

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING "UNIFIED PARCEL" IN RELATION TO THE DEVELOPMENT OF GARAGES 1 AND 4

The City is currently engaged in negotiations with a private developer for the possible redevelopment, as part of a public-private partnership, of the lots located at 245 and 345 Andalusia Avenue, which are owned by the City and where City Parking Garages 1 and 4 currently exist. The lots are separated by a street and the historic Miracle Theater building which is also owned by the City. As of the date of the issuance of this opinion, the project contemplates a ground lease with a vertical subdivision where the City retains ownership of the land on both lots. The subject properties are designated Commercial High-Rise Intensity on the City Future Land Use Map in the City's Comprehensive Plan. Under this category, the Comprehensive Plan provides: "Maximum Floor Area Ratio (F.A.R.) of 3.0, or 3.5 with architectural incentives. Up to an additional 25% F.A.R. may be granted for properties qualifying as receiving sites for Transfer of Development Rights (TDRs). *See* Table FLU-2 Commercial Land Uses.

The proposed project intends to use City-owned TDRs, which under the Comprehensive Plan will permit a maximum FAR of 4.375, with the use of all applicable bonuses. The latest version of the proposed project submitted to the City, on October 12, 2018, has an FAR of 4.375. The City's Zoning Code expressly permits a transfer of FAR throughout a "contiguous unified parcel." The developer has proposed to develop the site as either a Planned Area Development (PAD) or a Mixed Use Project. Between the two options, it is staff's preference that the project be developed as a Mixed Use Project.

Under Article 4 "Zoning Districts," Division 2 "Overlay and Special Purpose Districts," Section 4-201 Mixed Use District (MXD), M Miscellaneous Subsection 6 (Table 1), the City's Zoning Code provides for a transfer of FAR within a site plan. "The density and floor area ratio may be transferred throughout the **contiguous unified parcel**, so far as building height, building setback, building stepback, parking garage liner requirements and all other requirement [sic] of this Table are met." [Emphasis added] (The Planning and Zoning Director has indicated that it is possible for the project to meet all other requirements set forth in the Table.)

The proposed development is dependent on the transfer of FAR from one part of the project to the other. So long as the project can be viewed as a contiguous unified parcel, the Zoning Code would permit such a transfer. In this particular case, the two parking lot parcels are separated by Salzedo Street and the Miracle Theater building. The question arises whether the street and the Miracle Theater building prevent consideration of the project as a "contiguous unified parcel."

Section 4-201M1 of the Zoning Code, specifically provides that "[t]he parcel proposed for development shall be a contiguous unified parcel with sufficient width and depth to accommodate the proposed uses. **Public rights-of-way or other public lands shall not be considered as a separation.**" [Emphasis Supplied] Accordingly, notwithstanding that the

proposed parcels for development are separated by the Miracle Theater building and Salzedo Street, the Zoning Code does not deem that a separation because the Miracle Theater building is considered public lands¹, as it is owned by the City, and Salzedo Street is a public right-of-way.

Further, it is the opinion of the Planning and Zoning Director that the proposed site for the project is a contiguous unified parcel. Indeed, the Miracle Theater's operation is supported by the parking lots provided by the development. Accordingly, treating this project as a contiguous unified site plan is well supported, thereby permitting a transfer of FAR.

In consultation with special counsel, this opinion is issued pursuant to Sections 2-252(e)(1) and (8) of the City Code and Section 2-702 of the City's Zoning Code authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City.

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¹ The City's Zoning Code does not specifically define the term "public lands." Merriam-Webster defines "public land" as land owned by the governing and the Zoning Code distinguishes "public lands" from public rights-of way, making it clear that the terms are not interchangeable. In addition, the City Code uses the term "public lands" to mean City-owned property.