CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM

TO: Members of the City Commission

FROM: for Alejandro Vilarello, City Attorney Joel E. Mycell

DATE: March 24, 2004

RE: **Request for Legal Opinion: Parking and F.A.R. Calculations for Special Permit pursuant to Zoning Ordinance; Tower at Grand Bay, 2675 South Bayshore Drive; City Commission Meeting of March 25, 2004, Agenda Item PZ-2; City Commission Meeting of February 26, 2004, Agenda Item PZ-5 (MIA-0400003)**

This is in response to your request for a legal opinion wherein you asked, substantially, the following:

1. WHETHER THE ACCESSORY USE CALCULATIONS UTILIZED BY STAFF IN DETERMINING THE PARKING REQUIREMENTS FOR THE PROPOSED TOWER AT GRAND BAY'S SPECIAL PERMITS WERE PROPERLY DETERMINED?

2. WHETHER THE FLOOR AREA RATIOS (FAR) UTILIZED BY PLANNING STAFF IN DETERMINING THE PARKING REQUIREMENTS FOR THE PROPOSED TOWER AT GRAND BAY'S SPECIAL PERMITS WERE PROPERLY DETERMINED?

Discussion

The answer to both questions is in the affirmative. At the core of the challenges to zoning compliances posed by Counsel for the Appellant in the subject proceedings is the application of three methods of calculation utilized by the Planning Department in arriving at the parking requirements for the referenced Tower at Grand Bay ("Project"). They are: (1) Method of Floor Area Ratio (FAR) calculation; (2) Method for parking calculation; and (3) Ability to provide shared parking facilities within a site.

The gist of the Appellant's argument in opposition to the subject Special Permits clearly rests on the premise that the existing Grand Bay Hotel is a "nonresidential" use, thus, not entitled to the Zoning Interpretations, Planning Determinations and resultant calculations that utilized a "residential" classification for the Hotel as the basis for calculating the Floor Area Ratio (FAR) and parking requirements for the referenced Grand Bay Tower.

The Comprehensive Plan and Section 904 of the Zoning Ordinance vests the Planning Director with the authority to make "determinations" concerning characteristics of uses not specifically identified in the Zoning Ordinance. Section 1200 of the Zoning Ordinance vests the Zoning Administrator with the authority to "interpret" the Zoning Ordinance. The record of the subject proceedings is replete with assertions by the Planning Director and the Zoning Administrator that the calculations and conclusions reached in the issuance of all Class I and Class II Special Permits ("Special Permits") for the referenced project were based on their opinion that all "hotels," including the existing Grand Bay Hotel on the site of the subject project, are "residential" in character and considered as such under current City regulations governing zoning and land use matters.

Upon review, this Office agrees that "hotels" were rationally classified by staff as "residential" uses under Ordinance No. 10544, the Miami Comprehensive Neighborhood Plan 1989-2000, as amended ("Comprehensive Plan"), and Ordinance No. 11000, as amended, the Zoning Ordinance of the City of Miami ("Zoning Ordinance"). Thus, we have concluded, as will be discussed, that there is no merit to the Appellant's contentions that the Planning Department's FAR and Parking calculations for the referenced Project are "illegal."

The subject Project is to be located in Coconut Grove on a parcel of property designated as "O-Office" under the Comprehensive Plan. It is zoned O-Office with a SD-17 South Bayshore Drive Overlay District and a SD-19 Designated Overlay District.

The Comprehensive Plan is the City's "Constitution" for all future development. *See, Martin County v. Yusem,* 690 So.2d 1288 (Fla. 1997). All land use regulations must be consistent with the Comprehensive Plan. *See, §163.3194(1), Fla. Stat. (2003).* The *Goals, Objectives and Policies* section of the City's Comprehensive Plan state the following in provisions pertaining to the "Interpretation of the Future Land Use Plan Map," which reflect the Comprehensive Plan designations for all land within the City of Miami:

> The future Land Use Plan map is a planning instrument designed to guide the future development of the City in a manner that is consistent with the goals, objectives and policies of the Miami comprehensive Neighborhood Plan. Land development regulations and policies are to be consistent with the Future Land use Plan map.... The consistency of existing zoning regulations and proposed changes in zoning regulations (subsequent to adoption of the comprehensive plan) with the Future Land Use Plan map is to be determined by the Planning Director of the City of Miami.... The designated land use categories which appear in the Future Land Use Plan Map are to be interpreted as follows:
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> * * *
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> **Office**: This land use category accommodates general office uses related to health services, professional services, and real estate, banking and other financial services. **Residential uses**, up to high density multifamily, **including hotels**, are also permissible within this land use category . . . (Emphasis Added).

The Zoning Ordinance does not specifically define hotels as "residential" or nonresidential in character, but strongly implies, in a manner that supports the Zoning Director

and Zoning Administrator opinions, that "hotels" are residential in zoning character. Section 903.4 of the Zoning Ordinance provides that:

> For the purposes of density calculation, hotel and motel rooms shall be considered as equivalent to one-half (0.50) of a dwelling unit.

Section 906.7.4 of the Zoning Ordinance also draws a strong nexus between hotels and "dwelling units." Dwelling units are clearly depicted as "residential" in character through a series of definitions in the Zoning Ordinance, not the least of which is the definition of "dwelling unit" which essentially categorizes it as a living facility for a family. *See* Section 2502, Zoning Ordinance.

Read together, the aforementioned provisions of the Comprehensive Plan and the Zoning Ordinance support the use of a "Residential" zoning classification for hotels in the absence of any specific provision to the contrary.

Having concluded that "residential" is, indeed, a proper zoning classification for the Hotel, the only questions that remain would be whether the actual calculations were based on methodologies authorized under the Zoning Ordinance for making calculations for FAR and determining requisite parking in a "residential" facility. Attached, hereto, as "EXHIBIT A," is a chart that graphically sets forth the applicable calculation methodology used by the Planning Department in making the calculations objected to by Appellants. Said Exhibit sets out pertinent provisions of the Zoning Ordinance and "ordinary language" dictionary definitions when clarity is necessary, and clearly addresses, point-by-point, the calculations made, and the authority for such calculations for a residential facility in an O-Office zoning district. *See, Mandlestam v. City*

nmission of South Miami, 539 So.2d 1139 (Fla.3rd DCA 1988) (holding that words not defined zoning ordinance should be interpreted in accordance with normal dictionary meaning).

Additionally, the accessory use calculations and floor area ratios are addressed and ecifically identified in the Zoning Ordinance under the provisions of the underlying residential" use. The Exhibit also substantiates the Planning Department's underlying basis for its calculations for deductions and credits for Residential uses.

Conclusion

As a consequence of the foregoing, this Office is of the opinion that the Planning Director and the Zoning Administrator properly determined the parking and FAR requirements for the pending Tower of Grand Bay's Special Permits. Said decisions were based on an initial determination that a "hotel" use is characterized and classified as "residential" under applicable land use and zoning regulation of the City of Miami. Thus, the calculation methodologies based on such a designation, as shown on the attached Exhibit, in arriving at all parking and FAR requirements for the subject Special Permits, as well as other approvals and recommendations for the Tower of Grand Bay Project, were also proper.

Attachments

c: Mayor Manuel A. Diaz
Joe Arriola, City Manager
Priscilla A. Thompson, City Clerk
Alicia Cuervo Schreiber, Chief of Neighborhood Services
Ana Gelabert-Sanchez, Director Planning and Zoning Department
Lourdes Slazyk, Assistant Director, Planning and Zoning Department
Francisco Garcia, Zoning Administrator
Anthony J. O'Donnell, Jr., Esq.
Stephen J. Helfman, Esq.

The following definition is provided by Zoning Ordinance 11000.

1. **METHOD FOR GROSS LOT AREA (GLA) CALCULATION.**

Ordinance 11000, Section 2505. Specific Definitions.
Lot area, gross.
The net area of the lot, as defined herein, plus half of adjoining street rights-of-way and seventy (70) feet of any other public open space such as parks, lakes, rivers, bays, public transit right-of-way and the like. For areas included in applicable Special Districts (SD-5, 6, 7, 10, 11, 14, 16), the gross lot area shall include net area of the lot plus half of adjoining street rights-of-way and ninety (90) feet of any other public open space such as parks, lakes, rivers, bays, public transit right-of-way and the like. In both cases, where such space adjoins lots on two (2) adjacent sides, the area thus added shall include the area required to complete the gap otherwise left at the intersection

The following definitions are provided by The American Heritage® Dictionary of the English Language (Fourth Edition. 2000):

Adjoining:
Sharing an edge or boundary; touching. 2. Neighboring; adjacent. 3a. Connecting without a break: the 48 contiguous states. b. Connected in time; uninterrupted: served two contiguous terms in office.

Adjacent:
Close to; lying near: adjacent cities. 2. Next to; adjoining: adjacent garden plots.

The method of calculation for properties with adjoining / adjacent parks has traditionally been as follows:

Begin with	Net lot area as specified in survey (excluding dedications)
Plus	Half of adjoining street rights-of-way (to the centerline)
Plus	Seventy (70) feet or ninety (90) feet (as applicable) of open space into the park directly in front of the property by extending the side property lines perpendicularly across the right of way. This calculation begins at the centerline if the open space is not immediately abutting the property but across the street instead.
Total	Gross lot area

2. **METHOD OF FLOOR AREA CALCULATION**

Ordinance 11000, Section 2505. Specific Definitions.

Gross floor area

Gross floor area shall be the floor area within the inside perimeter of the outside walls of the building with no deduction for hallways, stairs, closets, thickness of interior walls, columns or other features. Where the term "area" is used in this ordinance, it shall be understood to be gross area unless otherwise specified. In theaters, assembly halls and similar occupancies, balconies, galleries, stages and mezzanine floors which are not enclosed shall be considered as adding to the floor area.

Floor area, residential.

The sum of areas for residential use on all floors of buildings, measured from the outside faces of the exterior walls or windows, including interior and exterior halls, lobbies, enclosed porches and private enclosed balconies and floor areas below floodplain.

Not countable as residential floor area are:
(a) Open terraces, patios, atriums, or balconies
(b) Carports, garages, breezeways, tool sheds
(c) Special purpose areas for common use of occupants, such as recreation rooms or social halls;
(d) Staff space for therapy or examination in group care housing
(e) Basement space not used for living accommodations
(f) Stairways, elevator shafts or mechanical rooms; or
(g) Any commercial or other nonresidential space

Accessory uses and other spaces intended as amenities such as pool area, ballrooms, meeting rooms, balconies, etc. are excluded from floor area calculation as provided for in the definition above.
The reason for this is that they do not generate additional parking demand since the hotel rooms, which accommodate the hotel guests who will be making use of the ancillary facilities, have already accounted for the parking demand.

However, **principal uses** such as gymnasiums, spas, restaurants, etc. intended to attract patrons who are not hotel guests must provide parking, as required by the specific use.

In the case of the subject project ballrooms and other amenities intended for the exclusive use of hotel guests are not counted but a restaurant, which caters to customers outside the hotel and has a separate entrance has been required to provide parking at the rate of 1 space per one hundred (100) square feet.

3. METHOD FOR PARKING CALCULATION

ORDINANCE 11000, SECTION 401 SCHEDULE OF DISTRICT REGULATIONS, O – OFFICE DISTRICT, OFFSTREET PARKING REQUIREMENTS.

Offices and other nonresidential uses:
One (1) space per three hundred fifty (350) square feet of gross floor area.

Lodgings:

One (1) space per every two (2) lodging units.
Multifamily residential uses:
One (1) space for each efficiency/one-bedroom unit.
Two (2) spaces for each two-bedroom unit or each three-bedroom unit.
Three (3) spaces for each unit with more than three (3) bedrooms.
In addition, one (1) space for every ten (10) units or portion thereof designated for visitors.

Adult care:
One (1) offstreet parking space shall be required for the owner/operator and one (1) space for each employee. In addition to providing offstreet parking, such establishments shall provide safe and convenient facilities for loading and unloading clients including one (1) unloading space for every ten (10) clients cared for.

Childcare:
One (1) space for the owner/operator and one (1) space for each employee. In addition to providing offstreet parking, such establishments shall provide safe and convenient facilities for loading and unloading children including one (1) unloading space for every ten (10) children cared for.

Convalescent homes, nursing homes, institutions for the aged or infirm and orphanages:
One (1) space for each five (5) beds, plus one (1) space for each doctor in regular attendance, plus one (1) space for each three (3) employees or volunteers on peak shifts.

Places of worship, primary and secondary schools: As for G/I.
For places of worship, a reduction of up to twenty-five (25) percent in required offstreet parking shall be permissible by Special Exception, when such facilities are located within 1000 feet of a mass transit station or mass transit stop. No other parking reduction may be used in conjunction with this provision.

Each of the parking ratios listed above is intended to apply to the category under which it appears.
The parking ratios listed in the zoning ordinance go with the use and if the use of a space is changed, the parking requirement of the use it changes to must be provided prior to the approval of the requisite certificate of use.
The parking requirement for a hotel or any other type of lodging is one (1) space for every two (2) lodging units as set forth above.

4. **ABILITY TO PROVIDE SHARED PARKING FACILITIES WITHIN A SITE**

Parking for any use must be provided on-site except where otherwise allowed and pursuant to the methods allowed. Within the SD-17 South Bayshore Drive Overlay District east of SW 27th Avenue, parking may be provided by the following methods: 1) Anywhere on-site, 2) up to 25% off-site by Special Exception and 4) payment in lieu of parking is allowed as set forth in Section 617.5. (Please see below). Variances for parking are not permitted.

Ordinance 11000, Section 617.5 (1.)
Upon application to the planning director, the owner of a property for which offstreet parking is required, but which parking the owner is unable to provide onsite, may request a waiver of any or all of the required spaces by substituting the payment of a fee per space in lieu of providing the required parking spaces.