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December 30, 2014

VIA HAND DELIVERY

Ms. Olga Zamora
Hearing Boards
City of Miami
444 SW 2nd Avenue, 3rd Floor
Miami, Florida 33130

**Re: Administrative Appeal of Dry-Run Approval of Proposed Plans for
the Redevelopment of Grove Isle and Construction of New Residential
Building and a New Club House at 4 Grove Isle Drive**

Dear Ms. Zamora:

On behalf of the Grove Isle Association, Inc., the condominium association for the residents of Grove Isle in Coconut Grove (the "Association"), we hereby appeal the Zoning Administrator's decision of December 18, 2014 (the "Decision")¹ to approve the application (the "Application")² by Grove Isle Yacht & Tennis Club, LLC (the "Club Owner") for dry-run review of architectural plans dated October 14, 2014, prepared by RTKL Associates, Inc. (the "Plans").³ The Plans detail the proposed redevelopment of the Property located at 4 Grove Isle Drive (the "Property"). This appeal is made pursuant to Section 7.1.5 of Miami 21 and Chapter 62 of the City of Miami's Code of Ordinances (the "Code"), and has been timely filed within

¹ A copy of the Decision is attached as Exhibit A.

² A copy of the Application is attached as Exhibit B.

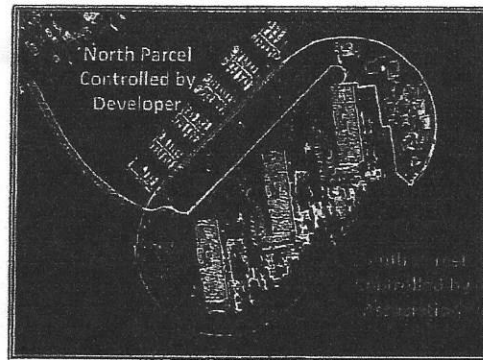
³ The Plans include two sets—one set titled "Grove Isle IV: Residential Building" and a second titled "Grove Isle: Relocated Clubhouse." Copies of each set of plans are attached as Exhibits C-1 and C-2, respectively.

Ms. Olga Zamora
December 30, 2014
Re: Grove Isle / Proposed Clubhouse

fifteen days of the Decision.⁴ For the reasons stated below, we respectfully request that the Planning, Zoning, and Appeals Board (the "PZAB") reverse the Zoning Administrator's Decision; hold that Miami 21 does not permit clubhouse uses open to the public within T5-R transects; and deny the Application with prejudice.

I. BACKGROUND

Grove Isle is divided into two parcels as shown in the image below. The "Northern Parcel" is the location of the Grove Isle Hotel and Spa and is owned by the Club Owner. The Grove Isle Hotel and Spa has historically included a fitness club, bar, restaurant, and store (the "Existing Clubhouse Uses") that are open to the general public upon purchase of an annual membership. The "Southern Parcel" includes the three residential condominium towers represented by the Association. Both parcels are zoned T5-R.



Although the whole of Grove Isle was originally designed and constructed by a single development team, the North and South Parcels are independently owned and operated by the Developer and the Association, respectively.

The Plans propose to demolish the existing Grove Isle Hotel and Spa (currently housed in six buildings) and to replace it with two new buildings—a residential tower and a new clubhouse

⁴ This appeal is filed pursuant to Section 7.1.5 of Miami 21 and Chapter 62 of the Code. We have been informed that the Office of the City of Attorney has questioned the Decision can be appealed. Please note that the Zoning Administrator's Decision is sufficient for the Club Owner to apply for a building permit based upon the Plans and that no other appealable decision of a City official or body may arise between the filing of such an application and the issuance of a building permit. As a result, we believe that the Decision is both the appropriate appealable action of the City and arises at a point in the approval process when all parties (including the City) can best avoid potentially unnecessary expenditures (e.g., the preparation of additional plans and the processing of a building permit application). To the extent that the City takes the official position that the Zoning Administrator's Decision is not appealable to the PZAB pursuant to Section 7.1.5 of Miami 21 and Chapter 62 of the Code, we respectfully request that the City provide written confirmation of its position and offer guidance as to the appropriate forum (whether administrative or judicial) in which to lodge this appeal.

Ms. Olga Zamora
December 30, 2014
Re: Grove Isle / Proposed Clubhouse

building (the "New Clubhouse Uses").⁵ According to the Application, the New Clubhouse Uses will include, among other uses:

- A convenience store (295 sf.);
- A multipurpose room (1,054 sf.);
- A dock master's office (265 sf.);
- A restaurant (2,130 sf. of dining space and 917 sf. of kitchen and storage space);
- A spa (4,092 sf.);
- A pro shop (371 sf.);
- A golf simulator (259 sf.);
- A fitness center (1,705 sf.) and
- 14 "guest suites" (11,009 sf.)

According to the Plans, the New Clubhouse Uses will be available for "island-wide usage", *i.e.*, residents of the South Parcel will be invited to use the New Clubhouse Uses.⁶ It is our understanding that the New Clubhouse Uses—for example the proposed restaurant and fitness center—will also be open to members of the public who do not reside on Grove Isle.

II. APPLICABLE LAWS

Applicable Definitions. Miami 21 Section 1.1.a defines Residential Uses as "encompass[ing] a variety of land use function predominantly of permanent housing." Such uses include "Ancillary" or "Accessory" Units which are defined as "[a] Dwelling Unit sharing ownership and utility connections with a Principal Building and contained on the same Lot."

Miami 21 Section 1.1.d defines Commercial Uses to include "General Commercial" such as "health spas and fitness studios", "Food Service Establishments", and "Recreational Establishments." Recreational Establishments are defined as "[a] place of business providing group leisure activities, often requiring equipment and *open to the public with or without entry or activity fees*"⁷ (emphasis added).

⁵ The letter of intent in support of the Application does not expressly request dry-run review of the New Clubhouse Uses. However, a set of architectural plans for the New Clubhouse Uses were apparently submitted to the City as part of the Application, are discussed in the Dry Run Comments attached to the Decision, and are part of the Plans. In light of the foregoing, we suspect that the Club Owner may have intentionally downplayed the New Clubhouse Uses in order to avoid scrutiny over the proposed relocation and expansion of the nonconforming uses.

⁶ Pursuant to the Settlement Agreement dated June 13, 1977 to which the City of Miami is a part and which was confirmed by the Final Judgment dated July 29, 1977 in 11th Circuit Court Case 73-6449 (the "Court Ordered Settlement"), the Club Owner is required to make club facilities available to residents of the South Parcel. The Club Owner has used this requirement in part to justify the imposition of mandatory maintenance fees on the residents of the South Parcel.

⁷ Copies of the applicable provisions of Miami 21 Section 1.1.d are attached as Exhibit D.

Ms. Olga Zamora
December 30, 2014
Re: Grove Isle / Proposed Clubhouse

Nonconforming Uses. Miami 21 Section 7.2.6 regulates nonconforming uses. Section 7.2.6.c specifically regulates the “Replacement and Expansion of Structures that Contain Nonconforming Uses.” Section 7.2.6.c.1 provides, among other things, that structures containing nonconforming uses may not be enlarged, extended, replaced or reconstructed except to:

- (a) Change the structure’s interior arrangement where the structure was “clearly designed or arranged for the nonconforming Use at the time that Use became nonconforming”;
- (b) Allow alterations of less than 50% of the structure’s square footage”; and
- (c) To bring exterior nonconforming uses into compliance with applicable non-use transect regulations.

Section 7.2.6.c.2 expressly prohibits the extension or transferring of nonconforming uses to any other “Structure on the same Lot or parcel if the other Structure was not used for the nonconforming Use at the time the Use became nonconforming.” Similarly, Section 7.2.6.c.3 expressly prohibits the addition of a new structure to house a nonconforming use.⁸

Permitted Uses. Uses permitted in each transect zone are listed in Miami 21, Article 4, Table 3. Specifically, Table 3 identifies uses permitted by right with an “R”, uses permitted by Warrant with a “W”, and uses permitted by Exception with an “E”. Uses for which Table 3 provides no letter designation are prohibited. Table 3 specifies that within T5-R transect districts only residential uses are permitted by right and that commercial uses are prohibited.⁹

III. ARGUMENT

A. The Decision unlawfully allows the complete replacement of a structure containing nonconforming uses and/or the nonconforming uses’ enlargement or expansion.

The North and South Parcels are located on separate lots; and are separately owned and operated by two independent, unaffiliated entities. The Court Ordered Settlement requires that the Club Owner make all clubhouse facilities available to residents of the South Parcel. Because the South Parcel’s residents do not reside on the North Parcel, they are members of the “public” with respect to the North Parcel. Because the Existing Clubhouse Uses are required to be and in fact remain open to the residents of the South Parcel (*i.e.*, the “public”), they are “Commercial” and “Lodging Uses” as defined by Miami 21. Similarly, because the New Clubhouse Uses will be open to the residents of the South Parcel, they will constitute Commercial and Lodging Uses under Miami 21.¹⁰

⁸ A copy of Miami 21 Section 7.2.6 is attached as Exhibit E.

⁹ A copy of Miami 21 Art. 4, Table 3 is attached as Exhibit F.

¹⁰ The common concept running through Commercial and Lodging Uses identified in Miami 21 is commercial interaction with members of the public. This characteristic is expressly stated in the definition of

Ms. Olga Zamora
December 30, 2014
Re: Grove Isle / Proposed Clubhouse

The North and South Parcels are zoned T5-R. According to Miami 21, Article 4, Table 13, Commercial Uses are prohibited within T5-R transects. Such prohibited Commercial Uses include health spas and fitness studios, Food Service Establishments, and Recreational Establishments. Although Table 13 permits a variety of Residential Uses within the T5-R transect, it notably prohibits Ancillary or Accessory Units. Table 13 also prohibits Inn and Hotel Uses within T5-R transects and permits Bed and Breakfast Uses only where authorized by Exception.

Miami 21, Section 7.2 authorizes the Existing Clubhouse Uses to continue being offered to residents of the South Parcel and other members of the public as legal nonconforming uses because they pre-date the adoption of Miami 21. Section 7.2.6 clearly provides, however, that "no enlargement, extension, *replacement, or reconstruction* of an existing Structure which contains a nonconforming Use..." may be permitted except: (a) to alter the structure's interior arrangement; (b) alterations that involve less than 50% of the structure's square-footage; or (c) to bring an exterior use into greater compliance with Miami 21's transect regulations (emphasis added). Section 7.2.6 further specifies that "no nonconforming Use shall be extended to occupy any other Structure on the same Lot or parcel if the other Structure was not used for the nonconforming Use at the time the Use became nonconforming." In short, Miami 21 prohibits the demolition of a structure containing nonconforming uses and its replacement with the same or new nonconforming uses.

The Decision and the Plans directly contravene Miami 21 Section 7.2.6. The Plans propose to demolish the Grove Isle Hotel and Spa where the Existing Clubhouse Uses are located and to construct a new structure that would contain essentially the same nonconforming uses—*i.e.*, a restaurant, fitness center, spa, convenience store, and lodging and/or prohibited Ancillary Units. Indeed, the Plans include two subsets of plans one of which is titled "Relocated Clubhouse." Despite Section 7.2.6's prohibition on the replacement of structures containing nonconforming uses, the Decision approves the Plans. In fact, page four of the Dry Run Comments attached as part of the Decision states that the "Project conforms to the **Functions, Densities, and Intensities** described in Article 4, Tables 3 and , and Illustration 5.5" (emphasis added). As detailed above, this is clearly erroneous and therefore compels reversal of the Decision.

"Recreational Establishment", a Commercial Use, which specifies that places of business providing group leisure activities are "Recreational Establishments" where it is "open to the public with or without entry or activity fees."

Ms. Olga Zamora
December 30, 2014
Re: Grove Isle / Proposed Clubhouse

B. The Plans do not satisfy Miami 21's Design Review Criteria.

Under Miami 21, all proposed development must satisfy the Design Review Criteria listed in Miami 21 Article 4, Table 12. The Decision only glosses over how the Plans satisfy those criteria. The Association contends that the Plans fail to satisfy Miami 21's Design Review Criteria as the Association will detail at hearing.

IV. CONCLUSION

In light of the above, the Zoning Administrator's Decision must be reversed and Application denied with prejudice because the Decision allows the complete replacement of a structure containing a nonconforming use and/or expansion of nonconforming uses in violation of Section 7.2.6 of Miami 21, and because the Plans fail to satisfy Miami 21's Design Review Criteria.

V. RESERVATION

The Association has made a public records request for all documents related to the Decision but, due to the recent holiday season, receipt of those records and the Association's ability to review those documents has been delayed. In light of that delay, the Association incorporates any such documents not yet provided by the City and hereby reserves its right to supplement this appeal with additional arguments based upon further analysis of any documents provided by the City.

Thank you for your attention to this matter. We look forward to presenting this matter before the Planning, Zoning, and Appeals Board. Please call me if you have any questions.

Very truly yours,



Tony Recio

cc: Irene Hegedus, Zoning Administrator
Francisco Garcia, Planning Director
Victoria Mendez, Esq., City Attorney

Enclosures