



BERCOW
RADELL
FERNANDEZ
LARKIN +
TAPANES

ZONING, LAND USE AND ENVIRONMENTAL LAW

200 S. Biscayne Boulevard
Suite 300, Miami, FL 33131

www.brzoninglaw.com

305.377.6227 office

305.377.6222 fax

mtapanes@brzoninglaw.com

Via Electronic Submittal (aparjus@coralgables.com)

April 8, 2025

Alberto N. Parjus, City Manager
Office of the City Manager
City of Coral Gables
2151 Salzedo Street
Coral Gables, Florida 33134-5717

Re: Application For Relief Under Section 14-214 of the City Code
in Connection with the Tree Mitigation Plan for The George
Project Located at 717, 729, 737 and 741 Valencia Avenue

Dear Mr. Parjus:

We represent The George Residences, LLC (the "Property Owner" or "Applicant") in connection with The George (the "Project") located at the above-captioned property (the "Property") and hereby enclose an Application for Relief pursuant to Section 14-214.2 of the City's Code of Ordinances (the "City Code"). The specific dispute underpinning this Application for Relief concerns the City Commission's consideration of a tree canopy mitigation plan for the Project, which is the subject of Resolution 2025-69.

Project and Relevant Procedural History. The Project is comprised of thirteen (13) residential town home units as part of a well-received and award-winning design, reflecting a far less intense project in terms of height and density than is permitted as-of-right on the Property. For example, the as-of-right zoning permits up to fifty (50) units on the site, and up to 150 feet in height or thirteen (13) stories. The approved Project features only thirteen (13) units, and is under forty-four (44) feet height, within three (3) stories. The townhome units of the Project are part of an attached, single structure, and the Project covers most of the Property site, save for 9,665 square feet of open space.

Following proceedings before the City's Planning Board, the Project was ultimately approved by the City Commission on July 9, 2024 via Resolution No. 2024-154. See Exhibit A (the "First

Resolution"). The Project's footprint implicates mature trees, which previously grew in between the now-demolished low-rise apartments and other related structures and fences on the Property.

First Resolution and Condition 3(c). The City Commission's First Resolution includes a condition in connection with a required Tree Relocation / Mitigation Plan to address mitigation for any loss of tree canopy on the Project site. Specifically, Condition 3(c) provides:

On-site Trees. The Applicant shall coordinate with Public Works on the feasibility of the relocation of the 6 mature oak trees and 2 additional mature trees. The Applicant shall prepare tree relocation plan or, in the event that one or more trees cannot be relocated, mitigation measures shall be proposed which improve tree canopy in the neighborhood surrounding the project site. The Tree Relocation/ Mitigation Plan shall be reviewed and approved by the City Commission prior to permit issuance for vertical construction. The Applicant shall also be responsible for canopy mitigation payments for any loss of tree canopy. All collected tree canopy mitigation funds shall be allocated toward providing new shade trees on Valencia, Biltmore Court, Cardena, and Biltmore Way.

Resolution No. 2024-154 at ¶(3)(c).

Applicant Efforts Following the First Resolution. Subsequent to the Project's approval via the First Resolution, the Applicant continued to coordinate with the City's professional staff, as well as Vice Mayor Rhonda Anderson, on crafting the best tree canopy mitigation program for the Property, in light of various site constraints and tree conditions. Moreover, the Applicant retained additional professional experts and specialists in the field of tree health evaluation and tree relocation methodologies.

February 14, 2025 Applicant Submission. The efforts of the Applicant and its arborists and tree relocation specialists are summarized in formal correspondence and expert reports submitted February 14, 2025. See Exhibit B (Letter of Applicant Counsel dated February 14, 2025). This correspondence enclosed professional arborist reports setting forth the risk to tree survival associated with tree relocation for the six (6) existing oak trees and logistical challenges, as well as a proposed a Tree Relocation and Mitigation Plan comprised of a Landscape Plan and legend depicting the Applicant's proposal to: (a) remove six oak trees; (b) relocate one gumbo limbo tree; and (c) plant eight new 35-foot tall oak trees along the Granada Golf Course at an estimated cost of \$356,000 to the Applicant. The mitigation fee matrix and analysis were summarized in the following chart reflected on the Tree Survey and Disposition Plan:

Existing Canopy Removed	81,669	SF	
Added Canopy from 58 8-12' tall trees to be planted at The George	(8,300)	SF	
Added Canopy from 6 20-22' tall Live Oaks to be planted in Curb Bump Outs	(3,000)	SF	
Canopy Deficit	70,369	SF	
Canopy Deficit divided by 500	140.7		
Mitigation Fee Per 500 SF of Canopy Deficit	\$ 2,500		
Gross Mitigation Fee	\$ 351,845		
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Cost of 8 35' tall Live Oaks to be planted at Granada Golf Course or a City Park	\$ (356,000)	\$44,500	per tree
Net Mitigation Fee*	\$ (4,155)		
*Actual mitigation fee will be zero dollars rather than negative \$4,155.			

See Exhibit C (Tree Relocation and Mitigation Plan submitted with February 14, 2025 Correspondence). The February 14, 2025 correspondence requested that the Tree Relocation and Mitigation Plan be set for hearing before the City Commission, as contemplated by Condition (3)(c) of the First Resolution. The item was scheduled to be heard on March 11, 2025. Following this submission, in meetings with City Professional Staff and Vice Mayor Anderson, Vice Mayor Anderson insisted upon the relocation of one or more of the oak trees.

March 10, 2025 Applicant Submission. After extensive meetings and communications with the City’s Professional Staff and the Vice Mayor, the Applicant submitted an Amended Tree Relocation and Mitigation Plan via correspondence of the Applicant’s counsel dated March 10, 2025. See Exhibit D (Letter of Applicant Counsel dated March 10, 2025). This letter reflects the following updated proposal summarized as follows:

- (1) agreement to relocate one of the six oak trees (No. 41, a large live oak tree) involving a complex multi-part process of moving four existing oak trees located in a City traffic triangle and bump out, and then relocating the large oak tree to the traffic triangle; and the gumbo limbo tree will also be relocated;
- (2) an agreed upon mitigation fee schedule as the product of discussions and exchanges with the City’s professional staff in the amount of \$215,000;
- (3) the planting of six live oak trees measuring a minimum of twenty to twenty-two (20-22) feet in height along the right-of-way along the front of the Project;
- (4) the planting of fifty-eight (58) trees on the project site measuring at least twelve (12) feet tall; and

(5) the planning of three hundred thirty-one (331) shrubs on the Property and adjacent rights-of-way set forth in Condition 3(c).

The Correspondence of March 11, 2025 included several professional arborist reports and specialist evaluations. These reports and materials included the report of a respected arborist who summarized his findings including that (a) correspondence from Florida Power and Light confirmed that power lines needed for oak tree relocation are not able to be de-energized; (b) relocation of the oak trees will require more than 25% of the tree canopy of the subject trees posing great risk of pathogen entry into the trees' vascular system, thereby threatening the survivability of the trees; and (c) concluding that "tree relocation to another site is not feasible." See Exhibit B (at Exhibit 4, Report by Jeff Shimonski of Tropical Designs of Florida, dated August 10, 2024).

City Commission Meeting of March 11, 2025. Upon the item being called, the updated proposed Amended Tree Relocation and Mitigation Plan was not well received by the City Commission, principally because it was submitted one day prior to the City Commission Meeting. Moreover, Vice Mayor Anderson reiterated her mandatory requirement that trees be relocated from the Property.

During discussion of the item, the Vice Mayor Anderson recounted meetings with the Applicant in January 2025, and subsequent meetings, during which she rejected any Tree Relocation and Mitigation Plan that did not involve the relocation of oak trees from the site, and only involved the relocation of a gumbo limbo tree from the site. Vice Mayor Anderson described these discussions as "not gentle conversations," but rather quite "heated." See Video of City Commission Hearing of March 11, 2025 at Commission Meeting Video Time Marker 4:09 (available at https://coralgables.granicus.com/player/clip/3181?view_id=5&redirect=true).

Vice Mayor Anderson went on to describe a meeting with the Applicant which was held on the Friday prior to the March 11, 2025 Commission Meeting, where she "walked out" because she was not making a sufficient "impression" upon the Applicant that development in the City requires that an applicant "must preserve as much tree canopy as is humanly possible" *Id.* at 4:10. Further, the Vice Mayor explained that as of "mid-day yesterday" it "became clear" to the Applicant that "this Community will not support this type of approach." *Id.* at 4:11. The Vice Mayor further stated that a year-long analysis is "difficult on the community." Vice Mayor Anderson directed the Applicant to work on the root ball pruning needed for the relocation of trees for which "there is no question" that they can be relocated. *Id.* at 4:12.

Thereafter, the Commission required that the Applicant hold a community "sunshine" meeting (with Commissioners in attendance) to present the tree mitigation program, and City Commissioner Kirk Menendez required that the Applicant send email invitations to those

residents who sent emails to the City expressing their “desire to be part of the process.” *Id.* at 4:14.

Commissioner Ariel Fernandez stated that this “project needs to go back before the community.” *Id.* at 4:15. He further stated “we had a vote, and expected for the six trees to be saved.” *Id.* at 4:15. Commissioner Fernandez concluded that any further discussion of the Item at the present meeting would be “beating a dead horse.” *Id.* The City Commission voted on a Resolution requiring the public Sunshine meeting on the tree mitigation.

Second Resolution. Resolution 2025-69 of the City Commission on March 11, 2025 on the item, with amendments, was reduced to writing (the “Second Resolution”), and this Request for Relief timely followed. See Exhibit E (Second Resolution).¹

Inordinate Burden. This Application for Relief is submitted on behalf of the Applicant as a statement of a dispute with the City as is contemplated by Section 14-214 of the City Code. This Article and Section of the Code was adopted by the City for the purpose of avoiding costly and time-consuming litigation that will work to the detriment of both the City, the community and the Applicant. §14-214, City Code.

While Condition 3(c) of the First Resolution requires approval of the tree mitigation plan by the City Commission, the City Code provides no mechanism for direct evaluation and approval of a tree mitigation plan by the City Commission. The City Code contemplates evaluation under the enumerated Code-based factors by the City “tree preservation agency.” The “tree preservation agency” is defined as follows:

City tree preservation agency means the *department or agency* charged by the city manager with the enforcement of the provisions of this article. The *decision-making staff* of this agency shall include an individual or individuals *with significant local experience in the fields of botany, landscape architecture, horticulture, and arboriculture.*

§82-28 (Definitions), City Code (emphasis added). Further, the Code contemplates an appeal of the decision of the tree preservation agency on a tree permit, by appealing to the Board of Adjustment (for trees on private property and not within an historic district). See §82-35(a), City Code. In the circumstance where the Board of Adjustment is sitting in this capacity, the Code provides a list of factors to be considered by the Board. *Id.* While the City Commission may

¹ Upon several inquiries with the Office of the City Clerk, the Office of the City Clerk confirmed that the final signed Second Resolution was not yet on file with the Clerk’s Office. In an abundance of caution, the Applicant submits this Application with the draft Second Resolution, until such time that it is formally rendered.

thereafter hear appeals from the Board of Adjustment, this proceeding is not *de novo*, and new evidence is not introduced before the City Commission. See §14-208.6(D), City Code.

The City Code provides certain factors to be evaluated by the tree preservation agency prior to the issuance of a tree permit. See §82-30(b), (c) and (d), City Code. The foregoing factors set out detailed requirements and factors to be considered to (1) preserve the existing specimen tree; (2) modify the existing specimen tree; (3) relocate the existing specimen tree; and (4) remove the existing specimen tree. *Id.*

The Second Resolution does not enumerate any of the foregoing Code-based factors for determination by qualified members of a "tree preservation agency," but rather requires a public meeting, for attendance by City Commissioners as a Sunshine Meeting, and to be held with interested members of the public who have emailed the City to voice their concern about the trees on the Property. See Exhibit E (Second Resolution). While the exact evaluation procedure under the Code may not be a model of clarity, it expressly contemplates the evaluation of tree permits and mitigation measures by "decision-making staff," with established credentials in the field of botany and landscape architecture. What it does not provide for is the evaluation of tree permits or tree canopy mitigation plans by the public at large or by the City Commission in the first instance.

The evolving, uncertain and politically charged proceedings of the current process has wrought unfair and inordinate burdens upon the Applicant because the issue of the appropriate tree mitigation plan for the Property is not being evaluated under the applicable (or any) Code-based factors by credentialed professional staff, as required by the City Code and Florida law. The City is required to track defined, Code-based factors as may be satisfied by competent, substantial evidence in the evaluation of development orders. Otherwise, the evaluation is ad hoc, arbitrary and capricious, and subject to the "shifting sands" of political influence.

The Second District Court of Appeal has explained the importance of tracking Code-based factors in these determinations, and to avoid ad hoc or implied procedures:

The meaning of a code would remain in flux. Such an approach does not promote consistency in the application of law. As the wording of its laws binds a legislature, the Town is bound by the wording of its Code. This mounts a bulwark against the Town's unfettered exercise of power. *See Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder*, 627 So.2d 469, 474 (Fla.1993) (noting that local governments and agencies must strictly adhere to town development plans and zoning codes); *City of Miami v. Rosen*, 151 Fla. 677, 10 So.2d 307, 309 (1942) (discussing the limited scope of

authority under which municipal ordinances are valid); *Ocean's Edge Dev. Corp. v. Town of Juno Beach*, 430 So.2d 472, 474–75 (Fla. 4th DCA 1983) (determining that courts cannot amend local ordinances “as the town would have liked it to read” by ignoring the language of the code “in favor of after-the-fact expert testimony as to legislative intent to fill in the cracks” because property owners and residents have every right to depend on the wording of the code.) As the circuit court noted, the Town is free to amend the Code. *See Carroll v. City of Miami Beach*, 198 So.2d 643, 645 (Fla. 3d DCA 1967) (“[T]he City is bound by the express terms of its own ordinance.... If the City desires a different meaning for its ordinance in the future, it may amend, modify, or change the same by legislative process.”).

Town of Longboat Key v. Islandside Property Owners Coalition, 95 So. 3d 1037, 1042-1043 (Fla. 2d DCA 2012).

Instead of tracking Code-based factors, the Second Resolution is imposing a procedural track not enumerated in the Code, and requiring the Applicant to satisfy undefined requirements as may be developed in the course of neighborhood meetings or further City Commission meetings. This places the Applicant in an untenable and ever-changing regulatory regime that is evolving as it progresses, and that is not imposed on other similarly situated applicants. To the contrary, the law requires that local government carefully track defined procedural requirements in connection with land development order applications. *E.g.*, *Gulf & Eastern Development Corporation v. City of Fort Lauderdale*, 354 So. 2d 57, 61 (Fla. 1978); *O’Conner v. Dade County*, 410 So. 2d 605, 606 (Fla. 3d DCA 1982); *Rosa Hotel Developers, Inc. v. City of Delray Beach*, 10 Fla. L. Weekly Supp. 600b (Fla. 15th Cir. Ct. 2003). Placing the burden upon the Applicant to meet application standards not defined by the City Code and under procedures not enumerated in the City Code inordinately burdens the Applicant as contemplated by Chapter 70 of the Florida Statutes.

Further, the remarks of the Vice Mayor and the Commission reflect a pre-determined mandatory result that was not arrived at by matching competent, substantial evidence (in the form of expert arborist reports) with corresponding Code-based factors as the law requires. In stark contrast to the undefined procedures and evolving requirements being imposed by the Second Resolution, the Applicant has submitted to the City reports by credentialed professionals establishing that relocation of the subject trees is not feasible, which reports are supposed to be evaluated under the Code-based factors by the Professional Staff of the City’s tree preservation agency. See Exhibit D (Cover Letter Summary of Arborist and tree relocation specialist Reports).

Moreover, the most recent arborist report by Lisa H. Hammer, RCA, dated March 31, 2025, and submitted contemporaneously with this Application (the "Report") recites that the evaluation was expressly conducted in accordance with the evaluation factors set forth by Chapter 82 of the City Code. As such, the Report constitutes substantial, competent evidence. After evaluating each of the trees on the site individually, the Report concludes that only the gumbo limbo tree is a good candidate for relocation, and that the six oak trees are "not good candidates for relocation due to their species, age, size, health/condition, aesthetic qualities and location." See Exhibit F (Report).

The Applicant respectfully requests the City Commission's review and approval of the Report and the February 14, 2025 Tree Relocation and Mitigation Plan consistent with Condition 3(c) of the First Resolution Condition and pursuant to Section 82-30 of the City Code at the May 20, 2025 City Commission. The Applicant expressly reserves all rights under Chapter 70 of the Florida Statutes and all other claims and rights, and commits to pay any reasonable fees associated with this Application. We look forward to meeting with you to discuss the foregoing and how best to address the issues raised by this Application. If you have any questions or concerns regarding this submission, please do not hesitate to phone me.

Very truly yours,



Melissa Tapanes Llahues

cc: Paul C. Savage
Mario Garcia-Serra
Cristina Maria Suarez, City Attorney (csuarez@coralgables.com)