

**City of Coral Gables City Commission Meeting**  
**Agenda Item E-1**  
**July 13, 2010**  
**City Commission Chambers**  
**405 Biltmore Way, Coral Gables, FL**

**City Commission**

**Mayor Donald D. Slesnick, II**  
**Vice Mayor William H. Kerdyk, Jr.**  
**Commissioner Maria Anderson**  
**Commissioner Rafael “Ralph” Cabrera, Jr.**  
**Commissioner Wayne “Chip” Withers**

**City Staff**

**City Manager, Patrick Salerno**  
**City Attorney, Elizabeth Hernandez**  
**City Clerk, Walter J. Foeman**  
**Deputy City Clerk, Billy Urquia**  
**Zoning Official, Martha Salazar-Blanco**

**Public Speaker(s)**

**George Hernandez, Attorney Representing Applicant**

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E-1 [Start: 10:29:29 a.m.]

Board of Adjustment Application No. BA-10-05-3859

Mr. Rogelio Tovar, Owner/Applicant, has filed an appeal to the Coral Gables City Commission from a decision of the Board of Adjustment at its regular meeting June 7, 2010, wherein it denied an application for a variance for the property located at 1221 Mariola Court pursuant to the provision of Ordinance No. 2007-01 as amended and known as the “Zoning Code.” (Board of Adjustment Vote: 5-2)

The Applicant is appealing the Board of Adjustment decision in regard to the proposed addition for the existing single-family residence.

1. Grant a variance to allow the proposed addition in conjunction with the existing residence to exceed the allowable floor area factor and maintain a square foot floor area of seven thousand eight hundred and thirty-five feet (7,835’) vs. the single-family residence shall not exceed a maximum square foot floor area of seven thousand one hundred and forty feet (7,140’) as required by Section 4-101 (d) (a) of the Coral Gables “Zoning Code.”

Mayor Slesnick: E-1 we have an appeal from the Board of Adjustment. The Tovar family has filed an appeal of the Board of Adjustment Application No. BA-10-05-3859, Mr. Rogelio Tovar,

Owner/Applicant, has filed an appeal to the Coral Gables City Commission from a decision of the Board of Adjustment at its regular meeting June 7, 2010, wherein it denied an application for a variance for the property located at 1221 Mariola Court pursuant to the provision of Ordinance No. 2007-01, as amended, and known as the "Zoning Code." (Board of Adjustment Vote: 5-2). The Applicant is appealing the Board of Adjustment decision in regard to the proposed addition for the existing single-family residence. Grant a variance to allow the proposed addition in conjunction with the existing residence to exceed the allowable floor area factor and maintain a square foot floor area of seven thousand eight hundred and thirty-five feet (7,835') vs. the single-family residence shall not exceed a maximum square foot floor are of seven thousand one hundred and forty feet (7,140') as required by Section 4-101 (d) (a) of the Coral Gables "Zoning Code." OK. George you are presenting this?

City Manager Salerno: Martha.

Mayor Slesnick: OK. I don't know why, you are the appellant, I am letting you go first, Martha can then explain after she hears your case why the Board acted, in fact we have the record, as you know, of the Board so we already know that.

Mr. Hernandez: Good morning, is this on?

Mayor Slesnick: It is on.

Mr. Hernandez: George Hernandez, 337 Palermo Avenue. I'm here to speak about the appeal; it will only take about ten or fifteen minutes to make my presentation.

Mayor Slesnick: No, you are going to take ten minutes.

Mr. Hernandez: OK.

Mayor Slesnick: At the most.

Mr. Hernandez: OK. Thank you.

Mayor Slesnick: Seven is better.

Commissioner Cabrera: Can I ask a question to you and to the applicant. Is Mr. Hernandez' presentation going to be specifically to the item in question? Well, Mr. Hernandez in your presentation you are going to present only the differences between the Code and what the applicant is asking for, right?

Mr. Hernandez: That's correct.

Commissioner Cabrera: OK. I just wanted to make sure.

Mr. Hernandez: Sure, sure. OK. You are correct in reading the request as advertised; the reason I'm here is that the request as advertised does not really follow the spirit of the request. The language of Section 83-801, which is the purpose and applicability of variances says, the purpose of this division is to establish a procedure for granting variances from the literal interpretation of these regulations where there are practical difficulties or unnecessary and undue hardships, so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done, that's the reason we decided to come to Commission for an appeal. My client, Mr. Tovar, would not be here had he maximized the FAR of his property, and then asked flippantly for another seven hundred square feet above and beyond the Code, I would not be here, considering my history with the city had this client maximized the FAR and then asked flippantly for another seven hundred square feet above the Code. The reason we are here is because there was a generous number of second story porches that were part of the original design, at the time when it was designed those porches were being encouraged by the Code, they would count as zero, there are special circumstances and conditions to this lot; this is a half-acre lot on Mariola Court, which fronts the Biltmore Golf Course, the next immediate backyard neighbor is two thousand feet (2,000 ft) away from his lot, and that backyard neighbor is the Biltmore Hotel. So all of the work we did, the community and you on the Code revision that put the square footage of second floor porches into the FAR count really were about studying what those porches did in a typical Coral Gables lot where you could potentially have another porch ten feet away, it was a problem of the infringement of privacy, light and air on backyard neighbors; that doesn't apply to this lot, this is a half-acre lot fronting the Biltmore, there are no backyard neighbors other than the Biltmore Golf Course, those porches which were done legally at the time do not infringe on the privacy of any rear yard neighbor, nor do they steal light or air from any other citizen's private property, that's why we are here. If you simply do not count those porches toward the count then he, Mr. Tovar, can build this library addition if we only give him twenty-four more feet, and the twenty-four feet are about building over the existing garage.

Commissioner Cabrera: That's the hardship?

Mr. Hernandez: That's the special condition, let me read this again, let me read this again – it says, this is from the Code, “the purpose of this division is to establish a procedure for granting variances from the terms of these regulations where there are practical difficulties or unnecessary and undue hardship”, it's not *and* it's not conjunctive, its disjunctive. So we are saying there are practical difficulties involved, and there are special circumstances and conditions, which are also from the Code, which are connected to this lot. Now, if I may, let me continue. This property, and I have visuals, I don't know if I have time to show the visuals, this property far exceeds the setbacks; the setbacks on this lot are fifty foot setbacks, Mr. Tovar's house two-thirds of it, is set back almost eighty feet. From the Biltmore Golf Course that setback when it was built was five feet, it's currently setback forty-three feet, and the house does not come anywhere near the side setbacks. So he way exceeded the spirit of the law in terms of setbacks, in terms of footprint, this house has an undridge of footprint of over two thousand six hundred square feet (2,600). When he built this house, he left 800 square feet of unused FAR on the table. This was not a “Mac Mansion”, this was not a house that was pushing the envelope of the height, or the mass, or the scale of what was admissible on this lot. What he did do is, he did generously sprinkle about the

back elevation first and second floor covered porches, and the reason he did that is because of the frontage of this lot on the Biltmore. From the first and second floor covered porches, he could look at the Biltmore tower, but those porches do not affect the mass, or the scale, or the privacy of any neighbor. There are six letters on the record saying they have no objection whatsoever to this proposal, since then there have been an additional three letters given to us which we can certainly pass on to you; more importantly the three adjacent neighbors, the neighbor to the west, which is Dr. Valdez, the neighbor to the east, which is Mr. Don Van Orsdel, and the neighbor across the street which is the Kernel as they call him, have all said that they do not object to this proposal. So a number of people, there have been no objections to this proposal at any of the public hearings that we have held. We've never had one neighbor show up and object to this proposal. The truth of the matter is, that if Mr. Tovar were building the house today, the second floor covered porch could have been a pergola, he could have made it a pergola, and the long balcony – I know you are looking at the pictures that's why I'm trying to guide you through the pictures, the long balcony on the second floor could also have been a pergola. Had he done that, he would have been completely able to do this addition, but he could not have known in 2006 that by 2008 the Code was going to change, and I think the spirit of that Code change had to do with protecting neighbor's privacy, light and air, but it would not apply on this lot, there is no rear yard neighbor that would be damaged by those second floor covered porches. That's why we are here for the request. I don't know if that's enough; I have visuals that I could certainly share.

Mayor Slesnick: We'll let you answer questions from the Commission and we'll let you speak last after Martha.

Mr. Hernandez: Thank you very much Mayor.

Mayor Slesnick: Ms. Salazar – Martha Salazar-Blanco is the secretary to the Board of Adjustment.

Ms. Salazar-Blanco: Good morning Mayor, Commissions, the applicant is proposing to exceed the maximum allowable floor area by six hundred and ninety-five square feet. As you know, the city's Zoning Code has specific regulations as well as design, performance, and to ensure renovations and new structures to be in harmony, in proportion to its site area. The intent and purpose of the maximum floor area is to limit the size and the mass of a resident in relation to the building site. As you may all recall, the Commission passed and adopted an ordinance in August of 2006, amending the existing single family residence zoning regulations, which address the oversize single family residences on an interim basis in order to allow the Zoning Code rewrite to proceed until the final provisions were adopted. One of the changes was requiring the floor space and roof terraces, breezeways, porches, located on the floor to be counted. Before the ordinance was adopted in August of 2006, the roof terraces, breezeways, and porches whether they were on the first floor or second floor, were not counted as a total maximum floor area. Other provisions were also changed, setbacks, heights, in computing the floor space of the square footage of residents. Under Section 1-103 (e), the Zoning Code mentions that the purpose of the Zoning Code is to preserve residential properties to ensure that future development would be in conformity with the foregoing distinctive character with respect to type, intensity, design, and

appearance. The Zoning Division finds in regards to the applicant's proposal as presented in the application brought forth a variance make the following recommendations, that special conditions and circumstances do not exist which are not tailored to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same zoning district; that the special conditions and circumstances would result from the actions of the applicant; that granting the variance requested will confer on the applicant any special privilege that is denied by these regulations to other lands, buildings, or structures in the same zoning district; that literal interpretation of the provisions of these regulations would not deprive that applicant a right commonly enjoyed by other properties in the same zoning district under the terms of these regulations and were not worth unnecessary and undue hardship on the applicant. That the variance granted is not the minimum variance that will make possible the reasonable use of the land, building, or structure; that granting a variance will change the use to one that is not permitted in the zoning district, or different from other land in the same district. That the granting of the variance will not be in harmony with the general intent and purpose of these regulations, and that such variances will not be injurious to the area involved or otherwise detrimental to the public welfare. Staff recommends denial of the applicant's request and recommends for the Board of Adjustment decision to be upheld. Thank you.

Mayor Slesnick: Thank you Martha.

Commissioner Withers: May I ask a question?

Mayor Slesnick: Martha.

Commissioner Withers: How does the neighbor on the west feel?

Ms. Salazar-Blanco: I have not spoken to any of the neighbors, they have not approached me; they have – I think that Mr. Hernandez can probably answer that.

Mr. Hernandez: The neighbor on the west is the most impacted neighbor. She was the first one without being asked to submit a letter of support, she offered the Tovar's because her lot is currently under construction that they could stage the construction activity through her yard so they wouldn't have to ruin their garden.

Commissioner Withers: What happens to the FAR of the garage when you build over it?- does that affect the square footage?

Ms. Salazar-Blanco: Well, the addition is a second floor over the garage and some covered breezeways also on the second floor, and....

Commissioner Withers: But I mean, the calculation of the FAR of the garage, does it change the actual floor area?- does it change when you build over it?- and how does that increase this?

Ms. Salazar-Blanco: Yes. It increases it by 695 square feet under the provision...

Commissioner Withers: Fifty percent...

Mr. Hernandez: Fifty percent – 285.

Commissioner Withers: It goes from what?- fifty percent to a hundred percent, does it?

Ms. Salazar-Blanco: One hundred percent.

Commissioner Withers: OK. So part of this increase is not really an increase, but it's because you are building over the garage which then goes from fifty percent to a hundred percent being counted, is that how the Code works?

Mr. Hernandez: That's correct.

Ms. Salazar-Blanco: Under the interim provision when this single family residence was permitted, there were different provisions where you would count the garage in half, you would count things differently that's why there were bonuses.

Commissioner Withers: Right, if you don't build over it.

Ms. Salazar-Blanco: Now, we obviously count it in full and there's other items in the house that we counted in full.

Commissioner Withers: So my question is this; it's not necessarily the increase of the square footage, it's getting you up to that 600 feet, it's the fact that we are now counting a hundred percent of the garage it's also getting us up there, is that a fair statement?

Ms. Salazar-Blanco: That's correct.

Commissioner Withers: OK. As far as the breezeways go, I don't understand – did we not count them and now we count them?

Ms. Salazar-Blanco: Right. Under the interim provisions and under the – there was a single family residence provision in 2005 by ordinance, and at that time it was not counted...

Commissioner Withers: OK.

Ms. Salazar-Blanco: A year later in August of 2006, there were other provisions amending those interim provisions, those provisions at that time, which by that time his set of plans had been approved already through the previous interim.

Commissioner Withers: Understand.

Ms. Salazar-Blanco: So at that time the breezeways were being counted on the second floor.

Commissioner Withers: OK. Understood. And what is that total square footage of those breezeways?- the second floor breezeways.

Mr. Hernandez: Porches – covered porches and breezeways – 670.

Commissioner Withers: And how about the covered dining area underneath?

Mr. Hernandez: That's zero, it remains zero, its first floor – only the second floor counts.

Ms. Salazar-Blanco: The second floor that counts now.

Commissioner Withers: OK – got you. Thank you.

Mr. Hernandez: So, if you add the 285 or half of the garage and the 670....

Commissioner Withers: You are up over the 800 – understand.

Mayor Slesnick: Any other questions? May I have a motion?

Commissioner Withers: Mr. Mayor, I'll move for the acceptance of the appeal by the owner/applicant.

Mayor Slesnick: It's been moved that the Commission approve the appeal, therefore overturning the Board of Adjustment, is there a second? OK, well, pass the gavel and I'll second it.

Vice Mayor Kerdyk: Is there any discussion?

Commissioner Anderson: I'll just briefly share why I don't support that. I looked at it, it's a beautiful home, I actually walk by it a lot when I play golf, and a testament to your abilities, but I don't see any real hardship there other than wanting another part of that house, the study to that house. It was between two Codes and the intent of the other Code was to do away with additional bulk and massing, so it got caught between two Codes, but so did a lot. So I was trying to balance out what other people that also have faced a similar circumstance wouldn't be fair for me to grant that based on that, and there is really no hardship other than, I think, believing having another room, another beautiful room, I'm sure, I'm sorry I can't support.

Mayor Slesnick: The reason I seconded because I felt that this was a special situation, there was no one more supportive of the anti-Mac Mansion ordinance than myself, in fact I campaigned for it, but in this case where we have the golf course and two thousand feet between it and its nearest neighbor, and all the neighbors that live west and east and south of the house says that it doesn't bother them, and because of the changing of the Code and the different calculations that we got caught up in here, that's why I seconded and support it. Thank you.

Vice Mayor Kerdyk: Is there any further discussion?

Mr. City Clerk

Commissioner Anderson

Commissioner Anderson: I'm sorry, what are we...

Mayor Slesnick: We are voting no if you want to deny the appeal.

**Commissioner Anderson: No**

**Commissioner Cabrera: No**

**Commissioner Withers: Yes**

**Mayor Slesnick: Yes**

**Vice Mayor Kerdyk: No**

**(Vote: 2-3)**

Mayor Slesnick: Do I have another motion?

Commissioner Anderson: To uphold staff's recommendation and Board of Adjustment's decision.

Mayor Slesnick: OK, Ms. Anderson moves to uphold the Board of Adjustment's decision, is there a second?

Vice Mayor Kerdyk: Yes, I'll second.

Mayor Slesnick: Vice Mayor Kerdyk seconds, any further discussion.

Mr. Clerk

**Commissioner Cabrera: Yes**

**Vice Mayor Kerdyk: Yes**

**Commissioner Withers: No**

**Commissioner Anderson: Yes**

**Mayor Slesnick: No**

**(Vote: 3-2)**

Mayor Slesnick: Liz, I would like to ask that for future reference I would like a better further explanation of George's reading of the ordinance about – we've always talked about having to have hardship, having to have hardship; Commissioner Cabrera served on the Board of Adjustment at one time and it was ingrained into his mind hardship, hardship, hardship. George has read us clearly a secondary provision...

Commissioner Cabrera: Condition – special condition.

Mayor Slesnick: And so....this is not about this appeal at the moment, but I thought that maybe Liz, a little memo. So for future reference we will understand better your interpretation of that.

Commissioner Cabrera: I just see the two being so close, hardship and special condition that I use the word hardship first when I speak of....

Mayor Slesnick: Well that's all we've ever talked about.

Commissioner Cabrera: Yes.

Mr. Hernandez: But it's interesting in the last language it says, practical difficulties as well. So the language actually became more liberal.

Mayor Slesnick: That was added?

Mr. Hernandez: That was added in the Code change, yes. It has not been kept up in the practices.

Mayor Slesnick: Well Liz, I'd like your thinking on that, and I'd like maybe the Board of Adjustment to have their thinking on that because if it is a new addition that we adopted as part of a massive Zoning Code change, we need to understand if we changed the conditions that we used to think of traditionally.

Commissioner Cabrera: That's true.

Mr. Hernandez: Thank you.

[End: 10:50:08 a.m.]