



To: Jane Tompkins

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

RE: Legal Opinion Regarding House Issue In Hammock Lakes Built 8 Inches Above Crown Of Road

Date: January 13, 2012

I have been asked to provide analysis for the file regarding my opinion that the house at issue in Hammock lakes could be built 8 inches above the crown of the road. The opinion is based on two lines of analysis:

Annexation of Hammock Lakes and Section 1-108 of the Zoning Code

Hammock Lakes was annexed by the City on July 31, 1996. *See* Section A-56, Appx. A, Coral Gables Zoning Code. At the time that Hammock lakes was annexed, the area was subject to a County ordinance establishing that a residence in certain areas (such as Hammock lakes) had to be built 8 inches above the crown of the road (or another applicable measuring point). *See* Section 11C-3(m), County Code. It is my opinion that the 8 inch requirement was an established standard applicable to Hammock lakes when it was annexed by the City, and that this requirement is in the nature of a site specific standard. Thus, even though the 8 inch requirement is not specifically listed in Section A-56 of Appendix A of the City's Zoning Code, it is my opinion that this established standard is equivalent to a site specific requirement and is still the applicable standard.

Indeed. As stated in section 1-108 of the Coral Gables Zoning Code:

Existing site-specific Zoning Regulations. There are certain properties which are subject to prior governmental approvals which have established standards which deviate from the basic standards in these regulations. Properties which are subject to those prior approvals are identified on the Official Zoning Map and the Site Specific Standards are set out in Appendix A of these regulations. In the event the Site Specific Standards and these regulations conflict, the Site

Specific Standards shall control except if granted Coral Gables Mediterranean Style Design Standards bonuses as provided for in Section 5-604." (emphasis added).

This provision recognizes that certain properties are subject to "established standards which deviate from the basic standards in these regulations," (emphasis added) and further states that these established standards should take precedence over more general standards in the Coral Gables Zoning Code. Here, it is my opinion that the 8 inch standard was the legally established standard for properties in Hammock lakes when it was annexed, that such standard is effectively incorporated into the Site Specifics for Hammock Lakes in Appendix A, and that this would take precedence over the 16 inch general standard in the Coral Gables Zoning Code.

Prior Approval by City

It is also my understanding that the City previously granted an approval that would have allowed the house to be built so that it was situated below the 16 inch requirement in the Coral Gables Zoning Code (and also below the 8 inch requirement in the County Code). It is also my understanding that the property owner went before the Board of Adjustment as to a lot coverage issue related to this property following the aforementioned approval, and could have sought a variance from the 16 inch requirement at that time. The property owner is now complaining that it would lead to additional cost and delay to have to again go before the Board of Adjustment (this time regarding the 16 inch requirement). The property owner is willing to accept the 8 inch requirement in the County Code, however, which would resolve any potential vested rights or estoppel argument and ensure that at least the 8 inch requirement would apply. It is my opinion that the 8 inch requirement is reasonable to impose under the circumstances stated above.

Conclusion

For both of the above reasons, it is my opinion that the 8 inch requirement in the County Code would apply to this property.

Osle, Zilma

From: Leen, Craig
Sent: Friday, January 13, 2012 10:56 AM
To: Tompkins, Jane
Cc: Olazabal, Carmen; Salazar-Blanco, Martha; Alfonsin, Lourdes; Osle, Zilma
Subject: City Attorney Opinion Re: 4995 Hammock Lakes Drive

Jane,

I have been asked to provide analysis for the file regarding my opinion that the house at issue in Hammock Lakes could be built 8 inches above the crown of the road. The opinion is based on two lines of analysis:

Annexation of Hammock Lakes and Section 1-108 of the Zoning Code

Hammock Lakes was annexed by the City on July 31, 1996. See Section A-56, Appx. A, Coral Gables Zoning Code. At the time that Hammock Lakes was annexed, the area was subject to a County ordinance establishing that a residence in certain areas (such as Hammock Lakes) had to be built 8 inches above the crown of the road (or another applicable measuring point). See Section 11C-3(m), County Code. It is my opinion that the 8 inch requirement was an established standard applicable to Hammock Lakes when it was annexed by the City, and that this requirement is in the nature of a site specific standard. Thus, even though the 8 inch requirement is not specifically listed in Section A-56 of Appendix A of the City's Zoning Code, it is my opinion that this established standard is equivalent to a site specific requirement and is still the applicable standard.

Indeed, as stated in section 1-108 of the Coral Gables Zoning Code:

Existing site-specific Zoning Regulations. There are certain properties which are subject to prior governmental approvals which have established standards which deviate from the basic standards in these regulations. Properties which are subject to those prior approvals are identified on the Official Zoning Map and the Site Specific Standards are set out in Appendix A of these regulations. In the event the Site Specific Standards and these regulations conflict, the Site Specific Standards shall control except if granted Coral Gables Mediterranean Style Design Standards bonuses as provided for in Section 5-604." (emphasis added).

This provision recognizes that certain properties are subject to "established standards which deviate from the basic standards in these regulations," (emphasis added) and further states that these established standards should take precedence over more general standards in the Coral Gables Zoning Code. Here, it is my opinion that the 8 inch standard was the legally established standard for properties in Hammock Lakes when it was annexed, that such standard is effectively incorporated into the Site Specifics for Hammock Lakes in Appendix A, and that this would take precedence over the 16 inch general standard in the Coral Gables Zoning Code.

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For both of the above reasons, it is my opinion that the 8 inch requirement in the County Code would apply to this property.

Craig E. Leen
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
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Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Tompkins, Jane
Sent: Tuesday, January 10, 2012 5:46 PM
To: Leen, Craig
Subject: FW: Attached Image

Hi Craig,

We're nearly ready to issue the permit for this house and I'd like to be able to include your written comments in the file when we do so. Do you think you'll be able to prepare a statement for us this week?

Thanks,
Jane

From: Tompkins, Jane
Sent: Friday, January 06, 2012 12:37 PM
To: Leen, Craig
Subject: FW: Attached Image

Craig,
I believe the second paragraph of section (m) is what you relied on in determining the Bartel residence on Hammock Lake Drive could be built at 8" above the crown of the road. Martha is sending you the zoning information. Please let me know if you need anything else.

Thanks,
Jane

PS My apologies if you received this more than once. I tried emailing it directly from the county's website but got an error message so I wasn't sure that it went through.

From: MANSC
Sent: Friday, January 06, 2012 12:33 PM
To: Tompkins, Jane
Subject: Attached Image