



To: Charles Wu

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "CL", is written over the end of the "From:" line.

RE: Legal Opinion Regarding Walk Up Window Interpretation

Date: July 31, 2015

I have reviewed the relevant Code provisions and discussed the matter with you. It is my opinion and interpretation, pursuant to section 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code, that a walk up service window is prohibited at that location under the wording of section 4-402.A of the Zoning Code, and is not separately carved out or permitted under the wording of section 4-403. When reading these provisions together, as they must be read (in pari materia), it is clear that there is no intent to allow a walk-up service window at this location. An amendment to the Zoning Code would be required to permit this specific use.

Herbello, Stephanie

From: Leen, Craig
Sent: Friday, July 31, 2015 4:37 PM
To: Herbello, Stephanie
Subject: FW: walk up window interpretation salient points

Please publish.

Craig E. Leen, City Attorney
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Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Friday, July 31, 2015 4:37 PM
To: Wu, Charles
Cc: Tompkins, Jane; Ramos, Miriam
Subject: RE: walk up window interpretation salient points

Jane and Charles,

I have reviewed the relevant Code provisions and discussed the matter with you. It is my opinion and interpretation, pursuant to section 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code, that a walk up service window is prohibited at that location under the wording of section 4-402.A of the Zoning Code, and is not separately carved out or permitted under the wording of section 4-403. When reading these provisions together, as they must be read (*in pari materia*), it is clear that there is no intent to allow a walk-up service window at this location. An amendment to the Zoning Code would be required to permit this specific use.

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From: Wu, Charles
Sent: Thursday, July 16, 2015 8:59 AM
To: Leen, Craig
Cc: Tompkins, Jane
Subject: walk up window interpretation salient points

Hi Craig. Here are the relevant code sections for your interpretation.

Sec. 4-402.A. of the City Code expressly prohibits what type of business uses can be operated outside of a building or restaurant when the property abuts Coral Way (including Miracle Mile), Biltmore Way, or Ponce De Leon Blvd. between SW 8th St. and Bird Rd. The subject property at 1315 Ponce De Leon falls within this restriction.

A. Except as provided in Section 4-403(F), no service station, public garage, auto repair shop, machine shop, used car lot, or any business conducted outside a building and/or restaurants shall be permitted on any lots or premises abutting Coral Way (a portion of which is known as Miracle Mile), or Biltmore Way, or upon lots or premises abutting Ponce De Leon Boulevard between Southwest 8th Street and Bird Road.

Sec. 4-403. "Business outside a building" details what types of businesses can be allowed if operating outside a building, including open-air cafes/restaurants (Subsection C.), restaurant drive-in service windows, and drive-in and walk-up tellers (Subsection E.), in accordance with Article 5, Division 1. This section does not expressly list a walk-up window or a pass-through window for a restaurant as a permitted use.

Section 4-403. Business outside a building.

No business shall be permitted unless such business is carried on within and under cover of a building or buildings according to the provisions of this and other ordinances of the City of Coral Gables; provided, however, that this section shall not apply to the following:

- A. Automobile service stations.
- B. Commercial nurseries for the growth and sale of trees, plants and flowers.
- C. Open-air cafes and/or restaurants when approved in accordance with the provisions of Article 5, Division 1.
- D. Open-lot Christmas tree sales, as provided in Article 5, Division 21.
- E. Restaurant drive-in service windows and drive-in and/or walk-up tellers when approved in accordance with the provisions of Article 5, Division 1.
- F. Used-car lots, when located in accordance with the provisions of Section 4-404.

In conclusion: The walk-up window proposed for 1315 Ponce de Leon is a use that is not allowed under Sec. 4-402.A. since it is a business activity operating outside a proposed restaurant and located on property abutting Ponce De Leon Blvd., between SW 8th Street and Bird Road, nor is it expressly listed as an exempted prohibited use under Sec. 4-403.

I hope this helps. I did not get into sidewalk/outdoor café discussion as it is not proposed at this property.

Charles K. Wu, AICP

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