

**City of Coral Gables City Commission Meeting
Agenda Item E-1
December 16, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

City Manager, Cathy Swanson-Rivenbark

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Assistant Development Services Director, Charles Wu

City Architect, Carlos Mindreau

Economic and Cultural Development Director, Cynthia Birdsill

Planning and Zoning Director, Ramon Trias

Public Speaker(s)

Mario Garcia-Serra, Gunster Law Firm

Ronnie Mateu, Mateu Architecture

Jim Dockerty, 4208 Ponce de Leon Blvd.

Agenda Item E-1 [Start: 1:50:00 p.m.]

A RESOLUTION OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA REQUESTING MIXED USE SITE PLAN REVIEW PURSUANT TO ZONING CODE ARTICLE 4, "ZONING DISTRICTS", DIVISION 2, "OVERLAY AND SPECIAL PURPOSE DISTRICTS", SECTION 4-201, "MIXED USE DISTRICT (MXD)" FOR THE MIXED USE PROJECT REFERRED TO AS "4311 PONCE" ON THE PROPERTY LEGALLY DESCRIBED AS LOTS 36-43 , BLOCK 5, INDUSTRIAL SECTION (4225 AND 4311 PONCE DE LEON BOULEVARD), CORAL GABLES, FLORIDA; INCLUDING REQUIRED CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Cason: So we'll now move to Item E-1. I think the consent's done, so E-1. And E-1, this is a Resolution. This is a public hearing. This is a Resolution relating to mixed-use site plan review for the mixed-use project referred to as 4311 Ponce. Madam City Manager, who will present this from our side?

Commissioner Quesada: Before it's presented, Mr. Mayor, I have to recuse myself from this item. The law firm that I am a partner and I work for does work for this applicant; has been doing work for this applicant for 25 years. I have not worked on this particular project. My firm has not worked on it. But in an abundance of caution, I'll be recusing myself from this item. So I'll step out until the next item comes up.

Mayor Cason: OK.

City Manager Swanson-Rivenbark: And Mr. Mayor, we'll have Charles Wu, as staff, presenting this item.

Mayor Cason: All right. Go ahead.

Assistant Development Services Director Wu: Thank you. For the record, Charles Wu, Assistant Development Services Director. We are waiting for the PowerPoint to pull up. Thank you. We have a handful of slides to introduce the project before you. This is regarding a mixed-use site plan at 4311 Ponce. This is the vicinity. It's about 0.46 acres, located at the northeast corner of Ponce and San Lorenzo at the southern edge of the City for about 20,000 square feet. Merrick Park is located on the south and the west; to the north it consists of one-story commercial buildings. On the site today you have two existing one-story commercial buildings and they're not historic. Second slide shows you some pictures of the vicinity of the property and very well familiar. The top slide shows Merrick Park on the west and the south. The picture on the bottom left is property to the south, and the picture on the bottom right is looking into the property. Where it consists of two one-story buildings today. This is some information, the zoning and land use. The land use is commercial medium high. Today it allows building height

of 70 feet with architectural bonuses, you can go up to 100 feet, and the proposing study lower than that, about 93 feet. Floor area ratio, they're allowed 3.0. With architectural bonuses, they're allowed 3.5, and they're coming in lower than that at 2.76 FAR (floor area ratio). The zoning is commercial, and it's located within the northern industrial (MXD) district. Here is a rendering of a 3-D simulation of what the building would look like if built as proposed. It is an eight-story modern design, consists of 55,178 square feet, ground floor retail, three levels of parking, two levels of office, and 8 two-story residential units on the very top. It's a very unique component put together in a mixed-use project. A topiary wall, a green wall is located and proposed to satisfy the Art in Public Places requirement on the west, south, and east side of the building, and obviously, that's a façade of the garage. This is to introduce to you the site plan. The green arrows show the pedestrian access. The yellow arrow shows the garage access at San Lorenzo, and they're also proposing a paseo along San Lorenzo. The landscape plan they're proposing: five existing royal palms to remain on Ponce. Two existing street trees will remain on San Lorenzo side, and they might have to remove one of two trees to allow vehicle access at the San Lorenzo side. Next slide is the west elevation. Again, this is the primary elevation, the west elevation from the Ponce side. Again, you see the green wall quite prominently. This is the south elevation facing San Lorenzo; again, a green wall. And this is the east elevation facing Southwest 39th Avenue, and this location generally is where an alley is, about 20 feet in width, and they are also proposing a smaller green wall there. The north elevation is where it hits the property line, so they're not allowed any openings there. At this point, is important to introduce some legislative history on this property. A project at this location generally which is a smaller component of six lots was approved in 2008. It was proposed for a seven-story, a smaller building, at 83 feet and half, with a penthouse, up to 95 feet, and together the entire project compose of 46,115 square feet altogether. They're proposing four live/work units on the first floor in the old project; the new project putting it on the top. They're proposing 182 parking spaces. That project was 2008. This is the site plan. It's very important to give you this history, because the applicant is going to explain to you they relied on this project, then they purchased two (UNINTELLIGIBLE) and redesigned the project to bring forth the project early today. This is the site plan, very similar, but as you can see, it's a much tighter plan. The townhomes face San Lorenzo, and the remaining was going to be retail components. Again, the design is very similar. There is no green wall proposed at the 2008 version and very important component.

This is why we are here before you today, is that the park did not step back the building where it exceeded 45 feet in height, and I'll go through a couple more slides, what that's about. It became quite vertical pretty much as your setback on all four fronts. And it's our opinion, staff at that time erred by not requiring the step back at that time. The applicant at the time did apply for permits. Through the review process, we know what it is in the economy, and the project permit expired and the project approval expired.

Mayor Cason: So they got the permit? They did not get a permit?

Assistant Development Services Director Wu: Did not get a permit, but they applied.

Mayor Cason: Applied, OK.

Assistant Development Services Director Wu: Again, these are the floor elevations, very similar to the design they are proposing today on the new building. Again, smaller side. Today's site you have before you today, they included some (UNINTELLIGIBLE) to the north, but very similar in design, and very similar in component of the elements of the project. Just some basic site data. I explained to you the FAR didn't go up to 3.5. With architectural bonuses, they coming in at 2.76, a lot lower. Total square footage is 55,178 square feet. They have first floor retail and two floors of office. Again, on the very top, 8 two-bedroom units at the very top. They exceed parking requirement by one space, and with that one loss of on-street parking, and as I said to you, they proposing a green wall; and to satisfy the Art in Public Places requirement, they have to through a Code requirement of approval before the Art Advisory Committee, Cultural Development Board, and Board of Architects prior to you seeing it. Now, back to where we are today and the basis of our recommendation. It's our opinion that the applicant doesn't meet the Code requirement of setback step back. The Code requires that at the front where it is on Ponce, you have to have a 10-foot setback if your building is higher than 45 feet. I'll go through the specifics of the Code in the next slide. If you want to reduce that, you have to step the building back, a back component higher at 45 feet. So the next slide will tell you what it is. The setback definition means a minimum horizontal distance between the property line and the building. It cannot be any building within the setback. And the Code today requires up to 45

feet, you can go to zero. And the next one is very important. Higher than 45 feet, it's 10 feet. And that's where we take a respectful disagreement with the applicant's interpretation, and I think an intelligent person can read it both ways. But we've been consistent in how we applied it, and we feel that this '08 approval was erred by staff and was not bring to your attention at the time.

Mayor Cason: The Code was the same at the time?

Assistant Development Services Director Wu: It's the same Code.

Mayor Cason: And you're saying that this part was missing; from your perspective, that the City erred in interpreting that?

Assistant Development Services Director Wu: In '08.

Vice Mayor Kerdyk: I don't think we talked about that at that point.

Assistant Development Services Director Wu: It was not brought up.

Vice Mayor Kerdyk: Yeah, it wasn't brought up. I mean, I see I referenced it a little bit in my conversation, but I didn't see.... Couple of questions, and I'll let you go on with your presentation. But the first 2008 project had 150 feet, because you said there were six lots; 6 times 25 is 150 feet, so on a 15,000-square-foot lot, correct?

Assistant Development Services Director Wu: Plus or minus.

Vice Mayor Kerdyk: Plus or minus, OK. So I guess the real question is now it has eight lots.

Assistant Development Services Director Wu: Yes.

Vice Mayor Kerdyk: Eight times 25 is...OK. The other thing is...one of the things...I voted for this I walked out, sometimes you walk out and you say, most of the times I walk out and I say, I

made a great vote. This one I had trepidations with. I can remember it. But one of the trepidations was part of it was site, but one of the trepidations was the parking configuration was terrible the first go round. They were using all these mechanical parking spaces, and they've alleviated that issue here on this current project; is that correct?

Assistant Development Services Director Wu: Yes. They have no mechanical parking. And as I said earlier, it was a tight site, even though they provided excess parking at the time.

Vice Mayor Kerdyk: I mean, it was obscene how much mechanical parking they used in that first project, obscene. And I brought this up on numerous occasions in a sidebar. We really need to look at that mechanical parking again and how we deal with that issue as we move forward. But anyway, they've solved that issue. I don't have that issue in this present.

Assistant Development Services Director Wu: Correct.

Assistant Development Services Director Wu: We take (UNINTELLIGIBLE) with the parking...

Vice Mayor Kerdyk: OK.

Commissioner Lago: But let me ask you.

Mayor Cason: I want to ask you, excuse me.

Commissioner Lago: Go ahead, Mayor.

Mayor Cason: Since you were there.

Vice Mayor Kerdyk: Right.

Mayor Cason: Is this your opinion, the same project or more or less the same? There's a few

little dimensions changed, but one of the issues was is this really the same project.

Vice Mayor Kerdyk: It's close. I mean, it's close to the same project. I mean, that's the issue. I mean...

Assistant Development Services Director Wu: It's from the same architect.

Vice Mayor Kerdyk: It's from same architect, same type of architectural thing, yeah. It's close.

Assistant Development Services Director Wu: So the style is the same, generally the same. It's a modern design; and the element is different, as you have a green wall, which is a very important component. In this project, the townhomes are on the roof, which I believe is a better placement.

Vice Mayor Kerdyk: Where we went awry back then is we didn't again, talk that much about the setback, you know, where the setback is.

Commissioner Lago: Yeah, and that's what I wanted to touch upon that because I'm a little bit concerned about the issue, the setback, and I know we'll talk about it in further detail. But I wanted to talk to you a little bit more about the design. That may be out of your hands, but you mentioned, and I wrote it down here, the north elevation. Can you put that back up?

Assistant Development Services Director Wu: Get back to that slide.

Commissioner Lago: OK. Maybe this may be a question for our City architect, who happens to be here today. So if you're looking at this building from the north elevation, go back two slides. There you go. No, no. Keep going, keep going, that's the view you're going to see.

Vice Mayor Kerdyk: Yeah, that's the problem.

Commissioner Lago: And that's, my problem, this is my issue. That's a problem, and because, you know, you're putting yourself in a situation where you may have that current situation. I'm

not sure if that's screening, if that's stucco; what type of material is that they're using. What is that?

Assistant Development Services Director Wu: The applicant can address that. But whenever you have an empty lot and you have an opportunity for the next-door neighbor to build at the property line, this is what you will be seeing. And for an urban environment, this is an evolution of redevelopment. So you might request maybe a mural in the meantime to go through Art in Public Places as well as a condition. It's not ideal, but we see a redevelopment opportunity for the next-door neighbor to come in and fill that gap.

Commissioner Lago: And what is the adjacent piece that would hopefully...

Assistant Development Services Director Wu: Also one story. Today it's one-story building, but it can be redeveloped into similar scale.

Vice Mayor Kerdyk: I think the reason is, and correct me if I'm wrong, that they have to go up like that, since they're not setting back and they can't put any windows there's a fire issue on that one-story building there.

Assistant Development Services Director Wu: Correct.

Vice Mayor Kerdyk: Is that right or wrong?

Commissioner Lago: I mean to a certain extent, I mean, that's not the end-all be-all. I mean, that's why I was asking you in regards to what is the material. Is that a stucco material? Is that a screening material? Is that due to the wraparound from the parking? I'm trying to figure out what it exactly is.

Assistant Development Services Director Wu: Commissioner Lago, I don't know if this will address your concern, is that getting back to the step back and if you can go to that slide, it might answer your question, but a solution may be in that requirement. I explained what setback is.

Now I'm going to explain what step back is. So the Code requires, and this is Section 4-201(e)(14), is that for a building up to 45 feet, you can have zero setback. If your building is higher than that, you have to step the entire building away from Ponce. The applicant contends, no. The building can stay at zero, but that portion higher than 45 feet, only that portion has to be step back, and that's what they're proposing.

Commissioner Lago: But let me ask you, let's discuss that. Again, I defer to the Vice Mayor in regards to these matters. I mean, he has got a lot more experience than all of us. But what have you seen in most buildings that have come before the Commission in regards to zero setback? Do they have a setback at 45 feet or it's that hasn't been really changed?

Vice Mayor Kerdyk: I mean, I think he shows...

Assistant Development Services Director Wu: We have examples; we can show you how --

Vice Mayor Kerdyk: Most of them are step back.

Commissioner Lago: Step back from the beginning, not at 45 feet.

Vice Mayor Kerdyk: Yeah. They do both.

Assistant Development Services Director Wu: Above 45 we've had to...

Vice Mayor Kerdyk: Yeah, they come back.

Assistant Development Services Director Wu:...buildings step back, and I have examples just to give you historical perspective.

City Attorney Leen: Can I actually add something here? In considering this, you're going to hear precedence from the City and also from the applicant. Each one has precedence. Ultimately, I should tell you the standard you're looking at, if you're going to apply an estoppels

theory, is you have to look at, one, was a prior opinion given; two, was it reasonably relied on; three, was there something detrimental? So not only was it relied on, but is it causing them a harm not to apply the older interpretation. And finally, is it unjust to apply the new interpretation? An estoppel does not set a precedent because it's related to a specific project. Now, in this particular case, I haven't opined that there is an estoppel. It's ultimately an issue for you to decide. And you need to look at both opinions, both the prior one and the current one, and the precedence, and then you can make a determination whether you wanted to apply the older interpretation. Now, as a technical matter, you could also direct staff that you want to apply the older interpretation going forward, but you don't have to. And I will tell you, I looked at the matter myself, and I happen to agree with staff that there is some ambiguity here, in my opinion, and the reason why is because the way it's worded, if I were drafting this, I would word it differently than saying "front," up to 45 feet in height; none if over 45 feet in height, 10 feet. I would say something like, if the building's over 45 feet in height, there'll be a 10-foot setback for the entire building, because I could see the way that it could be viewed the other way. However, if you're looking at the plain meaning it says setback; it doesn't say step back, and because it says setback, it's the whole building. So, you know, my own view as the City Attorney is, I do think staff has the better interpretation of the text as it's written. But it's true and I know staff's not contesting it. My understanding of the record is that we used to apply the older interpretation, so I've given the opinion that if you desire you could apply it to this project, but going forward, it would no longer apply. It would be staff's interpretation.

Vice Mayor Kerdyk: I think we have to clean it up so we don't have this issue again. And let me just say one more thing, Mr. Wu. It's the same thing as major road when the...

Assistant Development Services Director Wu: Frontage.

Vice Mayor Kerdyk:...frontage, that kills me still. I mean, you made the argument last time and it has never been interpreted, sitting in this Commission, as long as I have, as major road being, you know, a side street that is small like that, and we did it because it was a good project, but the fact is that's something else we have to consider. That major road we have to define. OK, major road meaning whatever. Same thing with this thing; let's define it so we're not sitting here and

having this discussion again at some other point. If there's anything else that you find, please let us know before the back foot.

Assistant Development Services Director Wu: So back to the definition of step back. The definition in the Code is exactly this: "Changes in the surface façade or facing of a building beyond the required setback with the intent of providing depth and variation to the building façade." So even though the building is set back above 45 feet, we want that portion of the building above 45 feet to step further back, and that's called a step back, stepping back. It will have the effect of the wedding cake approach for a building variation. And the Code requirement is when you want to seek relief from the top, you'd have to do the bottom. A vertical building step back of minimum of 10 feet all around the façade, and this, I think, may answer Commissioner Lago's question. On the north façade, if they're required to do that, they have to step the building back 10 feet, which would allow openings, potentially. But if the next-door neighbor comes in at zero, they're entitled to have a zero façade on that side. So that's consideration.

Commissioner Lago: But when you talk about step back, are you talking about the issue of at one point, either at the first floor or 45 feet above, you have to set the building back 10 feet?

Assistant Development Services Director Wu: Yes.

Commissioner Lago: Either at first floor or at...

Assistant Development Services Director Wu: Above 45 feet, wherever that component is, so long as you step the building further back 10 feet.

Mayor Cason: So it can be at 45, 50, 60, 70, 80 --

Assistant Development Services Director Wu: Or it could be at 30 feet.

Mayor Cason: Yeah.

Commissioner Lago: You have to do it within that 45 feet?

Assistant Development Services Director Wu: The design is for 45 feet.

Commissioner Lago: You had to do it within that. And does this building in the current design meet that?

Assistant Development Services Director Wu: It does not on the three sides.

Commissioner Lago: OK. And what does the Code dictate?

Assistant Development Services Director Wu: A 10-feet stepping away.

Commissioner Lago: On all four sides?

Assistant Development Services Director Wu: On all four sides.

Commissioner Lago: OK.

Assistant Development Services Director Wu: I have a table showing that.

Commissioner Lago: OK.

Assistant Development Services Director Wu: The next slide shows the setback table. The front required 10, but they say they want zero. On the side street, they're require 15; they've met that. And the interior side requires zero. On the rear, they're providing zero. So since they're requesting zero feet on the Ponce side, they have to do the second requirement, which is stepping back. That's the next table. Again, if the building's over 45 feet in height, they have to step the building away from...taller than 45 feet, that portion has to be stepping away at 10 feet. On the Ponce side, they met it for the habitable space, which is the office component; they pull the

building back 10 feet. On the other side, as we explain, they did not. It's right at the zero side. It's a model building, and that's the nature of the design. I think it's easier for Mediterranean design. For example, the next few cases, the traditional Mediterranean design: We have Village Place, approved in '04. You see the arrows here that shows the step back where they have it above 45 feet. And we just want to give you context of how it's applied. DYL, located on LeJeune and Granello: (UNINTELLIGIBLE) a draw of when they applied in '09. They also have the stepping back, but it goes higher. Gables Gateway: Again, we are showing the arrow where they step the building back. That was approved in '08. That's LeJeune and Ponce. We (UNINTELLIGIBLE) Merrick Manor, the first version, that was approved two years ago. We show you the arrows where they met the intent of the Code and here where they step the building back above the second floor. Again, Merrick Manor, same example. And I believe the redesign component also meets the intent of the Code. The last project, 4535 Ponce II, this was built, and it was approved in 2012. Again, same example: Step back was applied. To sum up, the review status. The Board of Architects approved the project design at its June meeting. Our reports states that the setback/ step back is not in compliance with the Code. The traffic calmers have been satisfied, and there was some landscape comments that were being provided as conditions in your resolution, if you so desire to approve this project. A neighborhood meeting was held in October 28 of this year, per Code requirements. Findings of fact, we find that Section 3-48 does not satisfy -- staff recommends on the record a denial. For the record, the Planning and Zoning Board motion to approve failed on a 3-2 vote. So we have a lack of recommendation before you today. As you know, the Code requires four affirmative votes to pass a motion, so that failed by one vote. That concludes staff's presentation.

Mayor Cason: Going back to 2008 again, was there confusion in staff? Had there not been any of these buildings built for a while and they were not familiar with it? Why would they ever...

Assistant Development Services Director Wu: We read the report and it was silent on the analysis component of the setback/step back, so I think it was an honest oversight. I don't think there was anything hidden.

Mayor Cason: But they moved it to the Commission, and had it not been for the recession, presumably, they would have gotten a permit based on what everybody knew?

Assistant Development Services Director Wu: Correct.

Mayor Cason: So the building would have been built today if they had not stopped the project?

Assistant Development Services Director Wu: If the project does not cease and come back again for a slightly larger project.

Mayor Cason: OK. Mario.

Mario Garcia-Serra: Good afternoon and Commissioners. Mario Garcia-Serra, with offices at 600 Brickell Avenue, representing 4311 Ponce, LLC (Limited Liability Company), the owner of the half-acre site located at the northeast intersection of Ponce de Leon Boulevard and San Lorenzo Avenue, indicated here by the yellow outline on this aerial photograph. I'm joined today by Pepe Rodriguez of 4311 Ponce, LLC; Ronnie Mateu, our project architect; and Juan Espinosa, our project traffic engineer. Some of you have already remembered that this site was the location of a previously approved project, or which was very similar to the project being proposed today. The difference between the project approved in 2008 and the project before you today is that the site now includes an additional 50-foot wide lot at 4225 Ponce to the north of 4311 Ponce, which, in turn, makes for a larger building site area and provides for a building which has more floor area itself and additional parking. There's a lot to like about this project, so I will give you a summary of its positives and then conclude with a discussion as to why I think that staff's recommendation of denial is not justified. The first thing to consider: This is going to be a new state-of-the-art home for one of the City's more prominent local businesses. As many of you are aware, Pepe is the owner of Decor Homes, a high-end furniture store, which is presently located a few doors down from the site. And if approved, the entire ground floor of this new building will be the new place of business for Decor Homes for a long time to come. Secondly, this is a truly mixed use project. Unlike many other mixed use projects that come before you, which are usually ground floor retail and then a residential tower above the retail,

this project has a very significant office component. And if you look at the rendering that we have on my right side over here and on your right side, you'll see the first floor will be the retail space where Decor Homes is going to be located; floors two, three, and four are parking. And Commissioner Kerdyk, speaking to the concern you had back in 2008: in 2008, there were 83 parking lifts proposed for this project; now there are only 8. Floors five and six will be the office space at about 12,000 square feet each floor, for a total of about 24,000 square feet of office space. And then floors seven and eight are the residential levels where you're going to have eight high-end luxury style townhomes. Again, another improvement over the 2008 project which had four live/work units on the ground floor. Third, this project, unlike most, is not maximizing its development potential. It has 8 stories when 10 are possible. It has an FAR of 2.75, when a maximum of 3.5 is permitted, and it has 8 residential units when at least 60 could have likely been permitted in this configuration in this size of property. Your Board of Architects approved the project and a majority of the PZB Board, the Planning and Zoning Board, even though we didn't have a quorum; though, we had a short board that night, we weren't able to get the necessary four-vote majority, but we did have a majority of the members present there recommending approval. So why is it, if I tell you all these good things that staff is recommending denial? And what it comes down to is the interpretation of one specific provision in the Code regarding setback and step back, which, in my opinion, regardless of how you interpret it, whether you interpret it how it's been done historically or whether you interpret it how it's been done in other instances more recently, we would be in compliance. Let me take out the provision in question. Here it is. The setback provision of the mixed use regulations, Subsection 14, which reads, and this is also in the exhibit book that I gave you in the first tab. "Front setback: up to 45 feet in height: none; if over 45 feet in height, 10 feet." And so you just heard staff tell you what this means is that if a building is 45 feet or shorter in total height, they can go up to the street with no setback. If it's over 45 feet in height, their opinion is that at the ground level, it should be set back 10 feet. Now, of course, we read it another way, and the way we read it is if up to 45 feet in height, the building should be at the property line. And when you reach 45 feet in height, it should then set back 10 feet. Now, if you look at your definition of setback and step back, you'll see in relevant provision underline: setback means a minimum horizontal distance between a property line and a structure. Doesn't say anything about the ground floor. It just says the minimal horizontal distance between a property line and a structure.

So it isn't too cozy to read this to mean that if up to 45 feet in height, you are at zero feet at the property line, and then above 45 feet, you go 10 feet back. And then when you look at the definition of step back, it means changes in the surface façade or facing of a structure or a building that are beyond, again, beyond the required setbacks. So if you read step back, if you read the definition of step back, what they're saying is when there's a step back requirement, it should be on top of, in addition to what the setback requirement is for that building. Again, very important how you read this section here and how it's been read historically, because as far as our building is concerned, on the front setback where it faces Ponce, for the first 45 feet in height, it's at zero; at the 45-foot height of elevation, it steps back 10 feet. The interior side, which is the side we were talking where the blank wall is, indeed, does not require a setback, none. Side street, which is San Lorenzo in this case, it's 15 feet; we have 15 feet of setback there. And then the rear of the property, the property facing the alley, since it's abutting an alley, also, no setback required there. So if you read that just how I read it to you, our property's in compliance with the setback requirements of the Code. And indeed, the 2008 project, which as far as setbacks are concerned, was exactly the same as this property is right now with zero on Ponce for the first 45 feet in height, then additional 10 feet; zero on the interior side, zero on the rear, and 15 on San Lorenzo, and that was indeed approved by the City Commission after thorough review by City staff. And as you know, things don't come to this Commission by accident; it's a long process that projects go through before they get here, and it's reviewed numerous times by Zoning analysts, people in the Planning Department, people on the Board of Architects. And if you look at that Resolution from 2008 and look at the plans that were (UNINTELLIGIBLE) indeed, it is the same as far as the setback situation with this property today. That's tab 2, your 2008 City Commission resolution. If you look at tab 3, which are the zoning analysis prepared for this project, this project that we have before you today in 2014, one prepared by the City architect on May 22, 2014 and another one prepared by the Planning division on April 21, 2014, which are tabs 3(a) and 3(b). You'll see, and I've tabbed them further for you in yellow, you'll see where you get to the section that talks about setbacks, and you'll see that it was determined that we had complied both on the first analysis and also on the second analysis. There was a statement that we have complied as far as setbacks are concerned. Again, that's for this project in this year. And sure enough, once you comply with Section 14, there is no need to look at Section 15 in the issue of setback reduction, because indeed, we have

complied with setbacks, and there's no need to reduce them. But let's play devil's advocate, especially since I've looked into the history, I've been involved with a lot of the mixed-use projects that were previously approved, and let's play devil's advocate and say that setback reduction is technically required here. And if you were to look at that question, go to tab 4, every other mixed use project that has been proposed and approved in the City of Coral Gables in the mixed use district has had some level of encroachment into that step back. It's true that there were step backs on those buildings, but they weren't a uniform 10 feet of setback all around the building. There were encroachments into that step back area, and the rationalization for that being permitted has always been the fact that the Board of Architects has jurisdiction over building and design and issues a building step back. And if the Board of Architects had previously approved the appropriateness of the step back, it was deemed to be appropriate for purposes of mixed use site plan also

Vice Mayor Kerdyk: Mario, are you considering...I see 0000 setbacks, but paseos, you're considering no setbacks because a paseo may be a setback, but it's built to the property line because you...

Mr. Garcia-Serra: Correct.

Vice Mayor Kerdyk: So that's how you're considering no setback.

Mr. Garcia-Serra: Correct. There was a structure going up to the property line and in many cases is arcade.

Vice Mayor Kerdyk: OK. So the arcade...se, because the key is we wanted arcades in that location there in Mediterranean and we want arcade. So, yes, what you say is correct. I mean, it comes to the property line, but really, it's set back. It just has that paseo.

Mr. Garcia-Serra: Also above the arcade, quite often we've had structured, you know, parking areas, parking garages.

Vice Mayor Kerdyk: Yes.

Mr. Garcia-Serra: And if you go through quickly through each of the things that are on tabs 4, it's highlighted for you, the previous zoning analysis that was done, and you'll see that they consistently say, starting with 4(b), which is where it's stated more clearly -- permitted for buildings approved by Board of Architects for Mediterranean architectural style. Again on "C," lower at the bottom, it's not highlighted, but it's there: setback requirements for (MXD) projects approved for Mediterranean style bonus. Same thing on "D" Permitted for a building approved by Board of Architects for Mediterranean architectural style. Same thing on "E" Setback relief may be awarded for (MXD) projects approved for a Mediterranean style design bonuses. You'll see right after that page, it states clearly in the zoning analysis they did for the DYL project, not applicable; Med bonus table for setback reduction overrides. So you keep on looking at all these projects and you see at some point in the past, they either interpret it the way it was interpreted for this project in 2008 or we're complying with setback with that additional setback of 10 feet at the 45 feet in height. Or if you weren't stepping back uniformly on all sides, it was OK if it was approved by the Board of Architects.

Vice Mayor Kerdyk: Do you think we've erred as far as not requiring setbacks from the interior portion of that building?

Mr. Garcia-Serra: Yes. Aside from what the Zoning code might permit, you also have the building code consideration that if you're building on a property line and you're not given any setback, you can't have any openings in that area. And of course, on a site like this, touching upon something that you discussed back on 2008. If you were to go and look at the minutes, in the mixed use district, we permit projects on a 10,000 square foot site as opposed to a 20,000 square foot site. And so by permitting projects on a smaller site, you have a situation sometimes, so in order to get a parking garage that works, you need the zero setback, you know, on the front for the first 45 feet in height and also the zero setback on the interior side so you could have the proper circulation. Here, we're also dealing with an office building as opposed to residential building, so we're not looking to have balconies, per se, on those floors. We're looking to have air conditioned space where you can have an office. So those -- all of those reasons are why

we're at zero on the interior side property line. And indeed, it's a situation that you've seen before. If you look at unmixed use projects recently approved, if you look at tab 4f, the very last page in that insert, you're going to see the Gables Ponce II project, which you could tell on the interior side indeed has a significant...it's certainly not step back 10 feet at the 45-foot height, and on top of it, has a significant component that is a blank wall that goes up straight.

City Attorney Leen: Mr. Mayor, I have a comment on this. I don't know if, Mario, you'd prefer to finish.

Mr. Garcia-Serra: No. If you want, by all means. Go ahead and weigh in on your...

City Attorney Leen: One issue that I see that's of concern to me with this interpretation, although, again, I do think that you could grant it, based on the prior interpretation, is that there's no ability to have setback relief then, and Mario, I'd be curious for your thoughts on this. Because if you interpret this to mean after 45 feet, it can go back 10 feet, let's say you didn't want to do that. Let's say you didn't want it to go back 10 feet, so you need to get relief, setback relief. The setback relief is putting it back 10 feet on all four sides, so it doesn't make any sense, because a setback relief is worse than the setback itself. And I think the issue is it's not the best provision in the world.

Mayor Cason: Very confusing.

Mr. Garcia-Serra: Well, in particular, there are situations where you could perhaps need relief on the interior side.

City Attorney Leen: That is possible, but it's not...

Vice Mayor Kerdyk: What did you say?

Mr. Garcia-Serra: That there's other situations where you could still use setback reduction to reduce your interiors, excuse me your street side setback requirements and so forth so that you

can come out to the property line on that side of the property, as well as if you're not abutting a street or alley in the rear is a setback requirement.

Vice Mayor Kerdyk: I mean, a lot of the problem here is that that north wall, as Commissioner Lago says.

Mr. Garcia-Serra: Sure.

Vice Mayor Kerdyk: I mean that's the issue.

Mr. Garcia-Serra: Well, you know, that's where I want the discussion to go also too, because, you know, because we are engaging almost in an academic discussion over how exactly do...

Vice Mayor Kerdyk: Right, right, right, right, right, right.

Mr. Garcia-Serra: Tell us what you actually think of the project, because I don't want the discussion of which way you can interpret the setback, especially when it's been interpreted different ways in the past to get in the way of a good project.

Vice Mayor Kerdyk: On that one wall, can you move it in a little bit so they can put windows on that wall, on that north wall?

Mr. Garcia-Serra: Yes. It would be a very dramatic...

Commissioner Lago: Mario, let me ask you a question. The project was vet -- we had some of the members here from P&Z.

Mr. Garcia-Serra: correct.

Commissioner Lago: We had the Board of Architecture. I mean, obviously, they did review the project.

Mr. Garcia-Serra: Sure.

Commissioner Lago: Like you said, there are several steps before it gets to Commission.

Mr. Garcia-Serra: Sure.

Commissioner Lago: I haven't read the minutes in regards to what their opinion was, but you know, I imagine they had their own opinions in regards to that north wall.

Mr. Garcia-Serra: Well, the City architect I think is here. I was not actually at the meeting.

Commissioner Lago: You weren't at the meeting?

Mr. Garcia-Serra: No. I was hired on this about a month ago.

Commissioner Lago: Oh, OK.

Mr. Garcia-Serra: So we might have to defer to, I'm not sure if the City architect is here or not, but if he is...if you could just give a summary, Carlos, of the Board of Architect's review.

Commissioner Keon: There's no definition, there's nothing on that wall, other than just a plain blank wall. There's no scoring, there's no texture...

Mr. Garcia-Serra: The wall has changed a little bit, because it was interesting going through all the minutes. When I went through Planning and Zoning Board, Commissioner Keon was on the Planning and Zoning Board, and you did have comments about the blank wall. And the blank wall has improved since then.

Commissioner Keon: OK. I sort of remember that blank wall.

Mayor Cason: But it's blank because you assumed there was going to be a building right up against it. It'd be ridiculous to put windows and spend money on it; is that right?

City Architect Mindreau: Right, Mayor. The building at zero setback at that point, you're not allowed to have any fenestration, any windows.

Mayor Cason: You're not allowed?

City Architect Mindreau: No, you're not allowed to have any windows on that site at that setback. To do so, you would have to step back setback. I believe it's three feet for the first floor and then a little further as you go along.

Mayor Cason: So there's no option?

City Architect Mindreau: There's no option.

Mayor Cason: Unless you moved it back.

Commissioner Lago: And the reason behind that is because of the expected project, the forthcoming project, which if it would ever be developed.

City Architect Mindreau: It's a fire-rating issue. You don't want the fire from your building to hit the building next door.

Vice Mayor Kerdyk: Carlos, could they take the three feet off that one side, and go into the encroachment of the 15 feet on the south side of the building? I mean, it basically move the building over a little bit and into the other setback and just put some windows on that one side?

Mr. Garcia-Serra: Let me let project architect address it.

Commissioner Keon: Right. But it was my understanding, I sort of vaguely remember it, that, that blank wall was not only there only because it, you know, was on the property line, but it was also part of a design of a building. Wasn't that building design?

Mr. Garcia-Serra: Also for purposes of the interior floors. For the purpose of having a layout of office that works, it was also driven by that.

Commissioner Keon: OK. Do we have a picture of what that looks like now? What does that wall look like?

Mr. Mateu: Hi. Good afternoon. My name is Ronnie Mateu with Mateo Architecture. I am the architect of both buildings. The issue about building a building that is at the property line, and the reason why the walls are blank and we do have score lines and on this design that we have now, as opposed to the one from 2008, the one in 2008 was pretty much a rectangular box, property line to property line, up the whole height, solid with score lines, but it was solid. This one is more articulated. It has a shape to it and holes, etcetera, because we don't take it all the way back, and we have some balconies and fenestrations. The reason it's solid is because of a fire code matter. It's not that we don't want to put windows in it or...

Vice Mayor Kerdyk: It's a fire matter.

Mr. Mateu:...we are wasting money if somebody builds up.

Commissioner Keon: Right.

Mr. Mateu: It's a fire code issue. And the issue of moving the building back after 45 feet from the side or any of that stuff also is a fire matter, because the fire code also has an area of how much windows you can actually puncture as you move back away from the property line. So if you, for example, were to set back the building five feet on places where you want to have windows, you're only allowed "X" percentage of that wall to have windows because there is a fire code matter of how much openings you are allowed to have. If you set it by 10, if you set it

by 15, if you set it back 20, that's how you get more windows. Now, if you were, some of the examples had been used here by the staff to show buildings that have, you know, setbacks, whatever, those make all kinds of sense because they're apartments, and apartments, by law, require windows and air and all of that, so they have to have those kinds of setbacks. In a building that is an office, you don't.

Vice Mayor Kerdyk: But let me tell you from a real estate, you know, knowing my real estate business, I think fairly well. The more windows you have in an office building, the better it is.

Mr. Mateu: Oh, absolutely.

Vice Mayor Kerdyk: For sure. So if there's any way that you can put windows on that side, the better it is for people renting the space, for sure.

Mr. Mateu: Absolutely. But the other thing that happens on that wall, because, you know, the other restraint that these lots have because they're only 100-foot deep, for purposes of the parking, parking is a real tight issue...

Vice Mayor Kerdyk: No doubt.

Mr. Mateu:...to fit and in those 45 feet that we have as the base where we have the retail on the ground and then we have, you know, height, two and a half, three stories of parking. To put the parking there before you set back the building, as we have designed them in the front 10 feet. If you set back the building...

Vice Mayor Kerdyk: On the side?

Mr. Mateu:...on the side, you're going to lose more parking spaces because that's where we have our elevators and our stairs.

Vice Mayor Kerdyk: Even if we allow you to encroach into the other 15 feet, because you have 15 feet on the other side, right? It's the --

Mr. Mateu: Well, on the San Lorenzo side, we have the 15 feet.

Vice Mayor Kerdyk: Well, that's what I'm saying. So, basically, you take your building and move it over 5 or 10 feet just so that you can get some windows in it?

Mr. Mateu: I think, if we were allowed to go to zero on the San Lorenzo side, that's a different story. You know, that's a different story. We would certainly be able to do that.

Vice Mayor Kerdyk: Yeah, OK.

Mr. Garcia-Serra: From a legal point of view, I have some concerns with that, because in the mixed use district, you're specifically prohibited from requesting variances from setback, and so the only way you could do setback is through the setback reduction, which we've already discussed; you know, then creates other issues with the required step back and the setback.

Mayor Cason: How about that living wall that you have on the other side. Could you put something on that blank side to spruce it up basically, to make it look not like a blank wall?

Mr. Garcia-Serra: I believe the answer to that, and Ron you can help me on that one, is no, because, again, it would require some amount of distance for maintenance. In other words, we can't be encroaching on the other person's property.

Mayor Cason: I mean, just temporarily until the other building was built up against it. It was a question of not looking nice. Is there something you could put there in the interim?

Mr. Garcia-Serra: Masking it essentially, you're finding a way to mask the blank wall.

Mayor Cason: Yeah.

Mr. Garcia-Serra: Is what you're looking for.

City Attorney Leen: You know, if I could, Mr. Mayor, if this is going to go forward, and I understand that the applicant has a slightly different perspective, but at least from staff's perspective and from the City Attorney's perspective, it would be on an estoppel theory, basically a settlement. It's really similar to a settlement, but it's under an estoppel theory, so I think you could require...so, for example, one problem is if you don't have the step back reduction, what harm does that cause to the adjoining properties? If you want to take action, such as moving the building to address that, I think you can.

Vice Mayor Kerdyk: OK.

Commissioner Lago: You're talking about what harm does it do. I mean...

Vice Mayor Kerdyk: I don't think it does any harm.

Commissioner Lago: Doesn't do any harm, but you're sending a message, though, that the building is above 45 feet and it's not meeting the requirement of 10-foot setback.

City Attorney Leen: Well, I think that the legal point, though, is...

Commissioner Lago: I don't have a problem, I like the design of the building. I think the building is a beautiful building. My issue is, you know, if you're going to apply the Code to certain people, then you got to apply it to everybody.

Mayor Cason: But is that the case?

Commissioner Lago: If that's not the case...

City Attorney Leen: The whole issue here is that there's been a change in interpretation, without any change in the law.

Commissioner Lago: And this is the issue, and I agree with the applicant in the aspect that they received approvals from staff eight years ago. They did not pull the permit. The economy tanked. And now, basically, staff is changing course.

City Attorney Leen: Yes. And there's no vested right. So you could go with staff.

Commissioner Lago: No, I understand. I understand there's no vested right, but there's also something a little, you know, inhumane about that, you know. They have gone through the process twice, so I'm a little sensitive to that fact.

City Attorney Leen: I understand.

Vice Mayor Kerdyk: But I think if we're talking...there's two issues. There's the front that you may have your opinion about and I may have my opinion, but also you were talking about the wall that's a problem on that north wall. So what I think the City Attorney is saying that if we had a settlement and we told them, "Hey, we need to put some windows on the wall and move the building 10 feet, don't do anything to the front of the building, is that a possibility? I mean, that's what I think would alleviate one of your problems.

Mayor Cason: Yeah, the wall.

Vice Mayor Kerdyk: The wall.

Mayor Cason: And the other one is the applicant fully believed that based on what happened before and up until the interpretations in 2014, that this was not going to be a problem. And so you went forward and presumably spent quite a lot of money.

Mr. Garcia-Serra: Of course.

Mayor Cason: And now there's a difference of opinion.

Mr. Garcia-Serra: And it's important to note in 2008, it got to the City Commission. The City Commission approved a resolution approving the site plan for this project with the exact sort of setback and step backs or lack thereof that it has today.

Mayor Cason: And there's no reason to believe that anybody would have caught anything at the permit stage after it came through the Commission, right? It would have...

Mr. Garcia-Serra: If you look in the exhibit, you'll see that tab 6 is a printout of that 2008 permit application, and indeed, it wasn't finally approved because Art in Public Places fees still needed to be paid, permit fees still needed to be paid. But the Zoning comments do not point this out as a comment at all. You know, this was fine as proposed.

Mayor Cason: What are the elements again that you said that we could on estoppel that's equivalent to five elements?

City Attorney Leen: Yes. There's several elements, and you may actually want to hear from the property owner too. He may want to testify and provide you that evidence. But the first element is there has to have been a change in interpretation basically.

Mayor Cason: There was.

City Attorney Leen: They were relying on a prior interpretation. Second, and I didn't get into this last time, but that interpretation has to mean that they will prevail, which here, I believe they would if you apply the older interpretation. OK, so second, they have to have relied on that interpretation and to their detriment, and it's two parts, which means it has to be more than simply "Oh, there's this prior interpretation; I'd like to rely on it." They have to have devoted time and resources, potentially, you know, through plans; and they can talk a little bit about the amount of resources that they've devoted to this interpretation until they learned that it no longer was the interpretation. At that point, they're on notice. So that's number two. Three, was that

reliance reasonable? And then lastly, would it be unjust to apply the new interpretation in these circumstances?

Mayor Cason: Do you want to address those?

Mr. Garcia-Serra: It is hundreds of thousands of dollars that have been paid in preparation -- preparing plans and professional fees and so forth. The time that they've had to be under contract...

Commissioner Lago: Yeah, Mario, but I mean, I know how much things cost. I'm in this industry. I mean, you're going to have to pay those no matter what. So at the end of the day you know, we're talking about like you have to pay the designer to design your building. You didn't go into construction, you didn't pull a permit. So you can hang your hat on the interpretation, but don't hang your hat on fees, because I think that that's...

Mr. Garcia-Serra: Correct, but I'm not talking...

Commissioner Lago: You know, that's not the most fair thing to...

City Attorney Leen: Commissioner, they just need to establish for purposes of...

Commissioner Lago: No, I understand. I think we should be fair about what we're saying here. They received the interpretation. They came to the Commission; it was approved. They didn't pull a permit. I understand the economy didn't go well, but...

Mr. Garcia-Serra: But the fees I'm referring to are not the fees in connection with the...

Commissioner Keon: Not with the City.

Mr. Garcia-Serra: ...2008 plans, but with the ones that we prepared right now. And the amount of time that it's taken to prepare right now, and then the fact that if the interpretation were to

change, we would then have to start over and start with a new set of plans in preparation and so forth. And so, indeed, we've expended those monies, we've made those actions, we've spent the time, we've made the effort. Up until the report was being prepared for the Planning and Zoning Board hearing in October is when this issue first came to the attention of my client. And since then, we've been trying to address it through the various arguments that you've heard today; and indeed, we're in a situation that we've relied upon those previous interpretations and actions of the City and would be prejudiced now if we weren't able to move forward with the project that's proposed, again, a project which I think is well received.

Mayor Cason: And if we were to approve it, it's not a precedent, because it's specific for this particular unique case?

City Attorney Leen: In fact, the way I would approve it, what I would recommend is that you make it clear going forward for all projects, the new interpretation is the one the Commission will apply. It's only applying it to this project because they detrimentally relied on the prior interpretation, and we could put that in writing. I could do a City Attorney's opinion.

Commissioner Lago: What is the actual detriment? Because we keep saying that word, and I want to know what the detriment is.

City Attorney Leen: One thing that's clearly detriment is that they'd already built the building.

Commissioner Lago: OK.

City Attorney Leen: That obviously is detrimental.

Commissioner Lago: So they didn't spend money on construction.

City Attorney Leen: If they didn't spend any money at all there's no detriment. Plans, based on the new interpretation, that could be considered a detriment.

Commissioner Keon: If they redesigned.

City Attorney Leen: The time and the amount of money spent on plans. It's ultimately up to you to decide, though. I'm just saying that you have the authority to approve it based on the old interpretation. I think that it's sufficient that...

Commissioner Lago: I just think that we should make a decision based on whether we approve this project or not, not stick all these add-ons in regards to detriment and, you know, how much money was spent and, you know, whether they spent the money twice. There was an opportunity to pull a permit; they didn't pull a permit, and now they're coming back to build this building. The economy's better and I understand that. So I think we need to step away from that and step away that there's a project here to be had. We have to make a decision based on two main topics. And again, correct me if I'm wrong. Number one, the setback. Do we approve the setback where we stand right now? Are we willing to approve that?

Vice Mayor Kerdyk: Right.

City Attorney Leen: Yes.

Commissioner Lago: Number one. Number two, excuse me, and I forgot. I apologize. The north elevation, can we live with the north elevation the way it's been designed as per the architect and the owner? If we can, then we move forward. If not, we make changes.

Vice Mayor Kerdyk: Mario has a question.

Mr. Garcia-Serra: The issue on the north elevation. I'm speaking to the project architect and he does think that we can incorporate a work of art, let's say a mural or something to that effect, on that elevation so that it is not a blank wall.

Vice Mayor Kerdyk: OK. But he doesn't want to move it over and put windows there; is that right?

Mr. Mateu: If I may, first, this is the north elevation we have now. Which is not a blank wall.

Vice Mayor Kerdyk: Yeah. That looks better.

Mr. Mateu: It has a balcony.

Vice Mayor Kerdyk: Yeah, yeah, better. Yeah.

Mr. Mateu: So it's a little bit different. It has score lines, etcetera, and we're limited as to what we can do there. And of course, if the Commission wanted us to do some sort of a mural or something, some art piece that we would do on a flat surface, we would certainly entertain that. Anything that require thickness or moving back is a problem, because we have our circulation, our vertical (UNINTELLIGIBLE) because of the tightness of the parking requirements that we have on these hundred-foot lots would eat up parking spaces...

Vice Mayor Kerdyk: OK.

Mr. Mateu:...going -- moving things --

Vice Mayor Kerdyk: Even sideways. Just moving things to the other side.

Commissioner Keon: You could always do some sort of tile work or something...

Mr. Mateu: Absolutely.

Commissioner Keon:...that creates some sort of design so it's not a blank wall. I mean, so that doesn't, we talked about that, I remember, at the Planning and Zoning Board meeting back in 2008.

Mr. Mateu: And we can actually incorporate that as part of our Art in Public Places proposal, which is what we're trying to...

Commissioner Keon: Yes. I mean, the problem with the whole thing, though, as long as nothing is built, you can maintain whatever that is. It's at when the next building comes along and is built also on the property line, you know, you're going to lose all that, so you want something that, you're not going to see anyway, so it's whatever. Anyway, I'm having a little bit of trouble defining the issue that is before us, and I don't think it's not now, it's my understanding that the issue of the blank wall is not an issue in this with you. That's not an issue.

Assistant Development Services Director Wu: No, we don't take issue with that.

Commissioner Keon: OK. So that's different, we may take issue.

Commissioner Lago: The issue is the setback.

Commissioner Keon: OK. Well, the issue is the setback. When this came before the Planning and Zoning Board in 2008, was the issue of the setback even discussed?

Assistant Development Services Director Wu: No.

Commissioner Keon: I don't remember any discussion about the setback at all, so I'm going to assume that staff presented it as being in compliance with the Code. Is that right?

Assistant Development Services Director Wu: Yes.

Commissioner Keon: So you have to assume at that time it was within compliance with the Code.

Assistant Development Services Director Wu: Reading the documents one can conclude that, yes.

Commissioner Keon: OK. So they believed it in, so the issue before us now is that at this time, under a second review, because it didn't go forward; it needed to go through the process all over again, that as approved, previously, under your interpretation, it is not in compliance with the Zoning Code because of the setback issue. Is that right?

Assistant Development Services Director Wu: That's correct. I feel we ethically are obligated to give you that information because we've had projects that follow that interpretation.

Commissioner Keon: Right.

Assistant Development Services Director Wu: One thing I wanted to add is about the disclosure of whether you're setting precedent. We've covered that in this resolution, if you want to approve it. A restatement, the very last "whereas" clause on page 2: approval of this project based upon the reliance of prior interpretation does not set precedent for admitting the setbacks/step back requirement feature, and that staff should apply in setback/step back moving forward. So it's very clear that we are covered if you want to approve this. It's written such, we have conditions ready to go, and we agree with the architect; there's a significant circulation component on the north wall, so moving that may incur more (UNINTELLIGIBLE) is the reality of the situation.

Commissioner Keon: I'm sorry; say that again.

Assistant Development Services Director Wu: You may force them to have more (UNINTELLIGIBLE), because they have to move into their parking requirement.

Commissioner Keon: Right. Yeah, I really don't, it's an 8-story building. How tall is the building?

Assistant Development Services Director Wu: Ninety-three feet, seven inches.

Commissioner Keon: OK, so 90 from 45. It's not that much higher. Yeah, do I think it was an oversight on staff's part. Obviously, we didn't recognize them on the Planning and Zoning Board, but it was an oversight on staff's part at the time. You know, maybe if it was 190-foot building, I'd have a problem with it. I mean, if the issue is, you know, that oversight on staff's, and I agree the issue for us was, and I remember the issue back in 2008, was that wall, because you have that same look like I'm at Region's Bank and it still bothers me, that Region's Bank downtown that it is, you know, such a (UNINTELLIGIBLE).

Commissioner Lago: Tower, tower.

Commissioner Keon: Yeah, it's very, very, very unattractive. You know, I'd rather see you put the money into doing something on that wall, because even if you put the setbacks in, that wall would still remain the same. It would still be there and there's nothing, because it says you can't do that.

Mayor Cason: So you'd be willing to take care of that part of the problem?

Commissioner Keon: I would like them to, you know, work with... I don't know that it has to come back to us. If they did it as, you know, some sort of a design on that wall so that it was very attractive, I don't care if you create a wave. I don't, whatever, but it is in keeping...you know, it's your building. I wouldn't tell you how to design your building. I wouldn't tell you what the appropriate, you know, art that is -- that goes with that building and works with that building and if attractive with that building. I'm not a designer and I'm not an architect. I'm not an artist, but I know when I look at it, if it looks good or not.

Commissioner Lago: Madam City Manager, Craig, have you seen this type of scenario play out before where a project received approvals and it was a change in the Code and then now it doesn't meet the Code?

Commissioner Keon: Not a change in the Code.

Commissioner Lago: I'm sorry.

City Attorney Leen: Not a change in the Code.

Commissioner Lago: Excuse me. There was an oversight. There was an oversight. I apologize.

City Attorney Leen: If there was a change in the Code I would not be giving this opinion.

Commissioner Lago: There was an oversight by staff at that point when the approvals were given.

City Attorney Leen: Yeah, there's a lot of cases on this. It happens. Sometimes it's a mistake; sometimes it's an actual change in interpretation. It's actually very hard. For example, if you decided to reject this project, I could defend that in court, because I could argue that it's very hard to estop the government, and I would argue what I told you about the provisions. However, I do believe you have authority as well to look at the whole situation and decide, you know, "this last time we're going to apply this older interpretation." The reason I say that is because it's not a change in the law. Nothing has changed in what's been passed. And ultimately, this Commission has the final interpretative authority over the Zoning Code. And so, you could recognize that there was this prior interpretation, that it was applied; you're going to apply it this one last time, and then I would recommend after, if you do decide to approve this, but you don't want this to set a precedent, I would put it in the resolution. But I would then also pass a resolution adopting this interpretation, which we'll put into a resolution and then, in the future, when people come to us and say, "Oh, well, I want to rely on this prior interpretation," we'll give them the resolution, which says the interpretation of this Commission. There's no possibility they could rely on the prior interpretation if you've issued a resolution that says that this is the interpretation going forward.

Mr. Garcia-Serra: Mr. Mayor, if I could? On the issue of the north elevation and the blank wall, remember, we're already proposing to incorporate our Art in Public Places as part of the building, so what we could be required to do is, as part of those approvals, which ultimately have

to come back here to the City commission, also address that blank wall on the north. And you know, on the issue of the great setback debate, you know, I think we could best sum it up as the law didn't change; the law stayed the same. The interpretation has changed somehow or for some reason, and we're at a point right now that I think it would just be unfair to us if we had to then abide by a new interpretation that essentially has been sprung on us.

Mayor Cason: And that's the last point of your estoppel argument, that basically we are looking at whether it's just or not.

City Attorney Leen: You look at the whole circumstances. Do you feel it would be just and it wouldn't be too difficult for them to comply, you can apply the new Code. But if you do think it would be unjust, unfair, basically what Mario just said, if you agree with him, then you could approve the project.

Commissioner Keon: Could we see the front elevation of the building, of the Ponce elevation, because that's where the setback issue is? It's on a Ponce elevation. Because the other setbacks are in compliance, right? The Ponce elevation. So, even though...

Mr. Garcia-Serra: Correct. This would be Ponce and this would be...

Commissioner Keon: No, on the Ponce side. Even on the front of that building, it looks like they're columns. Is the actual, you know what it is? I think part of what doesn't bother me about it is it's not a flat wall, it's not a flat front of a building. There is some dimension to the front of that building. It steps back where there, it looks like at the very top...

Mr. Garcia-Serra: Well, there's a step back here.

Commissioner Keon: Right.

Mr. Garcia-Serra: At the 45-foot height level, it steps back 10 feet.

Commissioner Keon: Right. And then it steps back at the...

Mr. Garcia-Serra: Further up here.

Commissioner Keon: It steps back further up. The entries or the doors on the ground floor, is that actually at the street or does it step back under some sort of something there?

Mr. Mateu: The main entrance to the building is here. The storefront is here.

Commissioner Keon: OK.

Mr. Mateu: There's an entrance to the ground level on the side.

Commissioner Keon: Right.

Mr. Mateu: And here, the storefront is all along here. It could be that if this was ever broken into smaller pieces, you could enter. From here, there's an eyebrow canopy along Ponce. But the parking area is here. This is 10 foot farther back. This is a terrace here so that it has a hole all the way back. And these are apartments; are two stories here. And they're way back. As you can see on the side how far back, so that the silhouette is like varied on the (UNINTELLIGIBLE).

Commissioner Keon: So that's why it doesn't it's not a flat panel. It's not a flat surface. So the fact that...

Mr. Mateu: And these are all independent so that there's breaks in each of in each of these...

Commissioner Keon: You know, there's enough going on in the front of that building that that doesn't, it doesn't, it doesn't bother me. You know, yes, do I think it should have been done right the first time? Yes, but it wasn't, and you can't undo that, and because of the design of the building, I don't have a problem with the setback. I would pass it. It would require that, you know, whoever reviews the Art in Public Places. Who reviews Art in Public Places?

City Manager Swanson-Rivenbark: The Economic and Cultural Development Department with the Cultural Board.

Commissioner Keon: OK, so you know, that you'd have to go back with them to some design along that north wall that, you know, would be appropriate following this discussion going forward.

Mr. Mateu: And I have met with them prior to this. They proposed the idea of the area (UNINTELLIGIBLE).

Commissioner Keon: Or something. That is, we're going south. We're going to say, "Oh, my God, what a great wall."

Mayor Cason: And presumably, whatever art goes there, it will be something that should be able to be removed if and when they build the building right up next to it, so that it could be moved somewhere else or --

Economic and Cultural Development Director Birdsill: That's exactly my concern, Mayor. To have official art that we're going to destroy violates the artist's rights in a lot of areas. I would prefer to solve the problem, maybe as Commissioner Keon said, with the design, maybe with some interesting materials that are fairly flat.

Mayor Cason: Yeah, maybe ceramics or what --

Commissioner Keon: Right, but doesn't need to be...that's actually part of the building. It's incorporated into the building.

Mayor Cason: Let's do this, and we have two people who want to speak, and then we can -- we have any more discussion, then we can go to the motion.

Commissioner Keon: OK.

Mayor Cason: We have, I think, first Peggy McMann. She here? And Jim Dockerty.

Mr. Dockerty: The discussion is fascinating, quite frankly. I own two buildings across the street at 4208 and 4212 Ponce.

City Attorney Leen: Well, let's swear them in.

Mayor Cason: Oh, you need to get sworn in, sir.

City Clerk Foeman: Raise your right hand, please. Do you solemnly swear or affirm that the statements you are about to enter will be the truth and nothing but the truth.

Mr. Dockerty: I do.

City Clerk Foeman: Proceed.

Mr. Dockerty: So I'm here as a concerned neighbor, a property owner in the neighborhood. I'm here to support the proposed plans. I think it's a fabulous building. I think it adds a great deal to the aesthetic of the neighborhood. I absolutely think it will be a very positive impact on the neighborhood. A lot of the property owners that are my neighbors I've spoken to, they're all very excited about it. I haven't seen or heard any negative reactions in the community, in the immediate neighborhood, to this building, so I just wanted to support the building.

Mayor Cason: Thank you very much. All right, do we have anymore discussion? Are we ready to make a motion? Anyone want to make a motion? I can't.

Commissioner Keon: I'll make the motion that we approve the project as presented with an Art in Public Projects piece that will go on that north wall that will be reviewed by the Economic Development people for approval.

Vice Mayor Kerdyk: I'll second it with just a comment. I mean, I'm not so crazy about it, but I'm a man of my word, and I voted for this, you know, six years ago and I'm going to maintain the same vote, because I do think there is a lot of the similarities between the first time and the second time. Just because it wasn't disclosed, just because we didn't discuss about the setback before, I just can't take that and so I am going to second the motion, and I will vote for this based on that.

Mayor Cason: OK.

City Attorney Leen: Mr. Mayor, can I ask a clarifying point? Do you accept that?

Mr. Garcia-Serra: Let's talk a little bit about the condition, because I guess it's art or architectural treatment that we want to do on that...

Commissioner Keon: It's an architectural treatment that would be... you know, I don't know what the words are for that. Maybe you can help me. Cathy, can you help me?

Mayor Cason: It's to spruce up that wall.

Commissioner Keon: Yeah. Fix up that wall.

Planning and Zoning Director Trias: What I would recommend is maybe you can ask the advice from the Board of Architects in terms of an appropriate treatment on that wall. There's some concern about the art. It could have been a variety of reason, but that's what I would recommend.

Mayor Cason: Is that fine?

Commissioner Keon: OK. I also think that if Development reviews for art, they should have an opportunity to comment on it also. If you want to add Board of Architects, I don't have any problem with that, but I would just soon not take that authority away from them.

Planning and Zoning Director Trias: Yeah. What I meant to say is that...

Commissioner Keon: In addition to.

Planning and Zoning Director Trias:...the option of an architectural treatment or art should be there, because it may be easier to do that if the Board of Architects believes that's a better option. I think you should follow that.

Commissioner Keon: OK. I mean, I don't have any problem with having both of them take a look at it and approve it, and I would think you would want it to be architectural in design so that it is built into the building.

Mr. Garcia-Serra: Even if we do art work, the Board of Architects still looks at it, so they were going to look at it anyways.

Commissioner Keon: OK. I mean, it can be tile, it can be fresco, it can be something that's actually build into the building, and pretty and will be there.

City Manager Swanson-Rivenbark: Excuse me, Commissioner Keon. Are you suggesting that with the approval of this motion, then staff will make certain that there is either architectural treatment or art in that wall, but that would not need to come back to the Commission? Just this clarification.

Commissioner Keon: Yes. I don't need it to come back to the Commission.

Mayor Cason: I don't need it to come back either.

Commissioner Keon: Board of Architects, you know, approves it, and, you know, the Cultural Development or the Economic Development people that do the review for art approve of it, it doesn't need to come back here.

City Attorney Leen: Would you be willing to proffer it?

Mr. Garcia-Serra: Yes, that is acceptable to us and we will proffer it.

Mayor Cason: All right. Let me close the public hearing portion of this. We have a motion from Commissioner Keon and the Vice Mayor seconds it. City Clerk.

Commissioner Keon: Yes.

Vice Mayor Kerdyk: Yes.

Commissioner Lago: No.

Mayor Cason: Yes.

Mr. Garcia-Serra: Thank you very much. Have a good day. Best holidays to everybody and --

Commissioner Keon: Thank you.

Commissioner Lago: You too.

Commissioner Keon: Can I ask Commissioner Lago, your objection is to the setback?

Commissioner Lago: Yes. And I think that what we're doing, what we just provided right now was the ability for somebody who, in the near future, may have a similar issue or where staff may have made a mistake for them to come and say, come to the City Attorney and say, "Listen, we have this problem and I'm entitled to what you gave this developer here." So I wanted to be -
- I wanted to be a little bit more careful in regards to that issue.

Commissioner Keon: I'll tell you that in doing like -- where I live, the Gables Club, the City did that; they gave them approval, took it back, and it cost the City \$3 million. I know the project right over here. What is the building that's right here on Segovia? Segovia Towers? That is exactly what happened. And then it's happened over and over. I do understand.

Commissioner Lago: I mean, listen, at the end of the day --

Commissioner Keon: Yeah, I understand.

Commissioner Lago: -- to me, it's a luxury. I'm not in the Vice Mayor's seat right now.

Commissioner Keon: Yeah.

Commissioner Lago: Because he voted on something eight years ago, which he trusted in staff to provide the correct information...

Commissioner Keon: And they didn't.

Commissioner Lago:...and the correct recommendation, and what ended up happening is staff made a mistake, but it's OK. We're not all perfect. We all make mistakes. I make mistakes every day. But at the end of the day --

Commissioner Keon: I just wanted to be clear as to what the concern was.

Commissioner Lago: And I wanted to be clear because at the end of the day...

Mayor Cason: Somebody left that. You can just leave it. Somebody left it from an earlier session. So whoever left...

Commissioner Keon: I understand. Thank you.

Mayor Cason:...their cell phone, please come back and get it.

City Attorney Leen: Mr. Mayor, I would like to formalize his opinion to try to address some of the concerns that Commissioner Lago raised. We could do one of two things. I could draft, in

conjunction with staff, the City Attorney opinion and either issue it or bring it back to this Commission; or two, you could issue a resolution, which you could direct right now, if you wish, that going forward, staff's interpretation will be the one that goes forward.

Mayor Cason: What do you recommend?

Planning and Zoning Director Trias: I would recommend that a discussion about the language, because I think the language is a little bit confusing.

Commissioner Lago: It is.

Planning and Zoning Director Trias: And I think probably an amendment to the language to clarify it would be better than just an interpretation.

Commissioner Keon: OK. So you'll come back to us with an amendment.

Commissioner Lago: Yes, another option a developer could have used is they could have gone through the variance process.

Mayor Cason: But we need to tighten up the Code.

City Attorney Leen: Well, there couldn't be variances with this project.

Commissioner Lago: What? I'm sorry?

City Attorney Leen: With this project, the mixed use requirements don't allow for the variance. Although, you may want to --

Commissioner Lago: They don't? They don't allow for a variance?

City Attorney Leen: No.

Commissioner Keon: No.

Vice Mayor Kerdyk: That's what he was saying when I was asking to move.

City Attorney Leen: There's like a provision in there that says that you can't grant variances as to that.

Commissioner Keon: Right.

Mayor Cason: So you'll provide our attorney language that makes it crystal clear going forward what this means.

Planning and Zoning Director Trias: Some recommendations to you to be able to clarify the language.

Vice Mayor Kerdyk: So that can go straight to us and it.

City Attorney Leen Leen: So why don't I do this. I'll just issue an opinion based on what I've heard today in conjunction with Ramon, and then he'll draft a revised language based on staff's professional judgment. It'll be brought to you through the normal course and that could resolve the issue.

Mayor Cason: OK.

Commissioner Keon: Thank you.

Mayor Cason: Thank you very much, Mario.

[End: 3:05:24 p.m.]