

IN THE CITY OF CORAL GABLES  
BUILDING & ZONING DEPARTMENT

CASE NO.: BA-10-05-3859

IN RE:

1221 Mariola Court

Lot: 77 & 78, Block: 50

Coral Gables Country Club Sec. 4, PB/PG: 10/57

Rogelio Tovar - Applicant

Rogelio Tovar - Owner

Jorge L. Hernandez - Architect/Engineer

CITY OF CORAL GABLES BOARD OF ADJUSTMENT

Commission Chambers  
405 Biltmore Way  
Coral Gables, Florida  
Monday, 8:01 a.m.  
June 7, 2010

1 APPEARANCES:

2 BOARD MEMBERS PRESENT:

3 JOHN C. LUKACS, CHAIRMAN  
4 DR. JOE BRIGGLE, VICE-CHAIRMAN  
5 SERGIO ARTIGUES  
6 TONY BELLO  
7 DR. KATHERINE DE BLIJ  
8 VIVIAN DE LAS CUEVAS-DIAZ  
9 JORGE MORA

10 FROM THE CITY:

11 ELIZABETH GONZALEZ, SECRETARY

12 FROM THE HOMEOWNER:

13 JORGE L. HERNANDEZ  
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1 THEREUPON:

2 (The following proceedings were had:)

3 \* \* \* \* \*

4 (Thereupon, all participants were sworn.)

5 \* \* \* \* \*

6 THE CHAIRMAN: Our next item is Item  
7 BA-10-05-3859, 1221 Mariola Court.

8 Mr. Hernandez.

9 MR. HERNANDEZ: Good morning. Let me sign  
10 in, please.

11 MS. GONZALEZ: The applicant is requesting  
12 a variance to exceed the allowable minimum  
13 square foot floor area factor of the residence  
14 by 695 square feet. The permitted floor area  
15 on this property is 7,140, and they're asking  
16 to be allowed to be at 7,835 square feet, due  
17 to an addition that's being proposed over the  
18 garage.

19 The Code has specific parameters, to  
20 maintain the residence in harmony with the lot  
21 rear site area. We cannot find any unusual  
22 circumstances with the property site area, and,  
23 therefore, Staff recommends denial.

24 MR. HERNANDEZ: Good morning. My name is  
25 Jorge Hernandez, and I'm here representing my

1 client, Mr. Tovar. Mr. Tovar is also present,  
2 in the hall. He is the applicant, and he's  
3 asking me to speak for him.

4 I would like to establish, for the record,  
5 my ability to give expert testimony on the  
6 architecture and planning of this City -- in  
7 general, and of the City, in particular. To do  
8 that, let me just read some of my credentials,  
9 please.

10 I'm am an architect. I graduated with a  
11 degree in architecture from the University of  
12 Miami in 1980, a Bachelor's of Architecture. I  
13 graduated with a Master's of Architecture from  
14 the University of Virginia. I've been a  
15 registered architect in the State of Florida  
16 since 1982.

17 I have taught at the University of  
18 Virginia, both, architecture and planning, and  
19 for the last 23 years, I have taught  
20 architecture and planning, in particular, of  
21 this City, at the University of Miami, where I  
22 am a full professor. I'm also a practicing  
23 architect.

24 My words have been published in the United  
25 States, Latin America and Europe. I have

1 lectured in those regions of the world. I have  
2 taught at the Prince of Wales School of  
3 Architecture, and I have served on numerous  
4 boards, both, State-wide and nationally, and  
5 locally.

6 On the State-wide and national level, I  
7 have served on the Florida Historical  
8 Commission, and the Florida State Historic  
9 Marker Committee, which I'm currently on. At a  
10 national level, I'm a trustee of the National  
11 Trust for Historic Preservation.

12 At the local level, I have served on the  
13 Board of Architects. I've served on the  
14 Historic Preservation Board, and I have served  
15 on the Planning & Zoning Board.

16 Thank you.

17 We do not concur with Staff's  
18 recommendation, and what I would like to do is  
19 present the reasons why we do believe that  
20 special conditions and circumstances do apply  
21 to this lot.

22 The way the Code is written, it calls for  
23 both, special conditions and circumstances to  
24 be present. In other words, it's not  
25 disjunctive. It has the "and." The special

1 conditions -- well, let me just back up and say  
2 that, really, the whole crux of this matter  
3 revolves around the second floor porches that  
4 are a part of the architecture of the house.

5 I should also clarify that Mr. Tovar  
6 commissioned me to design the house in 2006.  
7 The house was permitted in July of 2006. So he  
8 built the house. I designed the house for him.  
9 He moved from Puerto Rico, with his family,  
10 chose the lot, very particularly, this lot, for  
11 reasons that will be clear later, and has lived  
12 there ever since. This is his private  
13 residence for him.

14 At the time, in 2006, the area of second  
15 floor porches and first floor porches did not  
16 count to the floor area factor. So the Code in  
17 place actually encouraged the building of  
18 porches. As a person who's been involved in  
19 this community for a long time, I can tell you  
20 that I've seen four Code changes, and I've  
21 often helped and participated, with the Zoning  
22 Department, when the Code changes come about.  
23 They go and ask -- they usually go out and ask  
24 architects working in the City.

25 The reason why, in 2006 -- the 2006 Code

1 did not include the area of second floor  
2 porches is that houses were being built, before  
3 that, way before that, that were kind of  
4 hermetic, because one square foot of air  
5 conditioned space was equivalent to one square  
6 foot of porch. So there was a disincentive to  
7 build porches, and, therefore, the architecture  
8 that was produced was not an architecture  
9 common to this region, common to Coral Gables,  
10 common to our climate. It was a hermetic kind  
11 of architecture.

12 Because of that, the Code then said, okay,  
13 we will not count the area of porches, and the  
14 Code, at that point, made no distinction  
15 between porches on the first floor and porches  
16 on the second floor. This was the Code that  
17 was in place when Mr. Tovar and I designed and  
18 we built this house.

19 (Thereupon, Vivian de las Cuevas-Diaz entered  
20 the meeting room.)

21 MR. HERNANDEZ: Then the Code changed, in  
22 2007, shortly after the house was built, and  
23 Charlie Siemon was the consultant that the City  
24 hired to write the new Code. I toured with  
25 Charlie throughout the City, and I consulted

1 with him on the new Code, and Charlie, along  
2 with numerous people in the City, started to  
3 realize that second floor porches could provide  
4 a privacy infringement with the neighboring  
5 rear neighbor, and could also provide the  
6 obscurant of light and air with the neighboring  
7 rear neighbor. So the massing of the second  
8 floor porch was seen as a privacy and light and  
9 air infringement, which is why it was written  
10 that a second floor porch's square footage  
11 would count. A first floor porch's square  
12 footage, in the existing Code, does not count.

13 So that distinction was made between first  
14 floor and second floor porches, and the reason  
15 for the distinction, I've already mentioned,  
16 had to do with privacy, light and air, in a  
17 situation where the neighbors are adjoining one  
18 another, across the rear yard.

19 What I'd like to do now is show you the  
20 visuals that I have, to explain a little bit  
21 why I believe this case is unique, why the lot  
22 has special circumstances and special  
23 conditions. We're here before you, because we  
24 know that law is written generally, that's the  
25 best way to write law, and that you have the



1 authority to interpret that law, when you deem  
2 that the applicant's action in no way is  
3 injurious or injures the public welfare, and  
4 when it's asking for a reasonable request,  
5 which I believe this gentleman is, and I will  
6 try to set up the facts to do so.

7 I have boards, and I made two boards of  
8 each, which, since the table is long, and some  
9 of the images may be hard to see, if I can give  
10 you the boards, one for each side of the table,  
11 then you'll be able to see the images fine,  
12 unless you want to test your vision from here.  
13 I'm okay, either way.

14 THE CHAIRMAN: Why don't you test our  
15 vision from there?

16 MR. HERNANDEZ: Okay. Thank you.

17 THE CHAIRPERSON: We've actually been  
18 provided with a packet of all supporting  
19 documentation, which we have reviewed.

20 MR. HERNANDEZ: Okay. Wonderful.

21 Now, on the first board -- some of these  
22 images may not be in your package, but the  
23 first board that I have is a Google Earth  
24 image, which shows the property in question.  
25 This is the bottom of the image, and it shows

1 the distance between it and the nearest rear  
2 yard neighbor, which is the Biltmore Hotel  
3 parking garage, and this line is in excess of  
4 2,000 feet.

5 If you would look carefully, and my eyes  
6 aren't good enough anymore -- of course, this  
7 is true of all of these properties that  
8 surround the golf course, that they are special  
9 and unique, because they have frontage to one  
10 of the prime elements of the City planning, and  
11 that is especially true when you look at the  
12 setback condition along Mariola Court.

13 The houses on the north of Mariola Court,  
14 that front the Biltmore Golf Club, acknowledge  
15 the difference over those properties, because  
16 the front setbacks are 50 feet. The setbacks  
17 on the opposite side of the street, on the  
18 south side of the street, are 25 feet. So that  
19 difference in the setback, two-fold,  
20 acknowledges that there's no issue of privacy  
21 on the rear of these houses.

22 The image on the left of this simply shows  
23 the existing house, and with the darker hash,  
24 the footprint of the proposed addition.

25 These are the plans of the house, which I

1        can go through very quickly. Again, the point  
2        of showing them to you is to simply demonstrate  
3        that the house was laid out so that all the  
4        principal spaces of the house, public and  
5        private, really were pushed to the rear. The  
6        house is a relatively narrow and long  
7        rectangle. It straddles the broad width of the  
8        lot, but it's very narrow, so that most rooms  
9        can take advantage of that view.

10        On the first floor, this space here is the  
11        first story covered porch, and there's another  
12        covered porch along the length of the living  
13        room and dinning room. I'd also like to point  
14        out, in this image, that this portion of the  
15        design is the garage, which appears to be  
16        detached, but, really, is attached. The garage  
17        is set back the 50 feet required, but  
18        two-thirds of the frontage of the house is set  
19        back an additional 30 feet. So this house is  
20        set back 80 feet from the front property line.

21        This is the second floor of the house, with  
22        the proposed addition for the library over the  
23        garage, as shown in your package. It, again,  
24        shows that most of the bedrooms have been  
25        strung across that northern exposure, for the

1 view of the Biltmore Hotel, and it shows the  
2 second floor porch, which is this one, directly  
3 over the first floor porch, and this long porch  
4 directly over the long porch of the first  
5 floor, covering the French doors.

6 The rear setback, when the house was built,  
7 was five feet. Now, of course, it's ten feet,  
8 but the porches have been set back forty feet  
9 from the property line, so that the rear  
10 property line setback is thirty feet additional  
11 to the new setbacks. So the house is well  
12 situated in the middle of the lot, with  
13 sufficient green space, both, in front and to  
14 the rear.

15 The next series of images are a series of  
16 photographs. The first -- can everyone see  
17 that, more or less?

18 The first one is the front of the house,  
19 which shows, in fact, the long approach to the  
20 house. I don't believe this one was in your  
21 package. And it shows, on the left of the  
22 image, the existing garage, on top of which the  
23 new library would be built.

24 More importantly, the second image, which  
25 is in your package, shows the view from the

1 Biltmore Golf Club. It shows how the whole  
2 rear of the house was designed to accommodate  
3 that unique setting. So it appears as if there  
4 are deep porches across the whole -- if you  
5 look at Image Number 5 on this board, which is  
6 in your package, you'll see that the porches on  
7 the east are shallow, the porches on the west  
8 are deep, but there's an intent for the  
9 appearance of symmetry, which is why the  
10 porches on the east are shallow, that they're  
11 configured -- their facade is configured  
12 identically to the ones on the west. Moreover,  
13 the whole house was pulled behind a very large  
14 monumental oak tree. So, again, additional  
15 privacy and additional distance from the  
16 neighbor.

17 Lastly, this image here, Image Number 4,  
18 which I don't know if it was in your package or  
19 not, shows the view from the first floor porch,  
20 and it shows why, in fact, the porches were a  
21 natural response -- architectural response to  
22 the site. From the site, that 2,000 foot vista  
23 allows them to enjoy the tower of the Biltmore,  
24 which makes this area of Coral Gables unique.  
25 It's like a waterfront exposure.

1           Now, the way the variance was written, and  
2           I worked with Staff on that, is kind of the  
3           mathematical outcome of what would happen if  
4           you grant the variance. It sounds like there's  
5           kind of disregard for the Code, because it  
6           seems like we're asking for 670 additional  
7           square feet, and the argument in the Letter of  
8           Intent, which I believe is in your package, but  
9           I'd like to read certain parts of it, for the  
10          record, really is trying to lay down the sense  
11          that if you acknowledge that the porches, when  
12          they were built, were built under a special  
13          circumstance, and the lot has a special  
14          condition, that is, the lot has special  
15          physical characteristics, and there were events  
16          surrounding their construction that triggered  
17          that first cause, special conditions and  
18          events, then you realize that Mr. Tovar is  
19          really trapped in the transition between two  
20          Codes, and the change of opinion on the nature  
21          of the public welfare of second floor porches,  
22          but that change of opinion had to do with  
23          properties that are generally distributed  
24          throughout the Gables, that is, properties that  
25          have rear yard neighbors, because, of course, a

1 second floor porch, ten feet away from a rear  
2 yard neighbor, could be a privacy infraction,  
3 could steal light and air from another person's  
4 property. That's not the case here.

5 The way we would like to frame this request  
6 is as follows: The letter serves as a request  
7 for variances allowing a semi-detached second  
8 floor library over an existing one floor  
9 garage. In July of 2006, when this house was  
10 designed and permitted, the floor area of the  
11 existing second floor covered porches did not  
12 count towards the floor area factor  
13 calculations. The covered porches in the rear  
14 of this lot face the Biltmore Golf Course and  
15 contribute to the aesthetic, harmony of the  
16 architecture of this neighborhood, as  
17 determined by the Board of Architects' approval  
18 of this design, originally, in 2006, and now in  
19 2007, I would add, which is part of the duties  
20 outlined for that Board, that, quote, came  
21 directly from that Board's charge.

22 The current code, 2007, includes the area  
23 of the second floor porches, which is 670  
24 square feet, as part of the FAF calculations.  
25 It is an undue hardship to have 670 square feet

1 taken from the expansion potential of this  
2 property, especially since this is not a  
3 typical Coral Gables lot. This nearly half  
4 acre lot faces the Biltmore Golf Course, has no  
5 rear neighbor and has as its nearest rear  
6 neighbor the Biltmore complex, a public  
7 facility, approximately 2,000 feet away.

8 The covered second floor porches would be a  
9 piling or a massing concern in the case of a  
10 typical lot, with a rear yard structure  
11 potentially ten feet away from the rear  
12 property line. As stated, this lot faces the  
13 Biltmore Golf Course, 2,000 feet away.  
14 Therefore, the second floor porches do not  
15 encumber any other person or private property's  
16 privacy, nor do they, by their massing, block  
17 or diminish any other lot's access to light or  
18 views. These porches are set back a minimum of  
19 forty feet from the rear property line. That  
20 is thirty feet greater than the minimum  
21 required by the new Code, plus 2,000 feet of  
22 open space of the Biltmore Golf Course.

23 We request the variance to add this  
24 proposed second floor library addition to the  
25 residence at 1221 Mariola Court, as configured



1 in drawings before you. If granted, this  
2 variance would allow the total overage in FAF  
3 to the property, under the 2007 Code, to be 695  
4 square feet. In parenthesis, and this is  
5 important, 670 of those square feet are the  
6 existing second floor porches.

7 We ask that you not include the floor area  
8 of these existing covered second floor porches  
9 to the FAF calculations for the reasons  
10 previously stated, and request an additional 25  
11 feet, for a total of 695, due to the exigencies  
12 of construction over an existing garage, and  
13 then there are two charts that show the two  
14 panels.

15 I have some graphic charts, that I think  
16 are important, also, to show. There are three  
17 graphic charts here. I'll just take one up at  
18 a time.

19 This first -- no, that's not the first one.  
20 This first one, in red, shows what was counted  
21 towards the FAF in 2006, all of the interior  
22 conditions, space of the house, a pool bath  
23 tucked under a stair, an exterior stair, and  
24 half of the garage. At that point, one story  
25 garages were counted in half. Of course, all

1 of the second floor, but the second floor  
2 porches, here, around here, were not counted  
3 towards the FAF. The total of the house, at  
4 that point, was 6,000 -- under that Code, was  
5 6,311 square feet. The total allowable, at  
6 that point, was 7,140 square feet. That's a  
7 difference of over 700 square feet, that they  
8 did not build out -- that Mr. Tovar did not  
9 build out. He consciously built the house much  
10 smaller than allowed on the lot and consciously  
11 filled the back elevation with porches, because  
12 of the unique views and unique plan and  
13 character of the rear of the lot.

14 This chart showed what happened to the  
15 property in 2007, when the Code changed.  
16 Mr. Tovar had done nothing to the house, he  
17 legally permitted and built. By doing nothing  
18 to the house, the property became  
19 non-compliant. So the fact that Staff claims  
20 that this is a result of his actions could not  
21 be so, if his house became non-compliant when  
22 he did absolutely nothing. It was a result of  
23 the Code change, not of his action.

24 And so what you see in red is the air  
25 conditioned space of the house. Now the Code

1 counts the full garage, so you see the full  
2 garage shaded in red. We're not asking for any  
3 special consideration having to do with that.  
4 Every other house, every other kind of lot in  
5 the City had that same issue imposed upon it.  
6 That's fine. And you see, in yellow, the  
7 addition of the second floor porches.

8 And when the Code changed, while Mr. Tovar  
9 was enjoying his house and did nothing to the  
10 house, the house automatically became a 7,266  
11 square foot house, versus the 7,140. So his  
12 delta of 700 plus vanished.

13 THE CHAIRMAN: Is it your position that  
14 that's simply unfair?

15 MR. HERNANDEZ: Well, given this lot -- my  
16 position is that given this lot, when the Code  
17 in 2006, I think, had as its intention to  
18 encourage the building of porches, and this  
19 lot, by virtue of its placement and its views,  
20 that for this lot, that's a very natural  
21 architecture response to the rear, that those  
22 two things together make the issue of hardship.

23 I understand there are lots like this, but  
24 the condition of him being trapped in the Code  
25 change, and him abiding by the letter of the

1 law of the Code, where he was encouraged to  
2 build porches, in a place where porches made  
3 sense, is what makes the case that we're  
4 presenting before you.

5 THE CHAIRMAN: Doesn't this Code provision  
6 apply to all properties that are similarly  
7 situated, yes or no?

8 MR. HERNANDEZ: Yes, but it doesn't  
9 provide -- it says, special conditions and  
10 circumstance. The condition is true for  
11 properties similarly situated, but none of them  
12 are under the circumstance. None of them were  
13 built at the time of the change, and none of  
14 them were built with so much extra space not  
15 used. So the condition -- the loss of special  
16 condition and circumstance. The condition  
17 being the physical traits of the lot. The  
18 circumstance being the fact that he acted in a  
19 short window of time, between the change in the  
20 law. He had waited, he could have reconfigured  
21 the house, but he doesn't have a crystal ball.  
22 None of us does.

23 THE CHAIRMAN: Wouldn't the remedy have  
24 been, at the time the Code provision was  
25 changed, to simply take an appeal of that

1 provision or present your arguments to the City  
2 Commission, indicating the quagmire in which  
3 your client, as you are today, has been placed?

4 MR. HERNANDEZ: He was not aware of those,  
5 as many citizens of the Gables do not follow  
6 the changes in the Code. He was not engaged in  
7 the process and he was not aware of it. He was  
8 a private citizen, paying his taxes, and this  
9 just happened.

10 I have closing arguments that talk a little  
11 bit about that or some comments at the end that  
12 talk about that.

13 This chart simply shows how the  
14 dramatization would be after the addition,  
15 which is, everything in red is an existing air  
16 conditioned space, plus the full garage, plus  
17 the half bath. The yellow would be the second  
18 floor two-story porches. The blue would be the  
19 new addition.

20 If the new addition -- and you can see  
21 there, if the new addition were built, and  
22 second floor porches were not counted, the  
23 overage would only be 25 feet, which is what  
24 we're saying is reasonable. Since we're adding  
25 it over the garage, we could pull a wall a foot

1 back and not need the 25 feet, but it would be  
2 very difficult to accomplish structurally.

3 So these three charts show what happened in  
4 that time of transition between July of '06 and  
5 the current Code, '07.

6 In the end, Mr. Tovar bought the lot  
7 because of its special view and special  
8 circumstances, hired me to design the house. I  
9 designed the house that was about 800 square  
10 feet under the envelope. I designed a house  
11 which the Board of Architects deemed was  
12 appropriate for the situation, because of the  
13 porches, did nothing to the house, became  
14 non-compliant.

15 His request is, simply, to build a library.  
16 He's retired. He manages his affairs from his  
17 home. He would like to continue to do that.  
18 The home did not have a den or a library, where  
19 he could retreat from the family and do so. I  
20 think, if he were allowed to build this  
21 library, the home would be in harmony with the  
22 surrounding neighborhood.

23 The issue of porches, and we know that  
24 lately there's been a number of special  
25 meetings and round tables and even, I think, a

1 task force to evaluate the greening of the  
2 Gables. Well, porches have a very low carbon  
3 footprint. They do not take up  
4 air-conditioning, and, more importantly, they  
5 shade and protect the thermal mass of the  
6 house, and particularly the glass areas of the  
7 house. I suspect, in the future, because of  
8 these initiatives, our Codes will change again,  
9 and I suspect, in some way, shape or form,  
10 because of these initiatives, which are just  
11 part and parcel of how the nation is going, we  
12 will find another version of the way we deal  
13 with the square footages of porches, but we  
14 don't know that now. We'll know that at some  
15 time, when the whole thing plays out. So I  
16 think we've made the case clear.

17 What can this Board do? The Board can tell  
18 Mr. Tovar, "Well, you can build the library, if  
19 you demolish the square footage of these  
20 existing porches," which are so much of the  
21 character of this house, that has been  
22 previously approved and sit there, or they can  
23 tell Mr. Tovar, "No, you're not allowed to  
24 build this library," even though, if he were  
25 coming up today, we could have designed the

1 structure in a way where the library was  
2 included and the second floor porches were not.  
3 The third thing you can do is to say, "Yes,  
4 it's a reasonable request. It doesn't hurt the  
5 public good whatsoever," and it's the smallest  
6 request that we can make given the  
7 circumstances.

8 I hope you'll do the third. I'm not alone  
9 in this matter. I know that you received a  
10 letter from the neighbor immediately to the  
11 west, endorsing this request -- this variance  
12 request. That is the neighbor that would be  
13 most impacted. As of this weekend, another  
14 neighbor went ahead and took it upon herself to  
15 secure another five letters of support.  
16 Everybody that has given these letters is  
17 really not in the thousand feet, they're really  
18 on the street itself. That is a short loop of  
19 a street. It's a small community. They know  
20 each house very well, and they know the effect  
21 that any change would have on each house, and  
22 so we have five additional letters of support,  
23 plus the one you received with your package,  
24 which is the neighbor immediately to the west.  
25 I'd like to hand these out, because they were



1 given to me yesterday in the evening --

2 THE CHAIRMAN: You can present those to the  
3 clerk.

4 MR. HERNANDEZ: Yes. If I could have  
5 copies later, because I didn't have time to  
6 make a copy this morning.

7 Should I read the addresses and the names  
8 into the record or --

9 THE CHAIRMAN: Actually, you can put the  
10 letters in directly.

11 MR. HERNANDEZ: Okay. Thank you.

12 THE CHAIRMAN: Mr. Hernandez, is there  
13 anything further?

14 MR. HERNANDEZ: No, unless you have any  
15 questions of me. I thank you for your time,  
16 and I hope you can concur with us.

17 THE CHAIRMAN: Okay. Thank you.

18 Is there anybody else here today who wishes  
19 to speak in favor of this application or in  
20 opposition to the application?

21 There being none, the public portion of the  
22 hearing is closed.

23 Members of the Board, questions for the  
24 applicant and/or the architect?

25 MS. DE LAS CUEVAS-DIAZ: Are we going to

1 pass those letters down?

2 THE CHAIRMAN: Okay. Mr. Hernandez, I'm  
3 sorry, if you could step up to the mike.

4 MR. HERNANDEZ: Sure. Yes.

5 THE CHAIRMAN: You read briefly from your  
6 letter of May 3rd, 2010, specifically one  
7 passage, as follows: You indicated that it is  
8 an undue hardship to have 670 square feet taken  
9 from expansion potential for the property,  
10 especially since this is not a typical Coral  
11 Gables lot.

12 If this request for a variance were denied,  
13 would the owners be denied any beneficial use  
14 of their property?

15 MR. HERNANDEZ: I believe so.

16 THE CHAIRMAN: In what way?

17 MR. HERNANDEZ: I believe that they would  
18 not be allowed to build the additional study,  
19 which if they were designing the house today,  
20 they could have, and if they were designing the  
21 house -- if they had included the study in  
22 2006, they could have.

23 I think, the one thing that is barring them  
24 from building that study is the way the Code  
25 changed its attitude towards second story

1 porches, and that attitude had to do with a  
2 concern for privacy, light and air, which  
3 doesn't apply on this lot.

4 THE CHAIRMAN: So what you're saying is  
5 that this specific provision of the Code is  
6 inapplicable?

7 MR. HERNANDEZ: To this lot, and this --  
8 I'm saying, this lot and this circumstance. If  
9 you read the Staff recommendation, I can pull  
10 it out, the first -- Staff recommendation, the  
11 first term, it says, "That special conditions  
12 and circumstances do not exist." That's what  
13 we take issue with. Special conditions have to  
14 do with the physical characteristic of this  
15 lot, which is not typical. There are others  
16 like it, but it is not the typical Coral Gables  
17 lot. Very few lots in Coral Gables face the  
18 Biltmore Country Club.

19 THE CHAIRMAN: It is a single family  
20 residential lot?

21 MR. HERNANDEZ: Yes.

22 THE CHAIRMAN: That's currently improved as  
23 a single family residential home? It was built  
24 what, several years ago?

25 MR. HERNANDEZ: Yes.

1 THE CHAIRMAN: The original design did not  
2 include a provision for the library space that  
3 you seek to have approved today, correct?

4 MR. HERNANDEZ: Yes.

5 THE CHAIRMAN: The Code changes.

6 MR. HERNANDEZ: Yes.

7 THE CHAIRMAN: That is applicable to every  
8 other property located in the City of Coral  
9 Gables, but what you're asking is for the  
10 applicant to be excused from the application of  
11 this Code provision, given, what, the  
12 locational characteristic of this property?

13 MR. HERNANDEZ: And the circumstance. In  
14 other words --

15 THE CHAIRMAN: And the circumstance being  
16 what?

17 MR. HERNANDEZ: The circumstance being that  
18 the Code was changed, with a concern over how  
19 second floor lots (sic) affected privacy, but  
20 there is no issue of privacy here, because it's  
21 public lands behind the lot. So that's what  
22 I'm asking -- and I understand that there are  
23 other lots throughout the City, where this is  
24 not the case.

25 In fact, I helped Charlie Siemon frame that

1 phrase in the Code, but the Code was not  
2 specific enough, to say, "Except for situations  
3 where the backyard faces a public property."  
4 It didn't say that. That's why we're here  
5 before you. I think that's the purpose of this  
6 Board.

7 The circumstance of when he actually  
8 committed or when he actually built the house,  
9 when he took action, and the change in the  
10 Code, that was really written for the general  
11 circumstances, not for this particular  
12 circumstance, is, I think, what makes this case  
13 unique, what gives it a hardship.

14 THE CHAIRMAN: Are there any provisions of  
15 the Code that would specifically except your  
16 client's property from the application of this  
17 Code provision?

18 MR. HERNANDEZ: I'm sorry, say that again.  
19 I'm not an attorney, so --

20 THE CHAIRMAN: That's okay. You do a very  
21 fine job for your client, I will say that.

22 MR. HERNANDEZ: Thank you.

23 THE CHAIRMAN: Is there any specific  
24 provision in the Code that excepts your  
25 client's property from the application of this

1 Code provision?

2 MR. HERNANDEZ: No. In other words, is  
3 there any provision in the Code that says,  
4 "Except for lots that face a public  
5 right-of-way"? No, there are not, and that's,  
6 I think -- no change in the Code is perfect.  
7 I've been involved in four of them. That's why  
8 I'm here. I'm here for us to collectively  
9 acknowledge that 2,000 liner feet to the  
10 Biltmore Golf Club really makes that provision  
11 more of a general provision, where we have a  
12 backyard to backyard neighborhood, and not in  
13 this case.

14 THE CHAIRMAN: Okay. And you would concur  
15 that the Board of Adjustment doesn't write the  
16 code?

17 MR. HERNANDEZ: Absolutely. I do know that  
18 you do not write the Code.

19 THE CHAIRMAN: That's within the  
20 jurisdiction of the City Commission.

21 MR. HERNANDEZ: But it is your ability to  
22 interpret the Code, when there are special  
23 circumstances and conditions, which I think is  
24 the case here.

25 Thank you very much, unless there's other

1 questions.

2 THE CHAIRMAN: Members of the Board, any  
3 further questions?

4 MS. GONZALEZ: May I have a chance to  
5 rebut?

6 THE CHAIRMAN: You may.

7 MS. GONZALEZ: I'd like to point out a  
8 couple of points. Mr. Hernandez is correct, in  
9 the previous Code, second floor porches were  
10 not counted. In the Zoning Rewrite, now they  
11 are. The garages were counted in half in floor  
12 area factor, and now they are counted in whole.  
13 There is no distinction in our Code as far as  
14 facing the golf course or the water, even, for  
15 that matter.

16 The floor area factor is taken in its  
17 entirety and does not distinguish or  
18 differentiate between whether it's taken from  
19 the garage area or it's taken from a terrace or  
20 a porch or bedrooms.

21 If he were to build this second floor  
22 addition under the old Code, when he designed  
23 the porches, under his own numbers, he would  
24 have still been exceeding the maximum floor  
25 area factor, under the old Code, under his

1 design. He is now exceeding that by a larger  
2 amount.

3 So if -- in fact, he was not being caught  
4 between two Codes, this was just designed at  
5 that time, just as every property is designed  
6 under the Code and the provisions that are in  
7 effect at that time, so if, in fact, he would  
8 have designed the second floor porches and the  
9 second floor addition, he would have still been  
10 over 24 square feet, as he has stated in his  
11 letter.

12 The percentage and the factors are all  
13 based on -- in our comparable to the size of  
14 the lot. There is no distinction which says,  
15 if you have a larger lot, you can have a large  
16 percentage of lot coverage. So it's all  
17 comparable, and it's all equitable, and every  
18 home that comes in to either remodel or have an  
19 addition, at this time, is calculated under  
20 these parameters. We don't say, "Well, it was  
21 built ten years ago, under a different Code,  
22 and under different provisions, and, therefore,  
23 we're not going to count it."

24 THE CHAIRMAN: Mr. Hernandez, I'll allow  
25 you a brief surrebuttal.



1 MR. HERNANDEZ: Yeah. I'm glad that  
2 Elizabeth clarified it. If we'd built the  
3 house, in the manner we're proposing, in 2006,  
4 it would have been over, but only 24 square  
5 feet. Those 24 square feet -- the garage is  
6 extra deep by a foot and a half. We would have  
7 taken that out of the garage. That's why I'm  
8 saying, again, that, you know, we're not here  
9 flagrantly asking for an additional 695 square  
10 feet. We're saying, please consider the fact  
11 that this individual, to the best of his  
12 ability, in good faith, built this house within  
13 the Code, and built these porches -- generous  
14 numbers of porches, 670 square feet of porches,  
15 and because the Code changed its opinion on  
16 that matter, based on issues of privacy, he now  
17 has 670 square feet that he cannot use, and,  
18 again, it's been supported by everybody in the  
19 neighborhood. I don't think it harms the  
20 neighborhood.

21 But I am glad that you did clarify it, it's  
22 only by 24 feet, which could have very easily  
23 been handled at the time, had we known that the  
24 porches were going to count. He's kind of  
25 trapped, and in this case, he actually -- it's

1 not like he bought the house that somebody else  
2 built. He built the house himself, and seeing  
3 that two people that built and designed the  
4 house are in front of you, it's because we're  
5 caught in the time in between Codes.

6 THE CHAIRMAN: Thank you.

7 MR. HERNANDEZ: Thank you.

8 THE CHAIRMAN: Members of the Board,  
9 discussion?

10 DR. DE BLIJ: I don't really see any  
11 special hardship here or circumstance. You  
12 know, we have moved on in the Code. I don't  
13 really see any reason for setting aside the  
14 current Code, so I'm against approving this.

15 THE CHAIRMAN: Anyone else wishes to  
16 comment at this time?

17 MS. DE LAS CUEVAS-DIAZ: There was a  
18 discussion about the intent of the Code, and  
19 the fact that the intent was for privacy. Do  
20 we know this? I know you are mentioning it,  
21 but where is this coming from? Can you maybe  
22 speak to that? I want to understand the intent  
23 of the Code.

24 THE CHAIRMAN: I think Mr. Hernandez's  
25 presentation suggested that his participation

1 with Charlie Siemon, in consideration of  
2 various other Code provisions that were  
3 ultimately adopted by the City Commission,  
4 included consideration of privacy, as it  
5 relates to this particular Code provision or  
6 the application of this Code provision.

7 There is nothing specifically in the Code  
8 that speaks to the purpose or the limited  
9 versus general application of this Code  
10 provision to properties within the City of  
11 Coral Gables.

12 Is that correct?

13 MR. HERNANDEZ: That's correct, and those  
14 conversations included Eric Riel and Martha  
15 Salazar and Dennis Smith, who -- all of whom  
16 were here on those capacities at the time. I  
17 think they can testify to the fact that the  
18 major concern was privacy, light, air and  
19 massing, when porches -- some porches were  
20 across backyard property lines. So it was in  
21 the context of the discussions on the work. It  
22 never made itself into the language of the  
23 Code, because the Code was issued in general.

24 MS. DE LAS CUEVAS-DIAZ: Thank you.

25 THE CHAIRMAN: Vivian, does that answer

1 your question?

2 MS. DE LAS CUEVAS-DIAZ: Yes, thank you.

3 THE CHAIRMAN: The absence of any exception  
4 to the application of this Code provision  
5 causes me concern, I will say that, because  
6 what you are asking the Board to do and asking  
7 us to do, and what we would be required to do  
8 is to make a determination that this specific  
9 Code provision is inapplicable to your  
10 property, for the circumstances which you've  
11 articulated this morning.

12 There is nothing in the Code that allows us  
13 to entertain such a notion, when the black  
14 letter of the Code provision is very clear,  
15 very straight-forward. There's no ambiguity,  
16 in terms of its application. There's no  
17 ambiguity, in terms of the fact that it really  
18 does apply to your property.

19 The fact of the matter is that the property  
20 owner, just like every other owner in the City  
21 of Coral Gables, with properties that are  
22 similarly situated, face the same dilemma, if  
23 you will. That is, having to abide by a Code  
24 provision that was proposed, that was refined,  
25 that was debated, and ultimately approved by

1 the City Commission as a Code provision of  
2 general application.

3 I'm not certain that this Board is  
4 empowered to carve an exception to that rule  
5 and/or -- or provision. Rather, it's probably  
6 one that would need to be entertained by the  
7 City Commission, if they wish to excuse any  
8 specific properties from its application.

9 In terms of hardship, I've not heard any  
10 evidence of a hardship itself, given the fact  
11 that this beautifully designed and developed  
12 property -- and it truly is. I mean, the  
13 pictures speak volumes, in terms of the beauty  
14 of this property. It is going to be enjoyed as  
15 a single family residential home.

16 A hardship often takes into consideration  
17 the extent to which the property cannot be  
18 used, in other words, the uses are impaired,  
19 which are not present in this case, at least  
20 from my perception. In terms of fairness,  
21 whether applying it or not applying, if it is  
22 fair to the property owner, is really not  
23 something that falls within the purview of this  
24 Board, either.

25 And, lastly, is the provision applicable

1 with the property? Based upon the reading of  
2 the provision itself, it appears that it is.

3 Board members, any further discussion? May  
4 I have a motion, please?

5 DR. BRIGGLE: I make a motion to deny.

6 MS. DE BLIJ: Second.

7 THE CHAIRMAN: Any further discussion?

8 Madam Secretary, please take the roll.

9 MS. GONZALEZ: Mr. Artigues?

10 MR. ARTIGUES: No.

11 MS. GONZALEZ: Dr. De Blij?

12 DR. DE BLIJ: Yes.

13 MS. GONZALEZ: Mr. Bello?

14 MR. BELLO: Yes.

15 MS. GONZALEZ: Dr. Briggles?

16 DR. BRIGGLE: Yes.

17 MS. GONZALEZ: Mr. Mora?

18 MR. MORA: Yes.

19 MS. GONZALEZ: Mrs. De las Cuevas-Diaz?

20 MS. DE LAS CUEVAS-DIAZ: No.

21 MS. GONZALEZ: Mr. Lukacs?

22 THE CHAIRMAN: Yes.

23 Thank you very much.

24 Mr. Hernandez, you're familiar with the  
25 procedures for appealing a decision out of the

1 Board of Adjustment?

2 MR. HERNANDEZ: It goes to the City  
3 Commission.

4 THE CHAIRMAN: It does. If you need any  
5 clarity, in terms of what those procedures are,  
6 you can speak with the clerk and with the  
7 secretary, and they'll provide you with the  
8 guidance.

9 MR. HERNANDEZ: Thank you. Thank you for  
10 your time this morning.

11 \* \* \* \* \*

12 (Thereupon, the meeting was concluded at 8:50  
13 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, NIEVES SANCHEZ, Court Reporter, and a Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 12th day of June, 2010.



NIEVES SANCHEZ