



**City of Coral Gables
CITY COMMISSION MEETING
October 30, 2012**

E-1

ITEM TITLE:

Case File LHD 2003-18 REVISED (continued from October 16, 2012 City Commission meeting)

Lowell J. Kuvin, Esq., on behalf of J. C. and Waldo Toyos, III, applicants and property owners, has reinstated an appeal to the Coral Gables City Commission from a decision of the Historic Preservation Board at its regular meeting of May 20, 2010.

SUMMARY OF APPEAL:

The Historic Preservation Board at its regular hearing on May 20, 2010 made a motion to deny the de-designation of the historic designation of the property at 1044 Coral Way, legally described as Lot 1 and the west 32 feet of Lot 2, Block 11, Coral Gables Section "A", PB 5-102. (*Passed unanimously 8-0*). The applicant is appealing the decision of the Historic Preservation Board to deny the removal of local historic landmark status from the property.

On September 14, 2010, the City Commission passed and adopted Resolution No. 2010-198 remanding this matter and providing specific instructions to the Historic Preservation Board concerning the de-designation of the subject property:

- a. Ascertain whether the board has determined substantially the same facts on May 20, 2010 for de-designation as was heard by the board at its June 21, 2007 meeting. If it is concluded in the affirmative, then the Historic Preservation Board is barred from hearing this case again based on the principles of collateral estoppel and res judicata, and subsequently dismissal should follow, thereby preserving the applicants right to file an appeal before the Coral Gables City Commission regarding this finding.
- b. Further stipulating that if it is determined that there are substantially new facts that are presented before the Historic Preservation Board that were not decided before, then City Staff will have an opportunity to appeal same before the Coral Gables City Commission.

The applicant filed a petition in Circuit Court seeking to review this remand order. The Circuit Court affirmed the decision of the City Commission.

On August 23, 2012, in accordance with the remand instructions of the City Commission, the Historic Preservation Board met to review the issue of whether res judicata barred the Board's consideration at a hearing on May 20, 2010, of the application for removal of the 1044 Coral Way designation as a historic property. The Board found that res judicata did not bar consideration of that application on the merits.

Therefore, the City Commission will now consider the merits of the appeal of the May 20, 2010 decision of the Historic Preservation Board to deny the de-designation of the historic designation of the property at 1044 Coral Way on the merits.

BACKGROUND:

The following is a brief timeline of events that eventually resulted in the demolition of the historic structure at 1044 Coral Way.

The property was designated by the Historic Preservation Board as a Local Historic Landmark on April 15, 2004 (Resolution number HPB22-LHD2003-18). A Certificate of Appropriateness application was received for the construction of an addition, the rehabilitation of the historic residence, and the installation of at-grade improvements in July, 2004. A variance was requested at that time to exceed the maximum allowable floor area. Case File COA (SP) 2004-17 was reviewed by the Historic Preservation Board and on January 20, 2005 a motion to approve the design and the requested variances failed; however, the Board passed a motion to waive the one-year limitation related to the determination of the variances as specified in Section 24-10 of the "Zoning Code". The Owners did not resubmit plans to the Board.

At the beginning of May 2006, the home at 1044 Coral Way collapsed and was cited as an unsafe structure by City of Coral Gables Code Enforcement. The Historical Resources Department signed a permit for an emergency chain link fence for the perimeter of the property. A letter was then issued by the Building Official on May 10, 2006 deeming the structure unsafe. A request for a Certificate of Appropriateness [Case File COA (SP) 2006-13]] for demolition was reviewed by the Historic Preservation Board on August 17, 2006. A motion was passed to approve the application with staff's recommendations pending receipt of more information: additional supporting architectural drawings, photographs, structural report and forensic report.

On October 19, 2006, the matter was continued and presented to the Historic Preservation Board. The Board passed a motion to allow the demolition of the property with the understanding that as much as possible be salvaged from the ruins, saved and secured to be used in the future home and allowed the demolition with the understanding that the original historic building would be re-created unless the Board agrees to a lesser solution when they see the specific plans with additions.

In December 2006, a special meeting of the Historic Preservation Board was held to revisit the application regarding the demolition of 1044 Coral Way. The meeting was held to determine whether the conditions imposed at the August 2006 meeting had been satisfied. After discussion about reviewing future plans and designs, the Board accepted that the requirements set forth in the August Board motion were met. In February 2007, the demolition of the structure was complete.

On June 21, 2007, the Historic Preservation Board reviewed Case File COA (SP) 2007-13, a Special Certificate of Appropriateness for the construction of a new residence and the installation of at-grade improvements. The Board approved the design of the new residence with conditions and noted that the requested revisions could be brought to the Historical Resources Department staff for administrative approval. On August 2, 2007, staff issued a letter granting administrative approval of the requested revisions.

At the same June 21, 2007 meeting the Historic Board also denied a request from the owner to remove the local historic landmark designation of the property. The Historic Preservation Board determined at the August 23, 2012 meeting that this denial was merely procedural and not on the merits, so res judicata did not apply. This determination was not appealed by the City.

On December 20, 2007, the Historic Preservation Board revisited Case File COA (SP) 2007-13 when it was discovered that a variance from the Coral Gables Zoning Code was needed to implement the previously approved design. The Board granted a variance to allow the proposed residence to exceed the maximum allowable square foot floor area. The Board also granted an extension for the expiration of the approved variance to be three years, rather than the usual two-year expiration date for variances.

On May 20, 2010, the Historic Preservation Board considered a request for the removal of the local historic designation of the property. The Board's responsibility was to determine whether the property meets the criteria for designation as a Local Historic Landmark in its current state, without the original structures. The Historic Preservation Board discussed the criteria for designation and determined that the property still had historical significance due to its associations with the Merrick family. The Board made a motion denying the de-designation of the property, and to allow the owners to come back to the Historic Preservation Board, knowing that the Board has to approve the design of the new house (one that is sympathetic to the historic character of the street) because that was the agreement previously made at the time of demolition, with latitude to change the size of the house from that which was previously approved.

ADVISORY BOARD/COMMITTEE RECOMMENDATION(S):

Date	Board/Committee	Recommendation
04/15/2004	Historic Preservation Board	LHD 2003-18 – The Board made a motion to designate the property as a local historic landmark.
01/20/2005	Historic Preservation Board	COA (SP) 2004-17 - A motion to approve the design and related variances failed. The Board passed a second motion to waive the one-year limitation on variances.
08/17/2006	Historic Preservation Board	COA (SP) 2006-13 – The Board made a motion to approve demolition of the structure pending receipt of more information.
10/19/2006	Historic Preservation Board	COA (SP) 2006-13 – Continuation of the case. The Board made a motion to allow demolition with conditions regarding re-creation of the structure and salvaging materials.
12/1/2006	Historic Preservation Board	COA (SP) 2006-13 – Continuation of the case. The Board determined that the requirements from the August 2006 meeting were met and demolition could proceed.
06/21/2007	Historic Preservation Board	COA (SP) 2007-13 – The Board made a motion to approve design of new residence and at-grade improvements and allowing staff to administratively approve requested revisions.
06/21/2007	Historic Preservation Board	COA (SP) 2007-14 – The Board made a motion to deny the de-designation of the property as a local historic landmark.
12/20/2007	Historic Preservation Board	COA (SP) 2007-13 REVISED– The Board made a motion to approve a variance needed to implement the previously approved design.
05/20/2010	Historic Preservation Board	LHD 2003-18 REVISED– The Board made a motion to deny the de-designation of the property as a local historic landmark.
09/14/2010	City Commission	Passed and Adopted Resolution 2010-198. This was appealed to the Circuit Court by the applicant
2012	Circuit Court	Affirmed the remand decision of the City Commission
08/23/2012	Historic Preservation Board	The Board found that res judicata did not bar consideration of the application on the merits

PUBLIC NOTIFICATION(S):

Date	
10/04/2012	Notice of Public Hearing mailed to 1,000 foot radius of property.
10/05/2012	Daily Business Review

APPROVED BY:

Department Director	City Attorney	City Manager
		

ATTACHMENTS:

1. Resolution No. 2010-198
2. Verbatim Transcript of August 23, 2012 Historic Preservation Board meeting.
3. Letter dated September 19, 2012 to Lowell J. Kuvin from Historic Preservation Officer
4. September 14, 2010 City Commission Item E-1 with supporting documentation