



To: Dona Spain

From: Bridgette Thornton, Deputy City Attorney for the City of Coral Gables

Approved: Craig Leen, City Attorney for the City of Coral Gables

A handwritten signature in black ink, appearing to be "CL", is written over the name "Craig Leen".

RE: Legal Opinion Regarding Authority Of The Historic Preservation Board To Make Recommendations To The Planning & Zoning Board In Relation To The Establishment And/Or Separation Of Building Sites

Date: September 20, 2013

---

You inquired as to whether the City's Historic Preservation Board can make recommendations to the Planning & Zoning Board in relation to requests for the establishment and/or separation of building sites. As discussed in more detail below, while the City's Historic Preservation Board does not have the authority to review or authorize the establishment and/or separation of a building site, it may make a non-binding recommendation to the City's Planning & Zoning Board regarding a request for a building site establishment and/or separation. The Board should understand, however, that the standards the Planning & Zoning Board must consider in reviewing such an application are not the same as the considerations the Historic Preservation Board must review in determining whether to grant a certificate of appropriateness. Moreover, the City Commission is the final authority in determining whether to permit the establishment and/or separation of a building site as the Planning & Zoning Board only provides a recommendation regarding such applications to the City Commission.

#### ANALYSIS

The powers and duties of the Historic Preservation Board are outlined in Article 3, Division 5, Section 2-501 of the City's Zoning Code. Those powers and duties, amongst others, include the following:

- Designation of historic landmarks;
- Review of development applications affecting historic resources;
- Granting Special Certificates of Appropriateness (including variances);
- Designation of Historic Landmarks and Historic Districts;
- Delegating to the Historic Preservation Officer the authority to grant Standard Certificate of Appropriateness and other appropriate duties;
- Participation in national register program;

- Enforcement of maintenance and repairs provisions; and
- Recommend to the City Commission concerning the transfer of development rights, facade easements and the imposition of other restrictions, and the negotiations of historical property contracts for the purposes of historic preservation.

City of Coral Gables, Zoning Code Article 3, Division 5, § 2-501. Absent, however, from this list of powers and duties is the authority to authorize or even review a request for the separation and/or establishment of a building site. Instead, in accordance with Article 2, Division 1, Section 2-201 and Article 3, Division 4, Section 3-206 of the City's Zoning Code, the Planning & Zoning Board has the authority to review applications for the establishment and/or separation of building sites and to then make recommendations to the City Commission concerning said applications. Finally, it should also be noted that the standards for approval of a building site, as outlined in Article 3, Division 2, Section 3-206 of the City's Zoning Code, are very different from those applicable to the Historic Preservation Board's determination of whether to grant certificates of appropriateness - outlined in Article 3, Division II, Section 3-1106. Thus, ultimately, the City Commission has the sole discretion to determine whether to grant a request for the establishment and/or separation of a building site.

It is therefore my opinion that the City's Historic Preservation Board does not have the authority to grant or review a request for the separation and/or establishment of a building site; but the Board may make a non-binding recommendation to the City's Planning & Zoning Board regarding a request for the establishment and/or separation of a building site, with the understanding that the standards the Planning & Zoning Board must consider in reviewing such an application are *not* the same as those outlined for the review of a request for the issuance of certificate of appropriateness.

## Hernandez, Cristina

---

**From:** Thornton Richard, Bridgette  
**Sent:** Friday, September 20, 2013 3:50 PM  
**To:** Spain, Dona; Hernandez, Cristina  
**Cc:** Kautz, Kara; Leen, Craig; Figueroa, Yaneris; Franqui, Susan  
**Subject:** Legal Opinion Attached RE Historic Preservation Board's authority to review requests for the establishment and/or separation of building sites  
**Attachments:** Historic Preservation Board May Make Non Binding Recommendations to Zoning And Planning Board.pdf

Good Afternoon Dona,

Attached is the cleaned up version of the Legal Opinion you requested regarding the Historic Preservation Board's authority to review requests for the establishment and/or separation of building sites. Sorry for the delay in getting you a clean version and the confusion last night with Tucker. Let me know if you need anything else.

Cristy, please add it to our Office's Legal Opinion Binder.

Thank you both and have a nice weekend,  
Bridgette

Bridgette N. Thornton Richard  
Deputy City Attorney for the City of Coral Gables  
105 Biltmore Way, 2<sup>nd</sup> Floor  
Coral Gables, FL 33134  
Office: (305) 460-5084  
Cell: (305) 801-5797  
Fax: (305) 476-7795

**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.

\*\*\*\*\*

**NOTICE:** This e-mail is from the law office of the City of Coral Gables, and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you properly received this e-mail as a client, co-counsel or retained expert of the office of the City Attorney, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

**MEMORANDUM**

**TO:** DONA SPAIN

**FROM:** BRIDGETTE N. THORNTON RICHARD, DEPUTY CITY ATTORNEY

**DATE:** SEPTEMBER 20, 2013

**RE:** AUTHORITY OF THE HISTORIC PRESERVATION BOARD TO MAKE RECOMMENDATIONS TO THE PLANNING & ZONING BOARD IN RELATION TO THE ESTABLISHMENT AND/OR SEPARATION OF BUILDING SITES

---

You inquired as to whether the City's Historic Preservation Board can make recommendations to the Planning & Zoning Board in relation to requests for the establishment and/or separation of building sites. As discussed in more detail below, while the City's Historic Preservation Board does not have the authority to review or authorize the establishment and/or separation of a building site, it may make a non-binding recommendation to the City's Planning & Zoning Board regarding a request for a building site establishment and/or separation. The Board should understand, however, that the standards the Planning & Zoning Board must consider in reviewing such an application are not the same as the considerations the Historic Preservation Board must review in determining whether to grant a certificate of appropriateness. Moreover, the City Commission is the final authority in determining whether to permit the establishment and/or separation of a building site as the Planning & Zoning Board only provides a recommendation regarding such applications to the City Commission.

**ANALYSIS**

The powers and duties of the Historic Preservation Board are outlined in Article 3, Division 5, Section 2-501 of the City's Zoning Code. Those powers and duties, amongst others, include the following:

- Designation of historic landmarks;
- Review of development applications affecting historic resources;
- Granting Special Certificates of Appropriateness (including variances);
- Designation of Historic Landmarks and Historic Districts;

- Delegating to the Historic Preservation Officer the authority to grant Standard Certificate of Appropriateness and other appropriate duties;
- Participation in national register program;
- Enforcement of maintenance and repairs provisions; and
- Recommend to the City Commission concerning the transfer of development rights, facade easements and the imposition of other restrictions, and the negotiations of historical property contracts for the purposes of historic preservation.

City of Coral Gables, Zoning Code Article 3, Division 5, § 2-501. Absent, however, from this list of powers and duties is the authority to authorize or even review a request for the separation and/or establishment of a building site. Instead, in accordance with Article 2, Division 1, Section 2-201 and Article 3, Division 4, Section 3-206 of the City's Zoning Code, the Planning & Zoning Board has the authority to review applications for the establishment and/or separation of building sites and to then make recommendations to the City Commission concerning said applications. Finally, it should also be noted that the standards for approval of a building site, as outlined in Article 3, Division 2, Section 3-206 of the City's Zoning Code, are very different from those applicable to the Historic Preservation Board's determination of whether to grant certificates of appropriateness — outlined in Article 3, Division 11, Section 3-1106. Thus, ultimately, the City Commission has the sole discretion to determine whether to grant a request for the establishment and/or separation of a building site.

It is therefore my opinion that the City's Historic Preservation Board does not have the authority to grant or review a request for the separation and/or establishment of a building site; but the Board may make a non-binding recommendation to the City's Planning & Zoning Board regarding a request for the establishment and/or separation of a building site, with the understanding that the standards the Planning & Zoning Board must consider in reviewing such an application are *not* the same as those outlined for the review of a request for the issuance of certificate of appropriateness.