CAO 2015-008

To: Anthony Parrish; Ramon Trias

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

RE: Legal Opinion Regarding 106 Florida Avenue – Rear Wall

Date: February 19, 2015

I have reviewed the matter fully, including the relevant Code section, and conferred with the Planning & Zoning Director. I have been informed that the property on Grand Avenue is zoned Commercial Limited, but contains a single family residential use. You have asked whether the City would require the Grand Avenue property owner to build a wall between that property and the 106 Florida Avenue property (which is zoned single family residential, and also has a single family residential use). You have cited section 5-2403(H) of the Zoning Code in your email below in support of your position. I have been requested to review the matter by the Planning & Zoning Director and to provide a legal opinion and interpretation on behalf of and as counsel to the City, which the Planning and Zoning Department would then follow. I am copying Mr. Trias on this opinion and interpretation as it relates to his Department, but am sending it to you as well based on your request that I do so.

It is my opinion and interpretation that the purpose of the Zoning Code provision at issue is to separate properties containing commercial and residential uses by a wall, and place the principal burden for building and maintaining the wall on the property being commercially used. This protects the health, safety, and welfare of the residential use from being harmed by the commercial one. This purpose -- to separate commercial and residential uses -- is further manifested by the fact that the Code does not require a wall between single family residential and multi-family uses. It is only between commercial and residential ones.

Here, as mentioned above, the property is zoned Commercial Limited (although this is technically a different designation then strictly Commercial, I am accepting for purposes of this opinion that this distinction does not matter as "commercial use" is defined in Article 8 to include permitted or conditional uses in both Commercial and Commercial Limited districts).

it is my understanding that the Commercial Limited property at issue does not presently have a Commercial or Commercial Limited use, however. Instead, the property has a single family residential use. Notably, single family residential is not allowed as a permitted or conditional use in a Commercial Limited district. It may still continue as a use, however, because Article 6 of the Zoning Code permits legally non-conforming uses to continue.

Ultimately, it is my opinion and interpretation, on behalf of and as counsel to the City, that Article 6 governs here. The legally non-conforming residential use is allowed to continue and is not required to comply with the requirements for a commercial or commercial limited district. In my opinion, this includes not being subject to the requirement of building a wall under section 5-2403(H). Moreover, the obvious purpose of section 5-2403(H) – to protect a residential use from a commercial one – is not implicated here. It is also my opinion, however, that if a commercial or commercial limited use is placed on this property, that the City would then require the property owner to build a wall.

I am providing a link to Article 6 of the Zoning Code. Please review the Article and let me know if you have any further comments or questions. I would be happy to meet with you again with Mr. Trias to discuss as well.

Here is the link: http://www.coralgables.com/modules/showdocument.aspx?documentid=1637

Herbello, Stephanie

From: Leen, Craig
Sent: Thursday, February 19, 2015 7:12 PM
To: Chen, Brigette; Parramore, Carol
Cc: Thornton, Bridgette; Figueroa, Yaneris; Herbello, Stephanie
Subject: FW: 106 Florida Avenue - Rear Wall

Please place in the opinion folder.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Thursday, February 19, 2015 7:11 PM
To: 'Anthony Parrish'; Trias, Ramon
Cc: Chen, Brigette; Parramore, Carol
Subject: RE: 106 Florida Avenue - Rear Wall

Mr. Parrish,

I have reviewed the matter fully, including the relevant Code section, and conferred with the Planning & Zoning Director. I have been informed that the property on Grand Avenue is zoned Commercial Limited, but contains a single family residential use. You have asked whether the City would require the Grand Avenue property owner to build a wall between that property and the 106 Florida Avenue property (which is zoned single family residential, and also has a single family residential use). You have cited section 5-2403(H) of the Zoning Code in your email below in support of your position. I have been requested to review the matter by the Planning & Zoning Director and to provide a legal opinion and interpretation on behalf of and as counsel to the City, which the Planning and Zoning Department would then follow. I am copying Mr. Trias on this opinion and interpretation as it relates to his Department, but am sending it to you as well based on your request that I do so.

It is my opinion and interpretation that the purpose of the Zoning Code provision at issue is to separate properties containing commercial and residential uses by a wall, and place the principal burden for building and maintaining the wall on the property being commercially used. This protects the health, safety, and welfare of the residential use from being harmed by the commercial one. This purpose -- to separate commercial and residential uses -- is further manifested by the fact that the Code does not require a wall between single family residential and multi-family uses. It is only between commercial and residential ones.

Here, as mentioned above, the property is zoned Commercial Limited (although this is technically a different designation then strictly Commercial, I am accepting for purposes of this opinion that this distinction does not matter as "commercial use" is defined in Article 8 to include permitted or conditional uses in both Commercial and Commercial Limited districts).

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Ultimately, it is my opinion and interpretation, on behalf of and as counsel to the City, that Article 6 governs here. The legally non-conforming residential use is allowed to continue and is not required to comply with the requirements for a commercial or commercial limited district. In my opinion, this includes not being subject to the requirement of building a wall under section 5-2403(H). Moreover, the obvious purpose of section 5-2403(H) – to protect a residential use from a commercial one – is not implicated here. It is also my opinion, however, that if a commercial or commercial limited use is placed on this property, that the City would then require the property owner to build a wall.

I am providing a link to Article 6 of the Zoning Code. Please review the Article and let me know if you have any further comments or questions. I would be happy to meet with you again with Mr. Trias to discuss as well.

Here is the link: http://www.coralgables.com/modules/showdocument.aspx?documentid=1637

Best regards,
Craig

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
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Email: cleen@coralgables.com

From: Anthony Parrish [mailto:aparrish@windandrain.com]
Sent: Wednesday, December 31, 2014 10:59 AM
To: Leen, Craig; Trias, Ramon
Cc: Parramore, Carol
Subject: Re: 106 Florida Avenue - Rear Wall

Hello Mr. Leen: Dr. Elena Kendall, owner of the commercial district property at 105-111 Grand Ave, called me this morning and said she did not think she was required to build the wall and was not willing to do so at this time, with or without any cooperation on the part of NJM Builders, owner of the residential lot at 106 Florida Ave..

Therefore, I request that Coral Gables take whatever next step you deem appropriate. It is my opinion that the CG Code is clear on this issue, and that the adjoining commercial district owner is required to build and maintain the wall. Differing opinions are "what makes horse races." Please let me know your opinion at your earliest convenience.

Thank you.

Sincerely,

Andy Parrish 305-588-5209
Attorney representing NJM Builders, Inc.

From: Anthony Parrish <aparrish@windandrain.com>
To: "Leen, Craig" <cleen@coralgables.com>; "Trias, Ramon" <rtrias@coralgables.com>
Cc: "Parramore, Carol" <cparramore@coralgables.com>
Sent: Thursday, December 25, 2014 3:09 PM
Subject: Re: 106 Florida Avenue - Rear Wall

Hello Mr. Leen and Mr. Trias: Again, thank you for meeting with me the other day. As we discussed, I am sending the attached letter to the owner of the Grand Avenue commercial property. I am hoping the owner will respond.

Best regards,

Andy Parrish 305-588-5209

PS.. For your convenience, I am "pasting" the letter below:

December 24, 2014

A & B Real Estate Holdings
318 Alhambra Circle
Coral Gables, Fl. 33134

RE: Construction of 6 ft wall between your commercial property and adjoining residential lot to the rear

Dear Owner:

I am writing on behalf of my client, Devon Construction, Inc., owner of the property at 106 Florida Avenue (Folio 03-4120-006-1060) upon which a new residence is currently under construction. You are the owner of 107 Grand Avenue (Folio 03-4120-006-0890).

The City of Coral Gables requires the construction of a wall between residential and commercial districts as follows:

Article 5 Section 5-2403 Sub Par H

H. Where residential and commercial districts adjoin each other, a six (6) foot high wall shall be constructed along the property line between the commercial and residential properties. The wall shall be constructed and maintained by the commercial property owner; however, the abutting residential property owner may construct and maintain the wall.

My client is willing to pay 20% of the cost of permitting and then constructing this wall, or, if you prefer to have your own contractor permit and construct the wall, up to $1000 of the cost therefor.

Please contact me at your earliest convenience so we can discuss construction of this required wall.

Sincerely,

Anthony R. Parrish, Jr.
Fla. Bar No. 243396

cc. Mr. Ysmael M. Benitez, Pres. Devon Construction, Inc.

From: "Leen, Craig" <cleen@coralgables.com>
To: 'Anthony Parrish' <aparrish@windandrain.com>; "Trias, Ramon" <rtrias@coralgables.com>
Cc: "Parramore, Carol" <cparramore@coralgables.com>
Sent: Thursday, December 18, 2014 11:00 AM
Subject: RE: 106 Florida Avenue - Rear Wall

I agree. Carol, please set up a meeting.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Anthony Parrish [mailto:aparrish@windandrain.com]
Sent: Thursday, December 18, 2014 10:21 AM
To: Leen, Craig; Trias, Ramon
Cc: Parramore, Carol
Subject: Re: 106 Florida Avenue - Rear Wall

Hello again: I am just following up to make sure that your received my email of yesterday, and to see if we can get a date to meet or have a conf call regarding the rear wall behind 106 Florida Avenue (house under construction).

Many thanks,

Andy Parrish 305-588-5209

From: Anthony Parrish <aparrish@windandrain.com>
To: "Cleen@coralgables.com" <Cleen@coralgables.com>; "rtrias@coralgables.com" <rtrias@coralgables.com>
Cc: "cparramore@coralgables.com" <cparramore@coralgables.com>
Sent: Wednesday, December 17, 2014 12:39 PM
Subject: Fw: 106 Florida Avenue - Rear Wall

Hello Mr. Leen and Mr. Trias: I would like to meet with you at your earliest convenience to discuss the wall between the new house being built on Florida Avenue by me, and the adjacent commercial property on Grand Avenue.

Thnak you,

Andy Parrish 305-588-5209

H. Where residential and commercial districts adjoin each other, a six (6) foot high wall shall be constructed along the property line between the commercial and residential properties. The wall shall be constructed and maintained by the commercial property owner; however, the abutting residential property owner may construct and maintain the wall.

From: "Parramore, Carol" <cparramore@coralgables.com>
To: 'Anthony Parrish' <aparrish@windandrain.com>
Sent: Tuesday, December 16, 2014 3:19 PM
Subject: RE: 106 Florida Avenue - Rear Wall

Nice talking to you as well. In speaking with our Planning and Zoning Director, he thinks it best if you will meet with him and the City Attorney to discuss your options.

Carol Parramore
City of Coral Gables
City Attorneys Office
405 Biltmore Way 2nd Floor

Coral Gables, FL 33134
305-460-5338

From: Anthony Parrish [mailto:aparrish@windandrain.com]
Sent: Tuesday, December 16, 2014 3:03 PM
To: Parramore, Carol
Subject: Fw: 106 Florida Avenue - Rear Wall

Hi Ms. Parramore : Nice talking with you. I am hoping that someone has had this situation before. Otherwise we'll have to invent as we go.

Best regrds,

Andy Parrish 305-588-5209

----- Forwarded Message -----
From: Anthony Parrish <aparrish@windandrain.com>
To: "Hernandez, Cristina" <chernandez@coralgables.com>; "Sparber, Michael" <MSparber@coralgables.com>; "Jorrin, Tania" <tmjorrin@coralgables.com>; "Muñoz, Emily" <emunoz@coralgables.com>; "Sansores, Imelys" <isansores@coralgables.com>; "Ferrer, Irela" <iferrer@coralgables.com>; "Rodriguez, Steven" <srodriguez@coralgables.com>; "Tejera, Erick" <etejera@coralgables.com>
Cc: "Osle, Zilma" <zosle@coralgables.com>
Sent: Monday, December 15, 2014 1:20 PM
Subject: Re: 106 Florida Avenue - Rear Wall

Hi Cristina: I'm thinking maybe it wasn't such a good idea to cc everybody on this request. To whom do you think I should address this request?

Many thanks for your help,

Andy Parrish

From: Anthony Parrish <aparrish@windandrain.com>
To: "Hernandez, Cristina" <chernandez@coralgables.com>; "Sparber, Michael" <MSparber@coralgables.com>; "Jorrin, Tania" <tmjorrin@coralgables.com>; "Muñoz, Emily" <emunoz@coralgables.com>; "Sansores, Imelys" <isansores@coralgables.com>; "Ferrer, Irela" <iferrer@coralgables.com>; "Rodriguez, Steven" <srodriguez@coralgables.com>; "Tejera, Erick" <etejera@coralgables.com>
Cc: "Osle, Zilma" <zosle@coralgables.com>
Sent: Friday, December 12, 2014 3:26 PM
Subject: Re: 106 Florida Avenue - Rear Wall

Hello Ms.Hernandez and Everyone: I am hoping one of you will have the answer to the following question:

Article 5 Section 5-2403 Sub Par H of the Coral Gables Building Code provides as follows:

H. Where residential and commercial districts adjoin each other, a six (6) foot high wall shall be constructed along the property line between the commercial and residential properties. The wall shall be constructed and maintained by the commercial property owner; however, the abutting residential property owner may construct and maintain the wall.

As I am nearing completion of the house being constructed at 106 Florida Avenue, what is the procedure for contacting the abutting Commercial Property owner at 105-111 Grand Avenue and asking for the wall to be built separating the residential from the commercial?

I am willing to have my contractor permit and build the wall but will require cooperation and financial participation from the commercial owner. There has to be a right way and a wrong way to do this. Can you please advise me?

Sincerely,

Andy Parrish

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

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