



To: Ramon Trias, Development Services Assistant Director

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding Story Limitation When Developing Under PAD Ordinance

Date: November 21, 2019

---

As the attached letter (Exhibit A) explains, ALTA Developers is proposing to build a project with a height of 120 feet and 11 stories that will be located at 250 Bird Road, in the City's North Industrial Mixed Use Overlay District. The site is over an acre in size and will be seeking approval as a Planned Area Development (PAD).

Sec. 4-201(E) of the Zoning Code sets forth as follows:

“(6). Height. North Industrial MXD: which have an underlying zoning designation of Industrial, the City Commission may approve up to an additional twenty (20) feet of habitable building height upon finding that the proposed building complies with the following criteria:

- **The building has no more than ten (10) stories.**
- **The additional building height is for the purpose of providing increased floor to ceiling height in residential units.**
- The additional building height enhances the building's aesthetics and the aesthetics of the surrounding area.
- The additional building height does not result in increased density or floor area.”

Under the current proposal, the first and second conditions are not met. The building height permitted for sites zoned Industrial in this area is 100 feet. (Sec. 4-201(E)(6), Zoning Code). In looking at Sec. 4-201(D) of the Zoning Code, however, it is evident that the standards contemplate smaller lots. The instant site is over an acre in size and is proposed to be developed as a PAD. Consequently, it is necessary to look to the PAD regulations for further guidance.

Sec. 3-501(A) of the Zoning Code tells us that:

“The purpose of this Division is to encourage the construction of Planned Area Developments (PAD) by providing opportunity for construction of **quality**

**development on tracts and/or parcels of land through the use of flexible guidelines** which allow the integration of a variety of land uses and densities in one development. Furthermore it is the purpose of the PAD to:

1. Allow for **opportunities for more creative and imaginative development than generally possible under the strict applications of these regulations** so that new development may provide substantial additional public benefit...”

“A PAD may be approved as a conditional use in any zoning district, except single family residential, in accordance with the standards and criteria of this Division...” Sec. 3-501(B), Zoning Code. Therefore, a PAD is permitted at the intended location.

Further, Sec. 3-502(B) of the Zoning Code provides:

“Relation to general zoning, subdivision, or other regulation. **Where there are conflicts between the PAD provisions and general zoning**, subdivision or other regulations and requirements, **these regulations shall apply**, unless the Planning and Zoning Board recommends, and the City Commission finds, in the particular case:

1. That the PAD provisions do not serve public benefits to a degree at least equivalent to such general zoning, subdivision, or other regulations or requirements, or
2. That actions, designs, construction or other solutions proposed by the applicant, although not literally in accord with these PAD regulations, satisfy public benefits to at least an equivalent degree.

It is clear from the plain language of the PAD regulations, that the City Commission may provide for a departure from zoning regulations, if the Commission deems that the project is providing public benefits “to a degree at least equivalent to such general zoning, subdivision, or other regulations or requirements.”

The attached letter explains that allowing the additional story within the 120-foot envelope permits the building’s tower to comply with the 100-foot setback that is uniform for other buildings along the corridor and allows for the tower to be designed as a “U” instead of an “O”. The applicant explains that an “O” shaped tower would increase the mass of the building which is facing Bird Road, could lead to a canyon effect on that street, would result in the decreased flow of air and light, and would obstruct the view of many of the apartment units.

In addition, the applicant states that the following additional public benefits are provided by the project: (1) the mix of uses is considerably more elaborate than other mixed use projects in the North Industrial Mixed Use District with its office component being the largest of any project in the area; (2) developing as one unified mixed use development is preferable to the existing condition where outdated buildings are disconnected; and (3) high quality public open spaces are being provided.

In addition, in staff’s opinion, allowing the additional story(ies) within the 120 foot envelope permits for a diminished floor plate which results in better design and is in line with urban planning principles and guidelines.

Nothing in this opinion should be construed to provide for additional density or intensity. In consultation with staff, this opinion is issued pursuant to Secs. 2-252(e)(1) and (8) of the City Code and Sec. 2-702 of the City's Zoning Code authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City.

November 2019

BOCA RATON  
FT. LAUDERDALE  
JACKSONVILLE  
KEY LARGO  
MIAMI  
ORLANDO  
PALM BEACH



STUART  
TALLAHASSEE  
TAMPA  
VERO BEACH  
WEST PALM BEACH  
WINTER PARK

**GUNSTER**  
FLORIDA'S LAW FIRM FOR BUSINESS

**MEMORANDUM**

**TO:** Miriam Ramos, City Attorney  
**FROM:** Mario Garcia-Serra, Esq.  
**IN RE:** ALTA Project / 250 Bird Road / PAD Relief for Story Limitation  
**DATE:** October 30, 2019

---

This memo is intended to supplement the memo which I previously sent to you dated August 29<sup>th</sup> (revised on October 17<sup>th</sup>), which addresses the above referenced topic, in part. This memo serves to further elaborate and summarize the legal and policy justifications for utilizing the Planned Area Development (“PAD”) regulations of Division 5 of Article 3 of the City’s Zoning Code so as to permit 11 stories within the 120 feet of height which is permitted for the ALTA project site subject to City Commission review and approval.

**Background Information**

ALTA Developers is under contract to purchase a 1.4-acre site located at 250 Bird Road which is indicated in the aerial photograph attached as Exhibit “A”, (the “Property”). The Property is located within the City’s North Industrial Mixed Use Zoning District. ALTA is proposing to develop a mixed use office / retail / apartment project which will consist of 215 apartment units, approximately 11,000 square feet of retail space, and approximately 30,000 square feet of office space in a building which is 120 feet in height with 11 stories (the “Project”). Renderings of the Project are included in the attached Exhibit “B”. A building of 120 feet in height and 10 stories is what is typically permitted in the North Industrial Mixed Use District subject to City Commission approval. However, the City’s PAD regulations do grant the City Commission the authority and discretion to permit 11 stories within the 120 feet of vertical height otherwise permitted if the City Commission makes the findings required by Section 3-503 of the Zoning Code. A copy of the City’s PAD regulations is attached to this memo as Exhibit “C”.

**Analysis**

The purpose of the City’s PAD regulations is to provide for better largescale development which otherwise would not be possible due to “rigid adherence” to otherwise



applicable standards and requirements of the Zoning Code. This purpose is explicitly stated in Section 3-501 of the Zoning Code which states, in relevant part, as follows (emphasis added):

**Division 5. Planned Area Development**

**Section 3-501 Purpose and applicability**

A. Purpose. The purpose of this Division is to encourage the construction of Planned Area Developments (PAD) by providing greater opportunity for construction of quality development on tracts and/or parcels of land through the use of flexible guidelines which allow the integration of a variety of land uses and densities in one development. Furthermore it is the purpose of the PAD to:

1. Allow opportunities for more creative and imaginative development than generally possible under the strict application of these regulations so that new development may provide substantial additional public benefit.

...

4. Encourage harmonious and coordinated development of the site, through the use of a variety of architectural solutions to promote Mediterranean architectural attributes, promoting variation in bulk and massing, preservation of natural features...and promote urban design amenities.

5. Require the application of professional planning and design techniques to achieve overall coordinated development eliminating the negative impacts of unplanned and piecemeal developments likely to result from rigid adherence to the standards found elsewhere in these regulations.

The proposed utilization of the PAD regulations to permit an 11<sup>th</sup> story for this Project is exactly in line with the stated purposes above. As indicated in the alternative project design renderings attached as Exhibit “D”, it is possible to build, pursuant to the existing applicable Mixed Use District regulations, a building with the same amount of floor area in 10 stories but this would result in an “O” shaped tower as opposed to a “U” shaped tower, that would have the following negative urban design impacts:

- The 10-story alternative design would considerably increase the mass of the building which is facing Bird Road.
- The increased mass of the 10-story design could lead to a “canyon” type effect fronting the street which the City has taken considerable effort to avoid through its planning and design efforts.
- The “O” shaped tower would result in a decreased flow of air and light as compared to the “U” shaped tower.
- The “O” shaped tower would also obstruct the views of many of the apartment units.

Further evidence that the strict adherence to the 10-story limitation is not appropriate for this PAD project is the fact that the proposed apartment tower will still be at a maximum height of 120 feet which is the maximum height permitted in the area and what is already prevalent as indicated in the attached Exhibit “E”. The PAD regulations were enacted to address this sort of situation where the underlying zoning standards are being complied with in spirit and intent but where some flexibility should be allowed so as to facilitate a better project design<sup>1</sup>. The public interest is far better served by a higher quality “U” shaped tower design than it would be served by limiting a 120-foot tall building to 10 stories which ostensibly serves no public interest. The 10-story limitation may lead to higher floor to ceiling heights within units but that is not really a public interest but a private interest especially when considering that the Project’s proposed floor to ceiling height of 9 feet is more than adequate for this type of multifamily unit.

Indeed the public interest served, which is critical to the review of any PAD project, is better served by an 11-story “U” shaped tower for the reasons mentioned above as well as by the fact that the Project overall has the following additional public benefits:

- The Project’s mix of uses is considerably more elaborate than other mixed use projects in the North Industrial Mixed Use District. Its office component is by far the largest of any project in the area and will provide a critical “work” component to the area.
- Developing the Property as one unified mixed use development is a far improvement over its existing piecemeal as-built condition where outdated buildings are disconnected functionally and aesthetically.

---

<sup>1</sup> An important historical fact to note is that the PAD regulations, which were adopted in January of 2007, predate the adoption of the 10-story condition in the North Industrial Mixed Use District and this 10-story limitation is the only story limitation anywhere in the Zoning Code. This historical fact makes clear that the PAD regulations reference to the underlying permitted height being the maximum height permitted is concerned only with height as that term is and always has been defined in the Zoning Code which is a measurement of vertical distance in feet and not in number of stories especially considering that the Zoning Code’s definition of story does not prescribe maximum or minimum heights for a story.

Miriam Ramos, City Attorney

October 30, 2019

Page 4

- The high quality public open spaces which the Project will provide are in stark contrast to the existing condition.

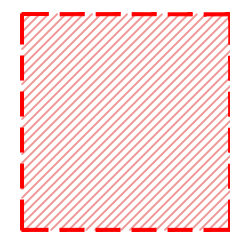
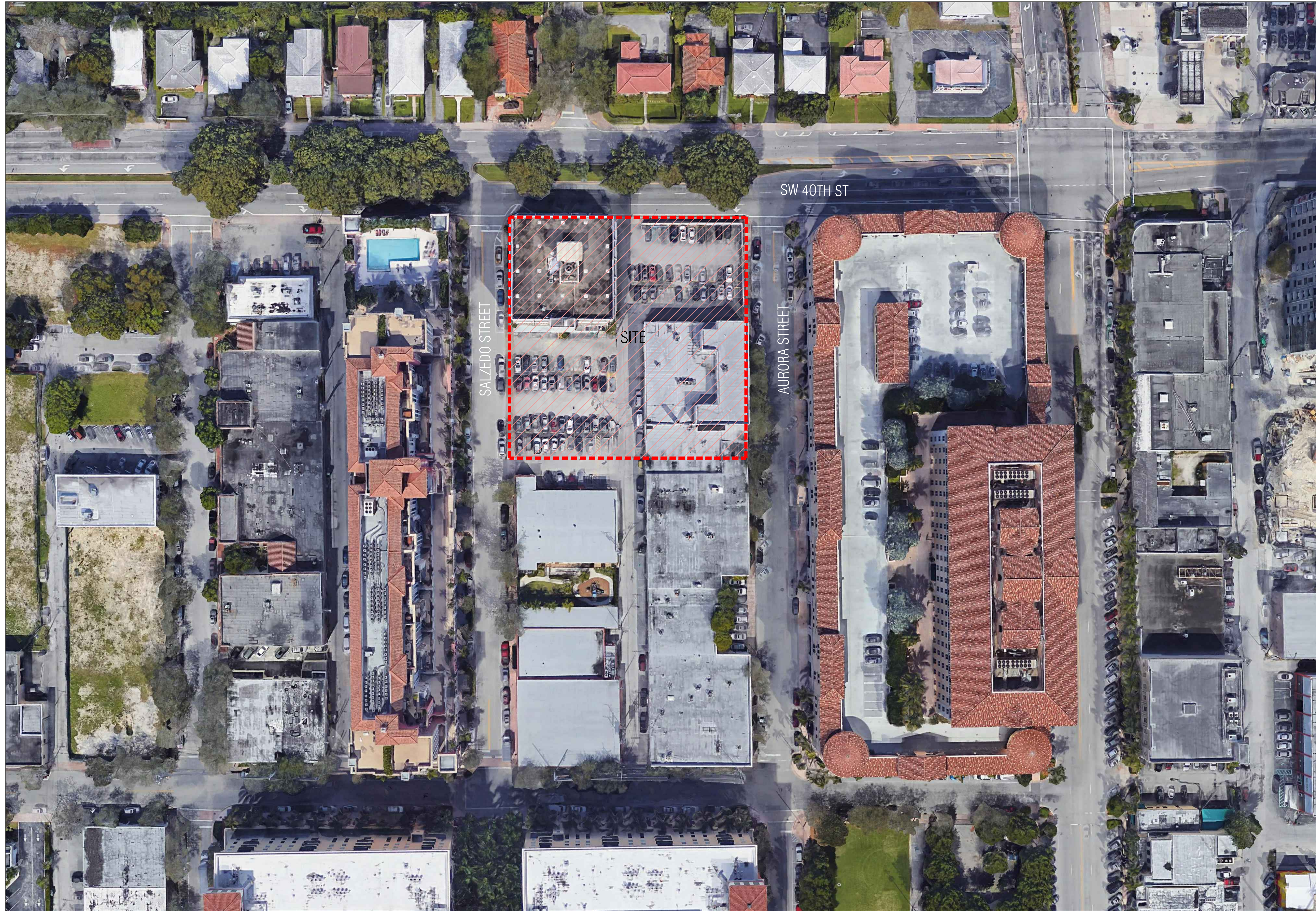
### **Conclusion**

Since the Property is over an acre in size and complies with the dimensional requirements of a PAD, it is eligible for review and approval as a PAD. The PAD regulations allow the City Commission authority and discretion to permit an additional story within the 120 feet of height which is permitted subject to their review and approval. In order to approve the proposed PAD, the City Commission would need to find that the Project complies with the criteria of Section 3-503 of the Zoning Code. Attached as Exhibit "F" is a summary of how the Project complies with these criteria.

ACTIVE 11357883.2

# Exhibit A

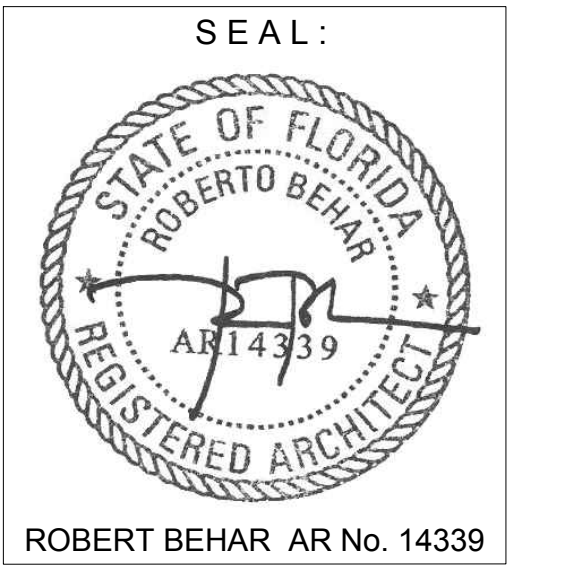




SITE

LOCATION MAP

SCALE: N.T.S.



**MERRICK 250**

250 BIRD RD.  
 CORAL GABLES, FL 33146

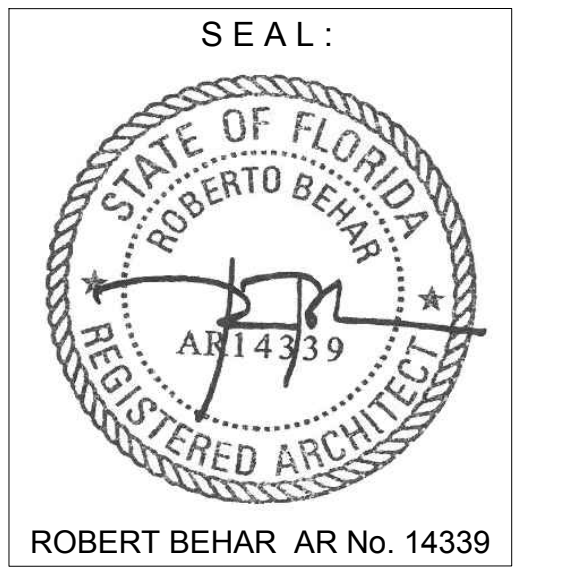
DATE: 09-23-2019  
 PROJECT NO: 19-017  
 DRAWING NAME:

SHEET NO:  
**CP-0.0**



# Exhibit B





**MERRICK 250**  
250 BIRD RD.  
CORAL GABLES, FL 33146

© 2017 BEHAR FONT PARTNERS, P.A. THE DESIGN AND DRAWINGS FOR THIS PROJECT ARE PROPERTY OF THIS ARCHITECT AND ARE PROTECTED UNDER THE COPYRIGHT PROTECTION ACT.

DATE: 09-23-2019  
PROJECT NO: 19-017  
DRAWING NAME:  
SHEET NO:

**R 1.0**

**RENDERING**





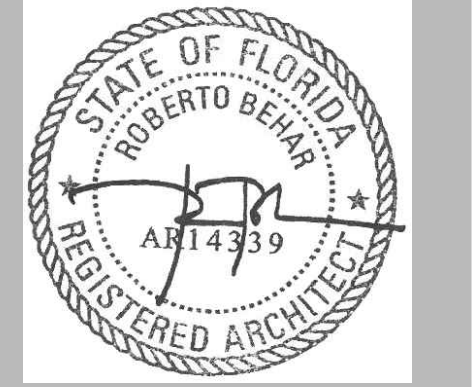
BEHAR • FONT

PARTNERS, P. A.  
ARCHITECTURE • PLANNING • INTERIORS

4033 PONCE DE LEON BLVD., CORAL GABLES, FLORIDA 33146  
TEL: 305.740.5442 FAX: 305.740.5443  
E-MAIL: info@beharfont.com

21 SCOTT STREET, BUFORD, GEORGIA 30518  
TEL: 678.765.2008

SEAL:



ROBERT BEHAR AR No. 14339

MERRICK 250

250 BIRD RD.  
CORAL GABLES, FLORIDA 33146

© 2013 BEHAR FONT PARTNERS, P.A. THE DESIGN AND DRAWINGS FOR THIS PROJECT ARE PROPERTY OF THIS ARCHITECT AND ARE PROTECTED UNDER THE COPYRIGHT PROTECTION ACT.

DATE: 09-16-2019

PROJECT NO:

DRAWING NAME:

SHEET NO:

R 1.1

RENDERING



# Exhibit C

## ARTICLE 3 - DEVELOPMENT REVIEW

10. Does not add property to the parcel proposed for development.

11. Does not increase the height of the buildings.

B. Other revisions. Any other adjustments or changes not specified as “minor” shall be granted only in accordance with the procedures for original approval.

### **Section 3-411. Expiration of approval.**

An application for a building permit shall be made within one (1) year of the date of the conditional use approval, and all required certificates of occupancy shall be obtained within one (1) year of the date of issuance of the initial building permit. Permitted time frames do not change with successive owners and an extension of time may be granted by the Development Review Official for a period not to exceed two (2) years but only within the original period of validity.

### **Division 5. Planned Area Development**

#### **Section 3-501. Purpose and applicability.**

A. Purpose. The purpose of this Division is to encourage the construction of Planned Area Developments (PAD) by providing greater opportunity for construction of quality development on tracts and/or parcels of land through the use of flexible guidelines which allow the integration of a variety of land uses and densities in one development. Furthermore it is the purpose of the PAD to:

1. Allow opportunities for more creative and imaginative development than generally possible under the strict applications of these regulations so that new development may provide substantial additional public benefit.
2. Encourage enhancement and preservation of lands which are unique or of outstanding scenic, environmental, cultural and historical significance.
3. Provide an alternative for more efficient use and, safer networks of streets, promoting greater opportunities for public and private open space, and recreation areas and enforce and maintain neighborhood and community identity.
4. Encourage harmonious and coordinated development of the site, through the use of a variety of architectural solutions to promote Mediterranean architectural attributes, promoting variations in bulk and massing, preservation of natural features, scenic areas, community facilities, reduce land utilization for roads and separate pedestrian and vehicular circulation systems and promote urban design amenities.
5. Require the application of professional planning and design techniques to achieve overall coordinated development eliminating the negative impacts of unplanned and piecemeal developments likely to result from rigid adherence to the standards found elsewhere in these regulations.

B. Applicability. A PAD may be approved as a conditional use in any zoning district, except single family residential, in accordance with the standards and criteria of this Division, the procedures of Article 3, Division 4 and other applicable regulations.

#### **Section 3-502. Standards and criteria.**

The City Commission may approve a conditional use for the construction of a PAD subject to compliance with the development criteria and minimum development standards set out in this Division.

A. Uses permitted. Unless approved as a mixed use development, the uses permitted within a PAD shall be those uses specified and permitted within the underlying District in which the PAD is located.

## ARTICLE 3 - DEVELOPMENT REVIEW

- B. Relation to general zoning, subdivision, or other regulations. Where there are conflicts between the PAD provisions and general zoning, subdivision or other regulations and requirements, these regulations shall apply, unless the Planning and Zoning Board recommends and the City Commission finds, in the particular case:
1. That the PAD provisions do not serve public benefits to a degree at least equivalent to such general zoning, subdivision, or other regulations or requirements, or
  2. That actions, designs, construction or other solutions proposed by the applicant, although not literally in accord with these PAD regulations, satisfy public benefits to at least an equivalent degree.
- C. Minimum development standards. Any parcel of land for which a PAD is proposed must conform to the following minimum standards:
1. Minimum site area. The minimum site area required for a PAD shall be not less than one (1) acre for residentially or commercially designated property.
  2. Configuration of lands. The parcel of land for which the application is made for a PAD shall be a contiguous unified parcel with sufficient width and depth to accommodate the proposed use. The minimum lot width shall be two hundred (200) feet and minimum lot depth shall be one hundred (100) feet.
  3. Floor area ratio for a PAD. The floor area ratio for a PAD shall conform to the requirements for each intended use in the underlying zoning districts; provided, however, that the total combined floor area ratio for all uses within the PAD shall be allowed to be distributed throughout the PAD.
  4. Density for multi-family dwellings and overnight accommodations. The density requirements for multi-family dwellings and overnight accommodations shall be in accordance with the provisions of the applicable zoning district.
  5. Transfer of density within a PAD. The density within a PAD may be permitted to be transferred throughout the development site provided that such transfer is not intrusive on abutting single family residential areas.
  6. Landscaped open space. The minimum landscaped open space required for a PAD shall be not less than twenty (20%) percent of the PAD site. Landscaped or urban open space which is located on elevated portions of the site may count toward this requirement.
  7. Height of buildings. The maximum height of any building in a PAD shall conform to the provisions of the underlying zoning district.
  8. Design requirements. All buildings within a PAD shall conform to the following:
    - a. Architectural relief and elements (i.e. windows, cornice lines, etc.) shall be provided on all sides of buildings, similar to the architectural features provided on the front façade;
    - b. Facades in excess of one hundred and fifty (150) feet in length shall incorporate design features such as: staggering of the façade, use of architectural elements such as kiosks, overhangs, arcades, etc.;
    - c. Parking garages shall include architectural treatments compatible with buildings and structures which occupy the same street;
    - d. Where necessary and appropriate to enhance public pedestrian access, no block face shall have a length greater than two hundred and fifty (250) feet without a public pedestrian

## ARTICLE 3 - DEVELOPMENT REVIEW

passageway or alley providing through access; and

- e. All buildings, except accessory buildings, shall have their main pedestrian entrance oriented towards the front or side property line.
9. Perimeter and transition. Any part of the perimeter of a PAD which fronts on an existing street or open space shall be so designed as to complement and harmonize with adjacent land uses with respect to scale, density, setback, bulk, height, landscaping and screening. Properties which are adjacent to residentially zoned or used land shall be limited to a maximum height of forty five (45) feet within one hundred (100) feet of the adjacent right-of-way.
10. Minimum street frontage; building site requirement, number of buildings per site, lot coverage and all setbacks. There shall be no specified minimum requirements for street frontage, building sites, number of buildings within the development, or lot coverage.
11. Platting and/or replatting of development site. Nothing contained herein shall be construed as requiring the platting and/or replatting of a development site for a PAD provided, however, that the Planning and Zoning Board and City Commission may require the platting or replatting of the development site when it determines that the platting or replatting would be in the best interest of the community.
12. Facing of buildings. Nothing in this Division shall be construed as prohibiting a building in a PAD from facing upon a private street when such buildings are shown to have adequate access in a manner which is consistent with the purposes and objectives of these regulations and such private street has been recommended for approval by the Planning and Zoning Board and approved by the City Commission.
13. Off-street parking and off-street loading standards and requirements. The off-street parking and off-street loading standards and requirements for a PAD shall conform to the requirements of the applicable zoning district. Off-street parking for bicycles shall be provided as may be required by the Planning and Zoning Board and approved by the City Commission. Where the parking for the development is to be located within a common parking area or a parking garage, a restrictive covenant shall be filed reserving within the parking area or the parking garage the required off-street parking for each individual building and/or use and such off-street parking spaces shall be allocated proportionately.
14. Boats and recreational vehicle, parking. No boats and/or recreational vehicles shall be parked on the premises of a PAD unless such boats and/or recreational vehicles are located within an enclosed garage.
15. Accessory uses and structures. Uses and structures which are customarily accessory and clearly incidental to permitted uses and structures are permitted in a PAD subject to the provisions of Article 5, Division 1. Any use permissible as a principal use may be permitted as an accessory use, subject to limitations and requirements applying to the principal use.
16. Signs. The number, size, character, location and orientation of signs and lighting for signs for a PAD shall be in accordance with Article 5, Division 19.
17. Refuse and service areas. Refuse and service areas for a PAD shall be so designed, located, landscaped and screened and the manner and timing of refuse collection and deliveries, shipment or other service activities so arranged as to minimize impact on adjacent or nearby properties or adjoining public ways, and to not impede circulation patterns.
18. Minimum design and construction standards for private streets and drainage systems. The minimum design and construction standards for private streets in a PAD shall meet the same standards as required for public streets as required by the Public Works Department of the City of Coral Gables. The minimum construction standards for drainage systems shall be in accordance with the Florida Building Code.
19. Ownership of PAD. All land included within a PAD shall be owned by the applicant requesting approval of such development, whether that applicant be an individual, partnership or corporation,

## ARTICLE 3 - DEVELOPMENT REVIEW

or groups of individuals, partnerships or corporations. The applicant shall present proof of the unified control of the entire area within the proposed PAD and shall submit an agreement stating that if the owner(s) proceeds with the proposed development they will:

- a. Develop the property in accordance with:
    - i. The final development plan approved by the City Commission for the area.
    - ii. Regulations existing when the PAD ordinance is adopted.
    - iii. Such other conditions or modifications as may be attached to the approval of the special-use permit for the construction of such PAD.
  - b. Provide agreements and declarations of restrictive covenants acceptable to the City Commission for completion of the development in accordance with the final development plan as well as for the continuing operation and maintenance of such areas, functions and facilities as are not to be provided, operated or maintained at general public expense.
  - c. Bind the successors and assigns in title to any commitments made under the provisions of the approved PAD.
20. Compatibility with historic landmarks. Where an historic landmark exists within the site of a PAD the development shall be required to be so designed as to insure compatibility with the historic landmark.
21. Easements. The City Commission may, as a condition of PAD approval, require that suitable areas for easements be set aside, dedicated and/or improved for the installation of public utilities and purposes which include, but shall not be limited to water, gas, telephone, electric power, sewer, drainage, public access, ingress, egress, and other public purposes which may be deemed necessary by the City Commission.
22. Installation of utilities. All utilities within a PAD including but not limited to telephone, electrical systems and television cables shall be installed underground.
23. Mixed-uses within a PAD. A PAD may be so designed as to include the establishment of complementary and compatible combinations of office, hotel, multi-family and retail uses which shall be oriented to the development as well as the district in which the development is located.
24. Common areas for PADs. Any common areas established for the PAD shall be subject to the following:
- a. The applicant shall establish a property owner's association for the ownership and maintenance of all common areas, including open space, recreational facilities, private streets, etc. Such association shall not be dissolved nor shall it dispose of any common areas by sale or otherwise (except to an organization conceived and established to own and maintain the common areas), however, the conditions of transfer shall conform to the Development Plan.
  - b. Membership in the association shall be mandatory for each property owner in the PAD and any successive purchaser that has a right of enjoyment of the common areas.
  - c. The association shall be responsible for liability insurance, local taxes, and the maintenance of the property.
  - d. Property owners that have a right of enjoyment of the common areas shall pay their pro rata share of the cost, or the assessment levied by the association shall become a lien on the property.
  - e. In the event that the association established to own and maintain commons areas or any successor organization, shall at any time after the establishment of the PAD fail to maintain the common areas in reasonable order and condition in accordance with the Development Plan, the City Commission may serve written notice upon such association and/or the owners

## ARTICLE 3 - DEVELOPMENT REVIEW

of the PAD and hold a public hearing. If deficiencies of maintenance are not corrected within thirty (30) days after such notice and hearing the City Commission shall call upon any public or private agency to maintain the common areas for a period of one year. When the City Commission determines that the subject organization is not prepared or able to maintain the common areas such public or private agency shall continue maintenance for yearly periods.

- f. The cost of such maintenance by such agency shall be assessed proportionally against the properties within the PAD that have a right of enjoyment of the common areas and shall become a lien on said properties.
  - g. Land utilized for such common areas shall be restricted by appropriate legal instrument satisfactory to the City Attorney as common areas in perpetuity in accordance with the provisions of Article 5, Division 23. Such instrument shall be recorded in the Public Records of Dade County and shall be binding upon the developer, property owners association, successors, and assigns and shall constitute a covenant running with the land.
- D. Exemptions to PAD minimum development standards for configuration of land requirements. Exemptions to minimum development standards may be considered for Assisted Living Facilities (ALF) and/or Affordable Housing Facilities that would allow parcels of land to be noncontiguous as prescribed herein. These exemptions shall only be available to PAD developments that satisfy all of the following criteria:
- 1. The project demonstrates that it would result in beneficial effects, serve important public interests, and not result in significant adverse impacts to the environment, residential areas, public services and facilities, or the desired character of an area.
  - 2. A minimum of seventy five (75%) percent of the total gross square footage of all buildings and ancillary ALF support uses (including square footage of recreational areas, support services, mechanical, etc) is dedicated as an assisted living facility and/or affordable housing facility.
  - 3. A maximum of two (2) noncontiguous parcels may be combined.
  - 4. The two (2) noncontiguous properties have the following designations:
    - a. Commercial land use designation(s) and commercial zoning designation(s); or
    - b. Industrial land use designation and industrial zoning designation.
  - 5. The proposed noncontiguous parcels are within one hundred and twenty (120) feet of one another. Such distance shall be measured by a straight line between the closest property lines of the properties.

### **Section 3-503. Required findings.**

The Planning and Zoning Board shall recommend to the City Commission the approval, approval with modifications, or denial of the plan for the proposed PAD and shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth with particularity in what respects the proposal would or would not be in the public interest. These findings shall include, but shall not be limited to the following:

- A. In what respects the proposed plan is or is not consistent with the stated purpose and intent of the PAD regulations.
- B. The extent to which the proposed plan departs from the zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, size, area, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest.

## ARTICLE 3 - DEVELOPMENT REVIEW

- C. The extent to which the proposed plan meets the requirements and standards of the PAD regulations.
- D. The physical design of the proposed PAD and the manner in which said design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, provide for and protect designated common open areas, and further the amenities of light and air, recreation and visual enjoyment.
- E. The compatibility of the proposed PAD with the adjacent properties and neighborhood as well as the current neighborhood context including current uses.
- F. The desirability of the proposed PAD to physical development of the entire community.
- G. The conformity of the proposed PAD with the goals and objectives and Future Land Use Maps of the City of Coral Gables Comprehensive Plan.

### **Section 3-504. Binding nature of approval for a PAD.**

All terms, conditions, restrictive covenants, safeguards and stipulations made at the time of approval of the Development Plan for a PAD shall be binding upon the applicant or any successors in interest. Deviations from approved plans or failure to comply with any requirements, conditions, restrictions or safeguards imposed by the City Commission shall constitute a violation of these regulations.

### **Section 3-505. General procedures for plan approval.**

- a. Pre-application conference - Planning department. Before submitting an application for approval of a Planned Area Development the applicant or his representative shall confer with the City of Coral Gables Planning Department before entering into binding commitments or incurring substantial expense. The applicant is encouraged to submit a tentative land use sketch for review and to obtain information on any projected plans, programs or other matters that may affect the proposed development. The pre-application conference should address, but shall not be limited to, such matters as:
  - 1. The proper relationship between the proposed development and the surrounding uses and the effect of the plan upon the Comprehensive Plan of the City of Coral Gables.
  - 2. The adequacy of existing and proposed streets, utilities and other public facilities and services within the proposed Planned Area Development.
  - 3. The character, design and appropriateness of the proposed land uses and their adequacy to encourage desirable living conditions, to provide separation and screening between uses where desirable and to preserve the natural and scenic areas and vistas of property.
  - 4. The adequacy of open space and recreation areas existing and proposed to serve the needs of the development.
- B. Pre-application review. The applicant shall distribute a copy of his plans or exhibits to the Director of Building and Zoning, Public Works Director, Public Service Director, Planning Director, Fire Chief and the Historical Resources Director (if applicable) and upon their review of the plans they shall advise the applicant of any recommended revisions, changes or additional information necessary before the filing of a formal application.
- C. Board of Architects review. After preliminary review by the departments, and the Historical Resources Department (if applicable), the applicant shall revise the plans to incorporate all recommended revisions and changes and shall submit such plans to the Board of Architects for review and preliminary approval prior to filing a formal application for Planning and Zoning Board review.
- D. Development plan--General requirements.
  - 1. Professional services required: plans for buildings or structures within a Planned Area Development shall

## ARTICLE 3 - DEVELOPMENT REVIEW

be prepared by a registered Architect with the assistance of a registered Engineer and a registered Landscape Architect, all being qualified under the laws of the State of Florida to prepare such plans.

2. Legal description of site: should the legal description of the site for a Planned Area Development contain a metes and bounds description, such description shall be prepared by a registered land surveyor. The legal description shall be accompanied by a map at a scale suitable for reproduction for advertising for public hearing, showing exact location of the development.
3. Development proposal: the Development Plan shall consist of a map or map series and any technical reports and supporting data necessary to substantiate, describe or aid the Development Plan. The plans for the development proposal shall include the following written and graphic materials:
  - a. Site condition map: site condition map or map series indicating the following:
    - i. Title of Planned Area Development and name of the owner(s) and developer.
    - ii. Scale, date, north arrow and the relationship of the site to such external facilities as highways, roads, streets, residential areas, shopping areas and cultural complexes.
    - iii. Boundaries of the subject property, all existing streets, buildings, water courses, easements, section lines and other important physical features within the proposed project. Other information on physical features affecting the proposed project as may be required.
    - iv. Existing contour lines at one foot intervals. Datum shall be National Geodetic Vertical Datum (N.G.V.D.) (if required by City Staff).
    - v. The location of all existing storm drainage, water, sewer, electric, telephone and other utility provisions.
  - b. Plan of pedestrian and vehicular circulation showing the location and proposed circulation system of arterial, collector, local and private streets, including driveways, service areas, loading areas and points of access to existing public rights-of-way and indicating the width, typical sections and street names. The applicant is encouraged to submit one (1) or more companion proposals for a pedestrian system, transit system or other alternative for the movement of persons by means other than privately owned automobiles.
  - c. Exterior facade elevations (if deemed appropriate or necessary by City Staff) of all proposed buildings to be located on the development site.
  - d. Isometrics or perspective and/or massing model(s) (if deemed appropriate or necessary by City Staff) of the proposed development.
  - e. Map of existing land use.
  - f. Existing and proposed lot(s) lines and/or property lines.
  - g. Master site plan--A general plan for the use of all lands within the proposed Planned Area Development. The plan shall serve as the generalized zoning for the development and shall guide the location of permissible uses and structures. Such plan shall show the general location, function and extent of all components or units of the plan, indicating the proposed gross floor area and/or floor area ratio of all existing and proposed buildings, structures and other improvements including maximum heights, types and number of dwelling units, landscaped open space provisions such as parks, passive or scenic areas, common areas, leisure time facilities, and areas of public or quasi-public institutional uses.
  - h. Location and size of all existing and proposed signs.
  - i. Existing and proposed utility systems including sanitary sewers, storm sewers and/or storm water drainage system and water, electric, gas and telephone lines. The applicant shall submit a statement indicating what proposed arrangements have been made with appropriate agencies for



## ARTICLE 3 - DEVELOPMENT REVIEW

the provision of needed utilities to and within the Planned Area Development including, water supply, sewer, storm drainage collection and disposal, electric power, gas, and telephone.

- j. General landscape plan indicating the proposed treatment of materials used for public, private and common open spaces and treatment of the perimeter of the development including buffering techniques such as screening, berms and walls, significant landscape features or areas shall be noted as shall the provisions for same.
- k. Description of adjacent land areas, including land uses, zoning, densities, circulation systems, public facilities, and unique natural features of the landscape.
- l. Proposed easements for utilities, including water, power, telephone, storm sewer, sanitary sewer and fire lanes showing dimensions and use.
- m. Location of proposed off-street parking. Smaller developments (as determined by the Planning Director) shall also be required to include stall size, aisle widths, location of attendant spaces, number of spaces by use, number of standard and compact spaces.
- n. Location and designation of historic landmarks located within the development site which have been approved as provided within the Zoning Code or notation of those structures which may be worthy of historic designation.
- o. Certified survey showing property boundary, existing buildings and their dimensions, setbacks from streets, (public and private) and property lines, easements, streets, alleys, topographical data, water areas, unique natural features, existing vegetation and all trees with an upright trunk of either nine (9) or more inches in circumference (as measured at the narrowest point below four and one-half (4½) feet above ground level) or twelve (12) or more feet in height (if required by City Staff).
- p. Proposed development schedule indicating the appropriate date when construction of the development can be expected to begin and be completed, including initiation and completion dates of separate phases of a phased development and the proposed schedule for the construction and improvement of common areas within said phases, including any auxiliary and/or accessory buildings and required parking.
- q. Location and designation of proposed traffic regulation devices within the development.
- r. Statistical information including:
  - i. Total square footage and/or acreage of the development site.
  - ii. Maximum building coverage expressed as a percentage of the development site area.
  - ii. The land area (expressed as a percent of the total site area) devoted to:
    - (a) Landscaped open space; and
    - (b) Common areas usable for recreation or leisure purposes.
- s. Copies of any covenants, easements and/or agreements required by this section or any other ordinance and/or regulations for the Planned Area Development.

### **Section 3-506. Application and review procedures for approval of plans.**

- A. Application. The applicant for a Planned Area Development shall file a written application therefore with the Planning Department on forms prepared by such department. Such application shall be accompanied by fifteen (15) sets of required plans, technical reports, update reports and/or exhibits. All plans shall have the details needed to enable the department heads, Fire Chief, Boards and City Commission to determine whether the proposed development complies with this section and all other applicable ordinances and regulations of the City. The plans shall have the preliminary approval of the Board of Architects as provided for under Section 3-506(C) herein. Upon receipt of such completed

## ARTICLE 3 - DEVELOPMENT REVIEW

application, all supporting data and exhibits and payment of the required costs and fees, the time periods established in this subsection shall commence. Any application for approval of a plan for a Planned Area Development which meets the definition of a development of regional impact under Chapter 28 of the Florida Administrative Code and/or Development of County Impact as defined under Chapter 33A of the Code of Metropolitan Dade County must be accompanied by the reports, studies and recommendations required for Developments of Regional Impact and/or Development of County Impact provided, however, that the provisions of Development of County Impact does not apply where the development meets the requirement of a Development of Regional Impact.

- B. Review of plans. Upon acceptance of the application, the Planning Department shall transmit the Plan Package to the Director of Building and Zoning, Public Works Director, Public Service Director, Fire Chief and the Historical Resources Director (if applicable) for their review and comments. Within sixty (60) days from the filing date, the Director of Building and Zoning, Public Works Director, Public Service Director, Planning Director, Fire Chief and the Historical Resources Director (if applicable) shall review the preliminary plan and shall submit in writing to the Planning and Zoning Board their comments concerning the proposed development. The comments shall include any changes which should be made to bring the plans in compliance with applicable rules and regulations.
- C. Public hearing. The Planning and Zoning Board shall hold a public hearing within ninety (90) days from the date of filing the application. Such public hearing shall be in accordance with the provisions of Section 3-302 herein. The Planning and Zoning Board shall recommend to the City Commission the approval, approval with modifications, or denial of the plan for the proposed Planned Area Development and shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth particularly in what respects the proposal would or would not be in the public interest. These findings shall include, but shall not be limited to the following:
  - 1. In what respects the proposed plan is or is not consistent with the stated purpose and intent of the Planned Area Development regulations.
  - 2. The extent to which the proposed plan departs from the zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, size, area, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest.
  - 3. The extent to which the proposed plan meets the requirements and standards of the Planned Area Development regulations.
  - 4. The physical design of the proposed Planned Area Development and the manner in which said design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, provide for and protect designated common open areas, and further the amenities of light and air, recreation and visual enjoyment.
  - 5. The compatibility of the proposed Planned Area Development with the adjacent properties and neighborhood.
  - 6. The desirability of the proposed Planned Area Development to physical development of the entire community.
  - 7. The conformity of the proposed Planned Area Development with the goals and objectives and Future Land Use Maps of the City of Coral Gables Comprehensive Plan.
- D. Approval by the City Commission. The City Commission upon receipt of the recommendations of the Planning and Zoning Board shall approve, approve with modifications, or disapprove the Preliminary Development Plan for the proposed Planned Area Development. The approval of the Development Plan shall be by Ordinance. No building permits shall be issued, no construction shall be permitted and no plats shall be recorded on land within a Planned Area Development until the Final Development Plan has been approved by the City Commission.

## ARTICLE 3 - DEVELOPMENT REVIEW

- E. Notice of hearings before the Planning and Zoning Board and City Commission for PADs shall be in accordance with the provisions of Article 3 Division 3 of these regulations.

### **Section 3-507. Amendments to the development plan.**

Amendments to the Development Plan shall be considered as major or minor. Minor amendments as specified in Section 3-508(A) herein may be approved administratively by the Building and Zoning Department with recommendations from other departments, as needed. Major amendments as specified in Section 3-508(B) herein shall be subject to the review and approval process set forth in Section 3-507. The Building and Zoning Department, with recommendations from other departments, as needed, shall determine whether proposed changes are major or minor. Requests for major amendments may be made no more than once (1) per twelve (12) month period.

- A. Minor amendments. Minor amendments are changes which do not substantially alter the concept of the Planned Area Development in terms of density, floor area ratio, land usage, height, provision of landscaped open space, or the physical relationship of elements of the development. Minor amendments shall include, but shall not be limited to, small changes in floor area, density, lot coverage, height, setbacks, landscaped open space, the location of buildings, parking, or realignment of minor streets which do not exceed twenty (20%) percent of the guideline limits contained within this Article specific to that type of development or that which is shown on the approved development plan.
- B. Major amendments. Major amendments represent substantial deviations from the development plan approved by the City Commission. Major amendments shall include, but not be limited to significant changes in floor area, density, lot coverage, height, setbacks, landscaped open space, the location of buildings, or parking, which exceed twenty (20%) percent of the guidelines contained within this Article specific to that type of development or that which is shown on the approved Development Plan, or changes in the circulation system.

### **Section 3-508. Time limitation of approval and construction.**

- A. Approvals granted pursuant to this Division shall obtain a building permit and begin construction within eighteen (18) months from time of the approval. Failure to obtain a building permit and/or begin construction shall render the approval null and void. Permitted time frames do not change with successive owners, provided however, one (1), six (6) month extension of time may be granted by the Development Review Official.
- B. If the Planned Area Development is to be developed in stages, the developer must begin construction of each stage within the time limits specified in the Development Plan (or subsequent updates). Construction in each phase shall include all the elements of that phase specified in the Development Plan.

### **Section 3-509. Monitoring construction.**

The City Manager or his designee shall periodically monitor the construction within the Planned Area Development with respect to start of construction and Development Phasing. If the City Manager or his designee finds that either the developer has failed to begin construction within the specified time period or that the developer is not proceeding in accordance with the approved Development Phasing with respect to timing of construction of an approved mix of project elements, he shall report to the City Commission and the City Commission shall review the Planned Area Development and may extend the time for start of construction or the length of time to complete a phase, revoke approval of the Planned Area Development or recommend that the developer amend the Development Plan subject to procedures specified in Section 3-508 herein.

### **Section 3-510. Mediterranean Village Planned Area Development.**

For rules and regulations regarding the approved PAD bounded by Ponce de Leon Boulevard on the west, Sevilla Avenue on the north, Galiano Street on the east, and Malaga Avenue on the south, see "Appendix C - Mediterranean Village Planned Area Development."

# Exhibit D





BEHAR • FONT

PARTNERS, P. A.  
ARCHITECTURE • PLANNING • INTERIORS

4533 PONCE DE LEON BLVD. CORAL GABLES, FLORIDA 33146  
TEL: 305.745.5442 FAX: 305.745.5443  
E-MAIL: info@beharfont.com

21 SCOTT STREET, BUFORD, GEORGIA 30518  
TEL: 678.765.2008

SEAL:



ROBERT BEHAR AR No. 14339

MERRICK 250

250 BIRD RD.  
CORAL GABLES, FLORIDA 33146

© 2013 BEHAR FONT PARTNERS, P.A. THE DESIGN AND DRAWINGS FOR THIS PROJECT ARE PROPERTY OF THIS ARCHITECT AND ARE PROTECTED UNDER THE COPYRIGHT PROTECTION ACT.

DATE: 09-16-2019

PROJECT NO:

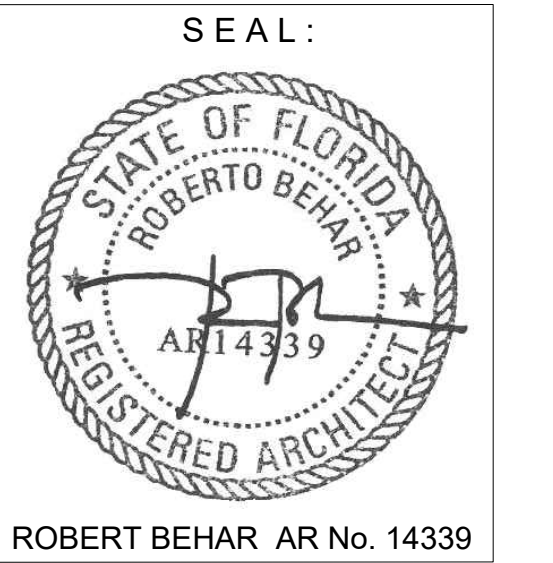
DRAWING NAME:

SHEET NO:

R 1.1-2

RENDERING





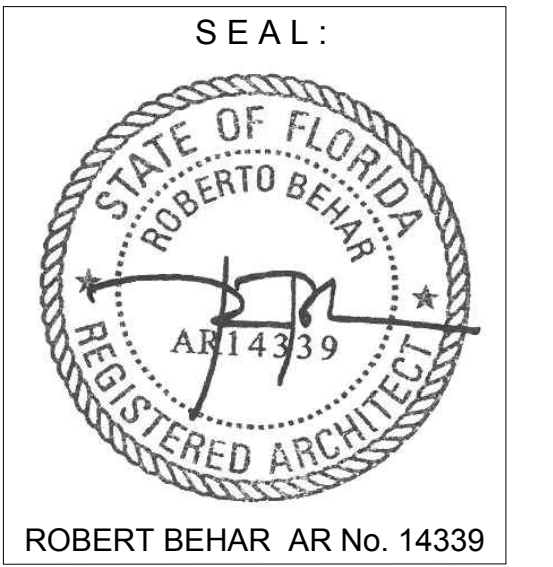
**MERRICK 250**  
250 BIRD RD.  
CORAL GABLES, FL 33146

© 2017 BEHAR FONT PARTNERS, P.A. THE DESIGN AND DRAWINGS FOR THIS PROJECT ARE PROPERTY OF THIS ARCHITECT AND ARE PROTECTED UNDER THE COPYRIGHT PROTECTION ACT.



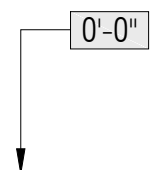
# Exhibit E





**MERRICK 250**  
 250 BIRD RD.  
 CORAL GABLES, FL 33146

© 2017 BEHAR FONT PARTNERS, P.A. THE DESIGN AND DRAWINGS FOR THIS PROJECT ARE PROPERTY OF THIS ARCHITECT AND ARE PROTECTED UNDER THE COPYRIGHT PROTECTION ACT.



HEIGHT TAG

MASSING CONTEXT

DATE: 09-23-2019  
 PROJECT NO: 19-017  
 DRAWING NAME:  
 MASSING CONTEXT  
 SHEET NO:



# Exhibit F

## Proposed Findings for PAD Approval

### **Section 3-503. Required findings.**

The Planning and Zoning Board shall recommend to the City Commission the approval, approval with modifications, or denial of the plan for the proposed PAD and shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth with particularity in what respects the proposal would or would not be in the public interest. These findings shall include, but shall not be limited to the following:

- A. In what respects the proposed plan is or is not consistent with the stated purpose and intent of the PAD regulations.

*The proposed plan provides a harmonious, coordinated and unified large-scale mixed use development which would not otherwise be possible due to “rigid adherence” to otherwise applicable standards and requirements of the Zoning Code. The proposed plan provides variation in setbacks, bulk, and massing, consistent with the stated purpose and intent of the PAD regulations.*

- B. The extent to which the proposed plan departs from the zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, size, area, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest.

*The proposed plan departs from the underlying zoning and subdivision regulations with respect to the number of stories permitted, but not the height. Based on the renderings and the massing created when the 10-story height limitation is applied, rigid adherence to that regulation is not in the public interest. Adhering to the 10-story height would result in (1) an increase in the mass of the building facing Bird Road, (2) a “canyon” type effect fronting Bird Road, (3) a decrease in the flow of air and light, and (4) obstruction of views for many of the residential units. None of these effects are in the public interest. On the other hand, the 11-story design does not increase the height of the building but does allow for a decrease in the mass of the building facing Bird Road, as well as an improvement in the views from several apartments and the flow of air and light. The 11-story departure from the underlying zoning regulations is in the public interest.*

- C. The extent to which the proposed plan meets the requirements and standards of the PAD regulations.

*The proposed plan meets the requirements and standards of the PAD regulations.*

- D. The physical design of the proposed PAD and the manner in which said design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, provide for and protect designated common open areas, and further the amenities of light and air, recreation and visual enjoyment.

*The physical design of the proposed PAD makes adequate provision for public services and provides adequate control over vehicular traffic by internalizing services such as trash and deliveries. The proposed PAD also provides for designated common open areas on the south side of the property where an easement will be dedicated to the City for public access. The proposed design affords a recess along the northern façade providing flow of air and light, which is permitted by the 11<sup>th</sup> story and also provides for generous public open spaces on the ground level.*

- E. The compatibility of the proposed PAD with the adjacent properties and neighborhood as well as the current neighborhood context including current uses.

*The adjacent properties and neighborhood on the south side of Bird Road are consistent and compatible with the proposed PAD. Specifically, the five closest buildings along Bird Road are over 100 feet in height, most within a few feet of the proposed 120 feet of height for the proposed PAD. The proposed PAD is compatible with the lower density and height across Bird Road because it provides only 45 feet in height for the first 100 feet from Bird Road. The proposed PAD is further compatible with the neighborhood as it provides a mix of uses, including office use, all of which are compatible with this area of the City.*

- F. The desirability of the proposed PAD to physical development of the entire community.

*The proposed PAD is desirable to the physical development of the entire community. It will provide public open space and a mix of uses that is very desirable to the community. This block has for a long time been a missing piece of the overall goal of developing this area of the City into a mixed use village.*

- G. The conformity of the proposed PAD with the goals and objectives and Future Land Use Maps of the City of Coral Gables Comprehensive Plan.

*The PAD conforms with the Future Land Use Map and the Coral Gables Comprehensive Plan, including the followings goals and objectives:*

***Goal FLU-1. Protect, strengthen, and enhance the City of Coral Gables as a vibrant community ensuring that its neighborhoods, business opportunities, shopping, employment centers, cultural activities, historic value, desirable housing, open spaces, and natural resources make the City a very desirable place to work, live, and play.***

*The Project includes nearly 14,500 square feet of open space, along with 215 new residential units to be located near employment centers and in close proximity to mass transit.*

***Objective FLU-1.2. Efforts shall continue to be made to control blighting influences, and redevelopment shall continue to be encouraged in areas experiencing deterioration.***

*The redevelopment of this Property will replace underutilized buildings with the kind of development the City wants to encourage.*

***Objective FLU-1.7.2. The City shall continue to enforce the Mediterranean architectural provisions by providing incentives for infill and redevelopment that address, at a minimum, the impact on the following issues:***

- ***Surrounding land use compatibility***
- ***Historic resources***
- ***Neighborhood identity***
- ***Public facilities including roadways***
- ***Intensity/density of the use***
- ***Access and parking***
- ***Landscaping and buffering***

*The Project avails itself of Mediterranean architectural design and in exchange provides a mixed-use building compatible with the surrounding neighborhood.*

***Goal DES-1. Maintain the City as a livable city, attractive in its setting and dynamic in its urban character.***

*The addition of a new mixed-use building at this location is in keeping with the livability of the area and adds a new dynamism which is presently lacking.*

***Objective DES-1.1. Preserve and promote high quality, creative design and site planning that is compatible with the City's architectural heritage, surrounding development, public spaces and open spaces.***

***Policy DES-1.2.1. Continue the award of development bonuses and/or other incentives to promote Coral Gables Mediterranean design character providing for but not limited to the following: creative use of architecture to promote public realm improvements and pedestrian amenities; provide a visual linkage between contemporary architecture and the existing and new architectural fabric; encourage landmark opportunities; and creation of public open spaces.***

*The Project is an example of high quality, creative design and site planning compatible with the City's architectural heritage.*

***Objective DES-1.2. Preserve the Coral Gables Mediterranean design and architecture.***

*The existing structures on the Property have been declared to not be historically significant by the Historic Resources Department and are proposed to be replaced with Mediterranean style design and architecture which may one day be deemed architecturally significant.*

***Policy MOB-1.1.2. Encourage land use decisions that encourage infill, redevelopment, and reuse of vacant or underutilized parcels that support walking, bicycling, and public***

***transit use.***

*The Project efficiently redevelops underutilized parcels into a new mixed-use building. This redevelopment provides greater housing and retail opportunities in close proximity to transit, employment centers, parks, and schools.*

**From:** [Ramos, Miriam](#)  
**To:** [Paulk, Enga](#)  
**Subject:** Opinion re. story limitation when developing under PAD Ordinance  
**Date:** Thursday, November 21, 2019 11:02:50 AM  
**Attachments:** [opinion - story limitation when developing a PAD.docx](#)  
[image005.png](#)  
**Importance:** High

---

Enga, please format and publish and please send me a final in PDF once it is done. The opinion is being issued to Ramon Trias and needs to go out today.

Thanks,

*Miriam Soler Ramos, Esq., B.C.S.*

*City Attorney*

*Board Certified by the Florida Bar in  
City, County, and Local Government Law  
City of Coral Gables*

405 Biltmore Way, 2<sup>nd</sup> Floor  
Coral Gables, FL 33134  
(305) 460-5084 direct dial



**Public Records:** This e-mail is from the City of Coral Gables – City Attorney’s Office and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this email in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. The State of Florida has a broad public records law. Most written communications to or from State and Local Officials regarding State or Local businesses are public record available to the public upon request.

**Confidentiality:** The information contained in this transmission may be legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

**CITY OF CORAL GABLES**  
**CITY ATTORNEY'S OFFICE**

OPINION REGARDING STORY LIMITATION WHEN DEVELOPING UNDER PAD ORDINANCE

As the attached letter explains, ALTA Developers is proposing to build a project with a height of 120 feet and 11 stories that will be located at 250 Bird Road, in the City's North Industrial Mixed Use Overlay District. The site is over an acre in size and will be seeking approval as a Planned Area Development (PAD).

Sec. 4-201(E) of the Zoning Code sets forth as follows:

“(6). Height. North Industrial MXD: which have an underlying zoning designation of Industrial, the City Commission may approve up to an additional twenty (20) feet of habitable building height upon finding that the proposed building complies with the following criteria:

- **The building has no more than ten (10) stories.**
- **The additional building height is for the purpose of providing increased floor to ceiling height in residential units.**
- The additional building height enhances the building's aesthetics and the aesthetics of the surrounding area.
- The additional building height does not result in increased density or floor area.”

Under the current proposal, the first and second condition are not met. The building height permitted for sites zoned Industrial in this area is 100 feet. (Sec. 4-201(E)(6), Zoning Code). In looking at Sec. 4-201(D) of the Zoning Code, however, it is evident that the standards contemplate smaller lots. The instant site is over an acre in size and is proposed to be developed as a PAD. Consequently, it is necessary to look to the PAD regulations for further guidance.

Sec. 3-501(A) of the Zoning Code tells us that:

“The purpose of this Division is to encourage the construction of Planned Area Developments (PAD) by providing opportunity for construction of **quality development on tracts and/or parcels of land through the use of flexible guidelines** which allow the integration of a variety of land uses and densities in one development. Furthermore it is the purpose of the PAD to:

1. Allow for **opportunities for more creative and imaginative development than generally possible under the strict applications of these regulations** so that new development may provide substantial additional public benefit...”

“A PAD may be approved as a conditional use in any zoning district, except single family residential, in accordance with the standards and criteria of this Division...” Sec. 3-501(B), Zoning Code. Therefore, a PAD is permitted at the intended location.

Further, Sec. 3-502(B) of the Zoning Code provides:

“Relation to general zoning, subdivision, or other regulation. **Where there are conflicts between the PAD provisions and general zoning**, subdivision or other regulations and requirements, **these regulations shall apply**, unless the Planning and Zoning Board recommends, and the City Commission finds, in the particular case:

1. That the PAD provisions do not serve public benefits to a degree at least equivalent to such general zoning, subdivision, or other regulations or requirements, or
2. That actions, designs, construction or other solutions proposed by the applicant, although not literally in accord with these PAD regulations, satisfy public benefits to at least an equivalent degree.

It is clear from the plain language of the PAD regulations, that the City Commission may provide for a departure from zoning regulations, if the Commission deems that the project is providing public benefits “to a degree at least equivalent to such general zoning, subdivision, or other regulations or requirements.”

The attached letter explains that allowing the additional story within the 120-foot envelope permits the building’s tower to comply with the 100-foot setback that is uniform for other buildings along the corridor and allows for the tower to be designed as a “U” instead of an “O”. The applicant explains that an “O” shaped tower would increase the mass of the building which is facing Bird Road, could lead to a canyon effect on that street, would result in the decreased flow of air and light, and would obstruct the view of many of the apartment units.

In addition, the applicant states that the following additional public benefits are provided by the project: (1) the mix of uses is considerably more elaborate than other mixed use projects in the North Industrial Mixed Use District with its office component being the largest of any project in the area; (2) developing as one unified mixed use development is preferable to the existing condition where outdated buildings are disconnected; and (3) high quality public open spaces are being provided.

In addition, in staff’s opinion, allowing the additional story(ies) within the 120 foot envelope permits for a diminished floor plate which results in better design and is in line with urban planning principles and guidelines.

Nothing in this opinion should be construed to provide for additional density or intensity. In consultation with staff, this opinion is issued pursuant to Secs. 2-252(e)(1) and (8) of the City Code and Sec. 2-702 of the City’s Zoning Code authorizing the City Attorney’s Office to issue opinions and interpretations on behalf of the City.

November 2019