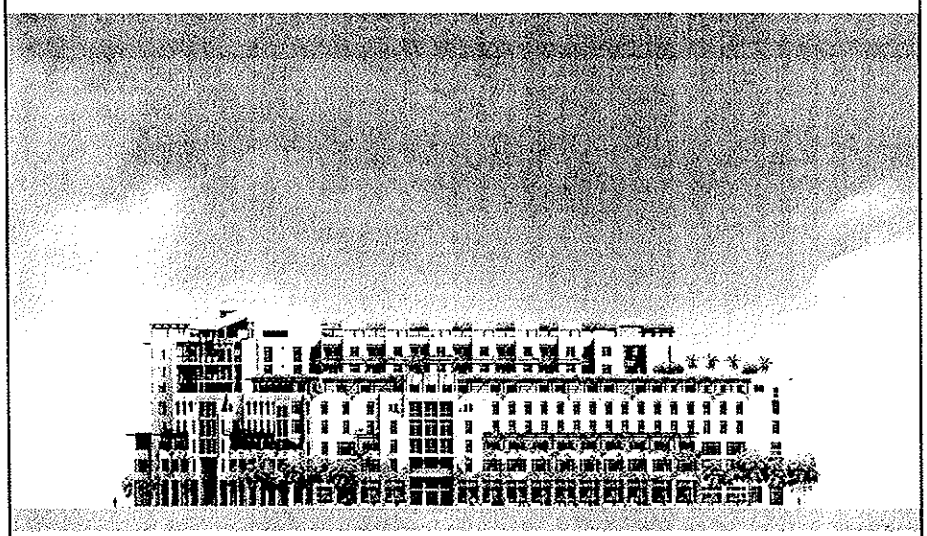
Le Jeune Elevation

PERKINS
WILL



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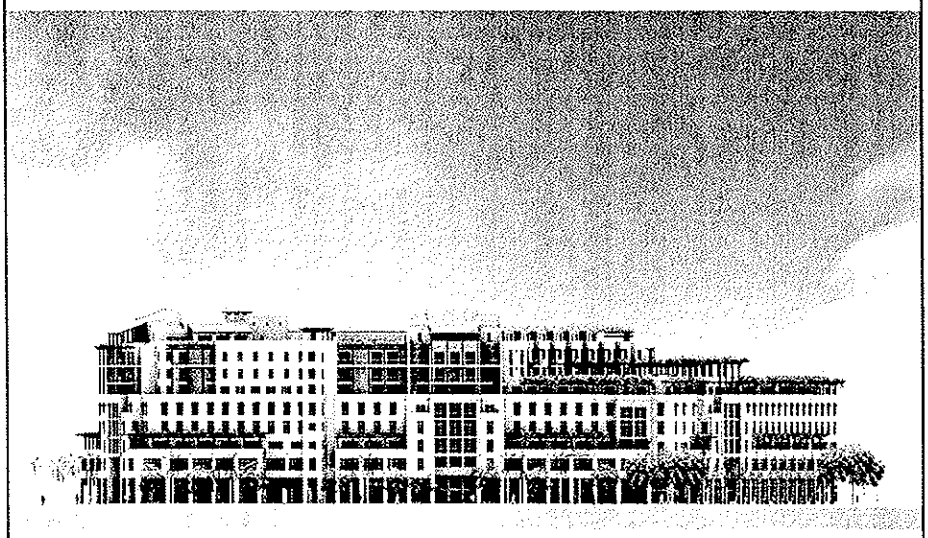
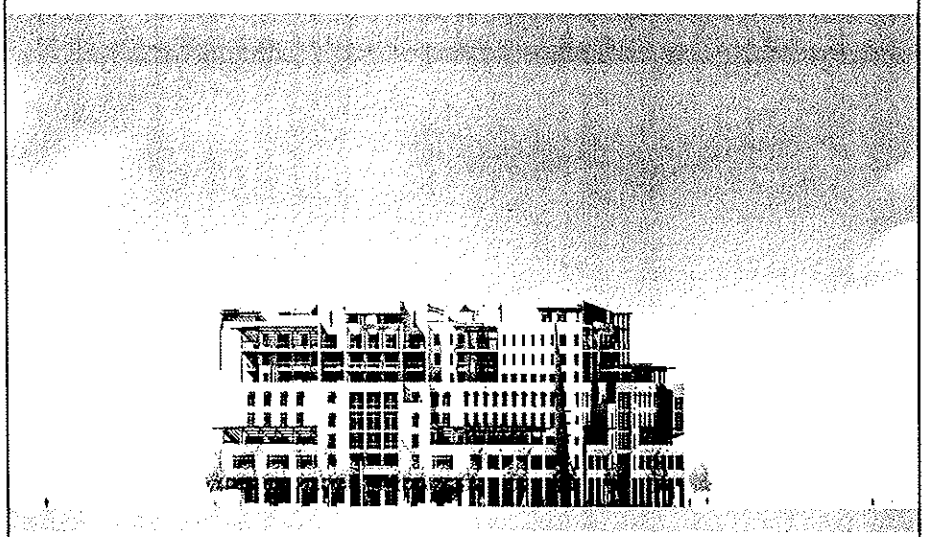
Greco Elevation

PERKINS WILL



Greco-Granello (Park) Elevation

PERKINS WILL



Granello Elevation

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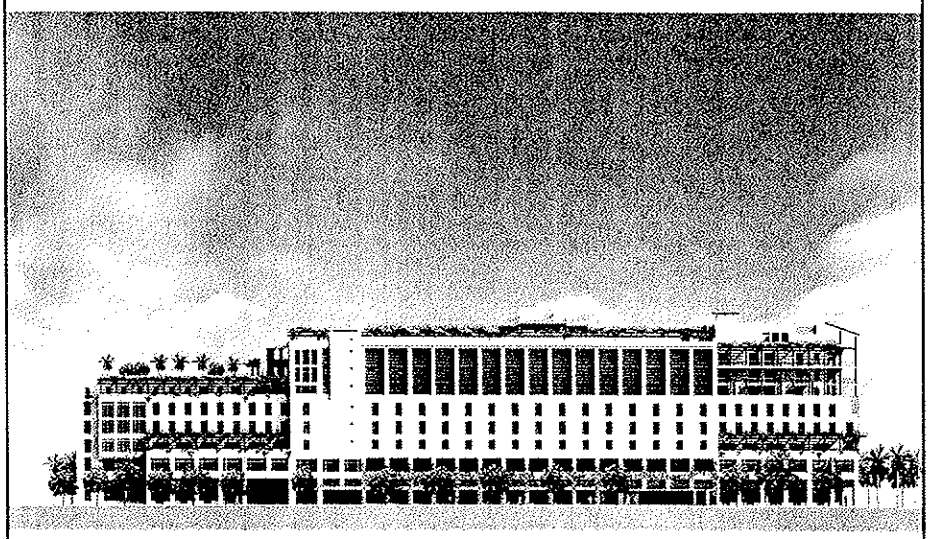

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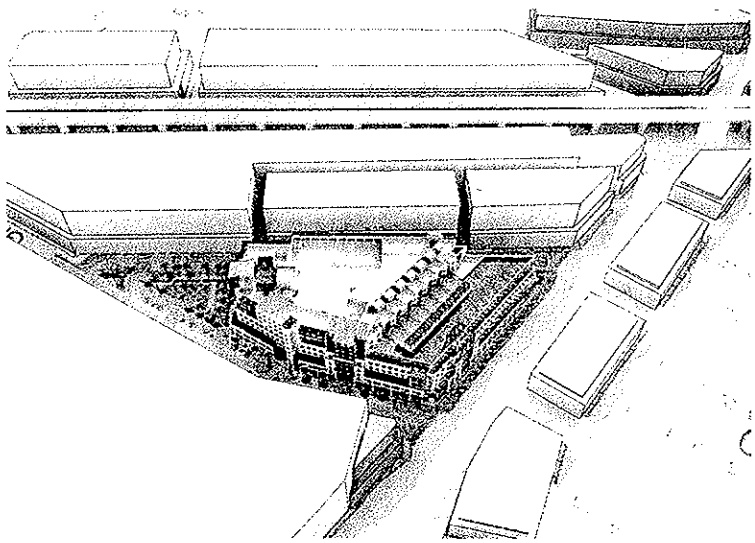
View from Le Jeune-Greco

PERKINS WILL



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