

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2010-128

RESOLUTION OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA DENYING THE APPEAL FILED BY ROGELIO TOVAR, APPLICANT (APPLICATION PROPOSAL NO. BA-10-05-3859), PURSUANT TO SECTION 3.605 OF THE CORAL GABLES ZONING CODE, THEREBY UPHOLDING THE DECISION OF THE BOARD OF ADJUSTMENT, IN CONNECTION WITH THE APPLICANT'S VARIANCE REQUEST TO ALLOW FOR THE PROPOSED ADDITION IN CONJUNCTION WITH THE EXISTING RESIDENCE TO EXCEED THE ALLOWABLE FLOOR AREA FACTOR MAXIMUM OF SEVEN THOUSAND ONE HUNDRED AND FORTY (7,140) SQUARE FEET AS REQUIRED BY SECTION 4-101(D)(10)(A) OF THE CORAL GABLES, "ZONING CODE," AND MAINTAIN A FLOOR ARE OF SEVEN THOUSAND EIGHT HUNDRED AND THIRTY-FIVE (7,835) SQUARE FEET, FOR SUBJECT PROPERTY LOCATED AT 1221 MARIOLA COURT, AND MORE PARTICULARLY LEGALLY DESCRIBED AS LOT(S) 77 AND 78, BLOCK 50, COUNTRY CLUB SECTION NO. 4, PB/PG: 10/57.

WHEREAS, Rogelio Tovar (Applicant) filed an appeal to the Coral Gables Commission from a decision of the Board of Adjustment at its regular meeting of June 7, 2010, (Application No. BA-10-05-3859) in accordance with Section 3.605 of the Zoning Code, for the purpose of granting a variance to exceed the allowable floor are factor being provided as required by Section 4-101(D)(10)(a) at the subject property located on 1221 Mariola Court (more particularly described as Lot(s) 77 and 78, Block 50, Country Club Section No. 4, PB/PG: 10/57) should be allowed; and

WHEREAS, the aforementioned application was duly advertised and heard by the Board of Adjustment of the City of Coral Gables at its meeting of June 7, 2010; and

WHEREAS, at the aforementioned public hearing of June 7, 2010, the Board of Adjustment passed and adopted Resolution No. 4991-ZB by a 5-2 vote denying the variance request for the appeal by said applicant to allow the proposed addition in conjunction with the existing residence to exceed the allowable floor area factor at the property located on 1221 Mariola Court, Coral Gables, Florida, and

WHEREAS, Rogelio Tovar filed an appeal to the Coral Gables City Commission from the aforementioned decision of the Board of Adjustment, which was duly advertised on July 2, 2010.

WHEREAS, on July 13, 2010, the City Commission after reviewing the record and decision of the Board of Adjustment and having given an opportunity for all interested parties to be heard, it is the opinion of the City Commission that the grounds and reasons for said appeal, in accordance with Section 3-806 of the Zoning Code entitled "Standards for Variances" were found to be insufficient to merit a reversal of the ruling made by the Board in Resolution No. 4991-ZB, therefore, the appeal should be denied; and

WHEREAS, a motion to deny the appeal and uphold the decision of the Board of Adjustment was offered by Commissioner Anderson, seconded by Vice Mayor Kerdyk; and

WHEREAS, on July 13, 2010, the City Commission voted by a 3-2 vote, to deny variance request to allow the proposed addition in conjunction with the existing residence to exceed the allowable floor area factor the property located at 1221 Mariola Court, Coral Gables, Florida;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the appeal be and the same is hereby denied and the decision of the Board of Adjustment is hereby affirmed.

SECTION 3. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS THIRTEENTH DAY JULY, A.D., 2010.

(Moved: Anderson / Seconded: Kerdyk)

(Yea: Cabrera, Kerdyk, Anderson)

(Majority: (3-2) Vote)

(Nays: Withers, Slesnick)

(Agenda Item: E-1)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY

CITY OF CORAL GABLES

OFFICE OF THE CITY ATTORNEY

- MEMORANDUM-

**TO: HONORABLE CITY
COMMISSION**

DATE: July 28, 2010

FROM:

SUBJECT: CITY ZONING CODE



**Elizabeth M Hernandez
City Attorney**

At the City Commission meeting of July 13, 2010, Mr. Hernandez quoted from the City Zoning Code a specific provision which he attempted to rely upon for purposes of circumventing the criteria established by the City Commission for the granting of a variance. That section is 3-801 entitled "Purpose and Applicability". It provides:

Section 3-801. Purpose and applicability.

Except as provided in Article 3, Division 9 for variances from platting standards, the purpose of this Division is to establish a procedure for granting variances from the literal terms of these regulations where there are practical difficulties or unnecessary and undue hardships so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.

The provisions of Section 3-801 provide the general intent of the Zoning Code provisions which in turn require the establishment of procedures. Those procedures are found at section 3-806 which are in fact the standards and provide as follows:

Section 3-806. Standards for variances.

A. In order to authorize any variance from the terms of these regulations, the Board of Adjustment or Historic Preservation Board, as the case may be, shall find:

- 1. That special conditions and circumstances exist which are peculiar to the land, structure of building involved and which are not applicable to other lands, structures or buildings in the same zoning district.**

2. That the special conditions and circumstances do not result from the actions of the applicant.
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations and would work unnecessary and undue hardship on the applicant.
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will not change the use to one that is not permitted in the zoning district or different from other land in the same district.
7. That the granting of the variance will be in harmony with the general intent and purpose of these regulations, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
8. That the granting of the variance is appropriate for the continued preservation of an historic landmark or historic landmark district.

B. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of land, structures, or buildings in other districts, shall be considered grounds for the issuance of a variance.

C. Under no circumstances shall the Board of Adjustment or the Historic Preservation Board grant a variance to permit the following:

1. A use not permitted in the district involved, or any use expressly or by implication by the terms of these regulations in said district; and
2. The reduction or diminishing of a building site upon which a single-family residence or duplex has heretofore been constructed.

D. The Board of Adjustment or the Historic Preservation Board may impose such reasonable conditions on the grant of a variance in order to ensure that the variance will have a minimum impact on surrounding properties.

Staff's recommendation, the Board Adjustment's decision and ultimately the City Commission decision was appropriately based on those standards and Mr. Hernandez reliance of the general purpose and intent provisions was misplaced. Please let me know if you have any further questions.

Cc: Patrick G. Salerno, City Manager
Maria A. Menendez, Assistant City Manager
Eric Riel, Planning Director
Manuel Lopez, Interim Building & Zoning Director
Martha Salazar-Blanco, Zoning Official

EMH/zo