

Hartnett Law P.A.

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February 12, 2025

Hand Delivered at February 12, 2025 Board Hearing

City of Coral Gables Planning and

Zoning Board

427 Biltmore Way

Coral Gables, Florida 33134

Re: Conditional Use Application for subdivision and development of 5810 Maggiore St. -
to be considered February 12, 2025 as Item E-1, 24-8053

Ladies and Gentlemen of the City of Coral Gables Planning and Zoning Board:

I am the Attorney-in-Fact and representative for Katherine P. Hartnett, owner of the property located at 510 Marmore Avenue, which is located adjacent to and immediately west of 5810 Maggiore St., Coral Gables, Florida. Katherine Hartnett has lived at 510 Marmore since she purchased the property around 1965 with her husband James D. Hartnett. Katherine is 86 and still lives at 510 Marmore. I write to continue to oppose the Condition Use Application for subdividing the 5810 Maggiore St. property submitted by Legacy 5810 LLC, and further oppose the attempts for an application to demolish and remove the existing single-family residence in order to then subdivide and build two two-story single-family residences on the existing property. We respectfully request that our arguments and submittals to the Board of Architects (Aug. 15, 2024, meeting), the Planning and Zoning Board (Nov. 14, 2024, meeting) and the City Commission (Jan. 14, 2025, meeting) be incorporated into the record.

It is our understanding that the reason this matter is back on the Planning and Zoning Board's agenda is because the applicant now claims the property must be demolished and considered an involuntary demolition that meets the criteria for an exception under the Building and Zoning Code. Of course, this plea came at the last minute during the Coral Gables City Commission Meeting on Jan 14, 2025 - after the Planning and Zoning Staff recommended denying the application, and after this Planning and Zoning Board voted 7-0 to recommend denial of the application. The pictures of the property in the public domain of Zillow and Multi Listing Service ("MLS) from the 2023 listing for sale before the applicant's January 2024 purchase, and the developer-applicant's 2024 MLS listing to rent the property show that the building was in fine shape and structurally sound. These pictures have been submitted for your review as well at this meeting. Certainly, the issues discussed in the applicant's Engineering Evaluation January 22, 2025 report would most likely have been discovered by a reasonably prudent prospective purchaser

through normal inspections - before they closed on the purchase. We agree with the February 11, 2025, Planning and Staff Report again recommending denial of the application and request you again vote to recommend denial of the application.

The subject property at 5810 Maggiore St. is subject to the 1982 Declaration of Restrictive Covenant (Book 11474, Page 207) and the 1983 Amended Declaration of Restrictive Covenant (Book 11760, Page 606) that restrict the subdivision of the property. The 1982 and 1983 Restrictive Covenants are attached as Composite Exhibit 1. At the time the application was apparently submitted in early-mid 2024, the criteria for a conditional use application included consideration of whether the property was subject to restrictive covenants, encroachments, easements or the like existed to prevent the separation of the site. See Section 14-202.6(F)4 Coral Gables Zoning Code in effect as of June 2024. We submit the application was defective when submitted for the failure to meet three of the 4 criteria in Section 14-202.6(F) and should have been rejected as submitted. Furthermore, we note that Section 14-202.6(E)3 states that where a single-family residence is removed, no permit can be issued for construction of more than one building on the building site. Similar provisions exist in other places in the Code as well. The Applicant's proposed demolition of the existing home that physically sits on three of the four platted lots should also lead The City to reject the application.

As the Applicant Legacy 5810 LLC's submittal mentions in the September 24, 2024, letter submitted as Exhibit A to the Staff Report before you, it appears that the applicant first requested to subdivide the property in 2023, and was advised on December 22, 2023, that the subject property could not be subdivided. See Building Site Determination Letter (No. BUSD-23-12-0012) referenced in the Applicant's September 24, 2024, letter. Notably, this was before the Applicant Legacy 5810 LLC purchased the property on January 26, 2024.

We agree with the Staff Report recommending denial of the application for the criteria expressed in the Staff Report. Additionally, contrary to the applicant's submittal, the 1982 and 1983 Restrictive Deeds are valid. See Save Calusa Trust v. St. Andrews Holdings, LTD., 193 So. 3d 910 (Fla. 3d DCA 2016) (holding restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, was not a title interest subject to extinguishment by Marketable Record Title Act "MRTA"). The City of Coral Gables should uphold its restrictions that were imposed through an agreement by the property owner in the 1980s. Mrs. Hartnett and the neighborhood have an interest in the City of Coral Gables maintaining those restrictions in the 1982 Declaration of Restrictive Covenant and 1983 Amended Declaration of Restrictive Covenant. Given that Mrs. Hartnett's property abuts the Applicant's property, she has an interest that is measured greater than the general interest in the community. See Save Calusa, Inc. v. Miami-Dade County, 355 So. 3d 534, 540-541 (Fla. 3d DCA 2023).

Additionally, Mrs. Hartnett also opposes the application to build 2-story buildings that are not in keeping with the one-story ranch designs in the area. The proposed structures to the north side of 5810 Maggiore property (Lots 11 and 12) would tower over her property, block her view to the east, and apparently remove a live oak tree approximately 30+ feet high (tree # 152), as well as many other trees in the open space. The proposed two new homes of 4 bedrooms each will presumably increase density and use of the property, including the expected addition of the amount

Letter to Coral Gables Planning and Zoning Board

February 12, 2025

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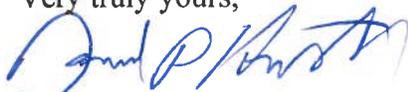
of persons and cars, as well as other land use issues. Additionally, the proposed buildings would not comport with the neighborhood, but rather would give the appearance of an apartment/condominium style buildings in a neighborhood of ranch houses.

There is also nothing in the plans submitted that we have located that would identify where septic tanks would be located, which is a particular concern regarding potential leaking onto Mrs. Hartnett's property to the immediate west on the Marmore Avenue side of the property.

We continue disagree with the Staff Report as to its assessment of item 14-202.6(F).3 that the proposed site maintains and preserves open space and specimen trees and promotes neighborhood compatibility. Rather, the proposed plans eliminate the north side open garden space of the current property that has numerous fruit trees, and 30+ foot oak tree, and other canopy and gardens, and replaces the open space with a new building that did not exist.

We respectfully request that the City enforce the 1982 and 1983 Restrictive Covenants, apply the City Zoning Code, and deny the application.

Very truly yours,



David P. Hartnett

DPH

Enclosure

Exhibit A

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Suite 301
Miami, FL 33176
Tel: 305-598-2000
Fax: 305-675-6171
dhartnett@thehartnettfirm.com

January 13, 2025

Hand Delivered at January 14, 2025 City Commission Hearing
Coral Gables City Commission
405 Biltmore Way
Coral Gables, Florida 33134

Re: Conditional Use Application for subdivision and development of 5810 Maggiore St. -
to be considered January 14, 2025

Ladies and Gentlemen of the Coral Gables City Commission:

I am the Attorney-in-Fact and representative for Katherine P. Hartnett, owner of the property located at 510 Marmore Avenue, which is located adjacent to and immediately west of 5810 Maggiore St., Coral Gables, Florida. Katherine Hartnett has lived at 510 Marmore since she purchased the property around 1965 with her husband James D. Hartnett. James was the son of former Mayor of Coral Gables, Fred Hartnett. James died in July 2023. Katherine is 86 and still lives at 510 Marmore. I write to oppose the Condition Use Application for subdividing the 5810 Maggiore St. property submitted by Legacy 5810 LLC, and further oppose the attempts for an application to demolish and remove the existing single-family residence in order to then subdivide and build two two-story single-family residences on the existing property. The Planning and Zoning Board previously voted unanimously 7-0 to recommend denial of the Application. The Staff Report also recommends denial of the application because it does not satisfy the criteria of the Coral Gables Zoning Code. My previous November 11, 2024, letter in opposition was submitted to the Planning and Zoning Board, and is attached to approved minutes of the Planning and Zoning Board. We ask that be incorporated into the record as well.

The subject property at 5810 Maggiore St. is subject to the 1982 Declaration of Restrictive Covenant (Book 11474, Page 207) and the 1983 Amended Declaration of Restrictive Covenant (Book 11760, Page 606) that restrict the subdivision of the property. The 1982 and 1983 Restrictive Covenants are attached as Composite Exhibit 1. At the time the application was apparently submitted in early-mid 2024, the criteria for a conditional use application included consideration of whether the property was subject to restrictive covenants, encroachments, easements or the like existed to prevent the separation of the site. See Section 14-202.6(F)4 Coral Gables Zoning Code in effect as of June 2024. We submit the application was defective when submitted for the failure to meet three of the 4 criteria in Section 14-202.6(F) and should have been rejected as submitted. Furthermore, we note that Section 14-202.6(E)3 states that where a

single-family residence is removed, no permit can be issued for construction of more than one building on the building site. Similar provisions exist in other places in the Code as well. The Applicant's proposed demolition of the existing home that physically sits on three of the four platted lots should also lead The City to reject the application.

As the Applicant Legacy 5810 LLC's submittal mentions in the September 24, 2024, letter submitted as Exhibit A to the Staff Report before you, it appears that the applicant first requested to subdivide the property in 2023, and was advised on December 22, 2023, that the subject property could not be subdivided. See Building Site Determination Letter (No. BUSD-23-12-0012) referenced in the Applicant's September 24, 2024, letter. Notably, this was before the Applicant Legacy 5810 LLC purchased the property on January 26, 2024.

We agree with the Staff Report recommending denial of the application for the criteria expressed in the Staff Report. Additionally, contrary to the applicant's submittal, the 1982 and 1983 Restrictive Deeds are valid. See Save Calusa Trust v. St. Andrews Holdings, LTD., 193 So. 3d 910 (Fla. 3d DCA 2016) (holding restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, was not a title interest subject to extinguishment by Marketable Record Title Act "MRTA"). The City of Coral Gables should uphold its restrictions that were imposed through an agreement by the property owner in the 1980s. Mrs. Hartnett and the neighborhood have an interest in the City of Coral Gables maintaining those restrictions in the 1982 Declaration of Restrictive Covenant and 1983 Amended Declaration of Restrictive Covenant. Given that Mrs. Hartnett's property abuts the Applicant's property, she has an interest that is measured greater than the general interest in the community. See Save Calusa, Inc. v. Miami-Dade County, 355 So. 3d 534, 540-541 (Fla. 3d DCA 2023).

Additionally, Mrs. Hartnett also opposes the application to build 2-story buildings that are not in keeping with the one-story ranch designs in the area. The proposed structures to the north side of 5810 Maggiore property (Lots 11 and 12) would tower over her property, block her view to the east, and apparently remove a live oak tree approximately 30+ feet high (tree # 152), as well as many other trees in the open space. The proposed two new homes of 4 bedrooms each will presumably increase density and use of the property, including the expected addition of the amount of persons and cars, as well as other land use issues. Additionally, the proposed buildings would not comport with the neighborhood, but rather would give the appearance of an apartment/condominium style buildings in a neighborhood of ranch houses.

There is also nothing in the plans submitted that we have located that would identify where septic tanks would be located, which is a particular concern regarding potential leaking onto Mrs. Hartnett's property to the immediate west on the Marmore Avenue side of the property.

We disagree with the Staff Report as to its assessment of item 14-202.6(F).3 that the proposed site maintains and preserves open space and specimen trees and promotes neighborhood compatibility. Rather, the proposed plans eliminate the north side open space of the current property and replaces the open space with a new building that did not exist.

Letter to Coral Gables City Commission
January 13, 2025
Page 3

We respectfully request that the City enforce the 1982 and 1983 Restrictive Covenants, apply the City Zoning Code, and deny the application.

Very truly yours,

A handwritten signature in black ink, appearing to read "David P. Hartnett". The signature is fluid and cursive, with the first name being the most prominent.

David P. Hartnett

DPH

Enclosure

Cc: City Commissioners (via email)

Composite
Exhibit 1

AMENDED DECLARATION OF RESTRICTIVE COVENANT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the undersigned ROGER CORP., a Panamian Corporation are the owner(s) of the fee simple title to the following described property situated in the City of Coral Gables, Florida:

Lot(s) 11, 12, 13 and 14, Block 119, Section Second amended Plat of Coral Gables Riviera Section Part 10, according to the Plat thereof, recorded in Plat Book No. 31 Page 1, of the Public Records of Dade County, Florida;

AND WHEREAS, the undersigned are the owner(s) of a single family residence situated upon said Lot(s) of the above described property and it is the desire of the undersigned to utilize said Lot(s) as a single building site, the undersigned owner(s) do hereby declare and agree as follows:

- 1. That the single family residence will not be used in violation of any ordinances of the City of Coral Gables now in effect or hereinafter enacted.
2. That the said Lot(s) above described upon which the said single family residence is situated shall not be conveyed, mortgaged, or leased separate or apart from each other and that they will be held together as one tract.

The said owner(s) hereby declare that this said covenant is intended to and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the said Lot(s) above described, and shall be binding upon the said owner(s), their heirs, personal representatives and assigns; and may be released only by the City of Coral Gables, Florida, or its successors, in accordance with the ordinances of said City then in effect.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals at Coral Gables, Dade County, Florida, this the 3 day of March, 19 83.

Signed, sealed and delivered in the presence of:

Witness signatures: (WITNESS 1) and (WITNESS 2)

Eduardo Poma, President of ROGER CORP., a Panamian corporation

STATE OF FLORIDA) COUNTY OF DADE)

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Eduardo Poma to me well known to be the person(s) described in and who executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at Coral Gables, Florida this 3 day of March, 19 83.

My commission expires:

Notary Public signature and title: Notary Public, State of Florida

PREPARED BY: David Raskosky 358-5563 848 Brickell Avenue, Suite 700 Miami, Florida 33131

RECORDED IN OFFICIAL RECORDS BOOKS OF DADE COUNTY FLORIDA RECORD VERIFIED RICHARD P BRINKER CLERK CIRCUIT COURT

APPROVED AS TO FORM ROBERT D ZAHNER CITY ATTORNEY



DECLARATION OF RESTRICTIVE COVENANT

KNOW ALL MEN BY THESE PRESENTS

WHEREAS, the undersigned ROGER CORP., a Panamanian Corporation are the owner(s) of the fee simple title to the following described property situated in the City of Coral Gables, Florida

Lot 11 and
Lot(s) South 44.31 Ft. of Lot 12, Lot 13 Block 119,
Lot 14 Riviera,
Section Second amended Plat of Coral Gables/Section Part 10,

according to the Plat thereof, recorded in Plat Book No. 31,
Page 1, of the Public Records of Dade County, Florida,

AND WHEREAS, the undersigned are the owner(s) of a single family residence situated upon said Lot(s) of the above described property and it is the desire of the undersigned to utilize said Lot(s) as a single building site, the undersigned owner(s) do hereby declare and agree as follows

1. That the single family residence will not be used in violation of any ordinances of the City of Coral Gables now in effect or hereinafter enacted
2. That the said Lot(s) above described upon which the said single family residence is situated shall not be conveyed, mortgaged, or leased separate or apart from each other and that they will be held together as one tract

The said owner(s) hereby declare that this said covenant is intended to and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the said Lot(s) above described, and shall be binding upon the said owner(s), their heirs, personal representatives and assigns, and may be released only by the City of Coral Gables, Florida, or its successors, in accordance with the ordinances of said City then in effect.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals at Coral Gables, Dade County, Florida, this the 9 day of April, 19 82

Signed, sealed and delivered in the presence of

Roberto Selva
(WITNESS 1)

Zera Mares
(WITNESS 2)

Roberto Selva
Roberto Selva, President of
ROGER CORP., a Panamanian Corporation
1981
CORPORATE SEAL
PANAMA

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Roberto Selva to me well known to be the person(s) described in said instrument, who executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and official seal at Coral Gables, Florida this 9 day of April, 19 82

My commission expires

Notary Public, State of Florida
My Commission Expires Nov. 16, 1985
Bonded This Tray Fair - Insurance, Inc.

Juliana Imayo
Notary Public, State of Florida

PREPARED BY

David Rasksoy
848 Brickell Ave., Suite 700
Miami, Florida 33131

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD VERIFIED
RICHARD P. BRINKER
CLERK CIRCUIT COURT

APPROVED AS TO FORM
Robert D Zahner
ROBERT D ZAHNER
CITY ATTORNEY