

**From:** [Leroy, Vanessa](#)  
**To:** [Bardales, Cindy](#)  
**Subject:** FW: HOA  
**Date:** Wednesday, October 18, 2017 11:47:47 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

---

---

**From:** Merino, Jennifer  
**Sent:** Friday, August 25, 2017 10:25 AM  
**To:** Wu, Charles <cwu@coralgables.com>  
**Cc:** Dominguez, Christy <cdominguez@hallandalebeachfl.gov>; Leroy, Vanessa <vleroy@hallandalebeachfl.gov>; Graham, Jane <jagraham@hallandalebeachfl.gov>; Carlton, Roger M. <rcarlton@hallandalebeachfl.gov>; Klopp, Keven <kklopp@hallandalebeachfl.gov>  
**Subject:** RE: HOA

Good morning Mr. Wu,  
I understand your concerns. In fact, we have provided the Building department with waivers that will address this issue moving forward for all permit applications. Many municipalities utilize these waivers and the City probably should've adopted one long ago. It will specifically put applicants on notice that there may be an HOA requiring additional approvals, but that the city does not enforce HOA or private covenants. It should suggest obtaining HOA approval prior to applying for a building permit (although that will not be mandatory).

With respect to the instant application, the condition itself mandates that it be brought back to P&Z if the HOA denies the application, so it would not be subject to the provision in the code that you referenced.

Unfortunately, not every bad idea is illegal. Since we have no legal basis to invalidate the instant order, we will do our best to educate the board if the item is brought back due to an HOA denial.

Regards,  
Jennifer Merino  
City Attorney

---

**From:** Wu, Charles [<mailto:cwu@coralgables.com>]  
**Sent:** Thursday, August 24, 2017 9:49 AM  
**To:** Merino, Jennifer <[jmerino@hallandalebeachfl.gov](mailto:jmerino@hallandalebeachfl.gov)>  
**Cc:** Dominguez, Christy <[cdominguez@hallandalebeachfl.gov](mailto:cdominguez@hallandalebeachfl.gov)>; Leroy, Vanessa <[vleroy@hallandalebeachfl.gov](mailto:vleroy@hallandalebeachfl.gov)>; Graham, Jane <[jagraham@hallandalebeachfl.gov](mailto:jagraham@hallandalebeachfl.gov)>; Carlton, Roger M. <[rcarlton@hallandalebeachfl.gov](mailto:rcarlton@hallandalebeachfl.gov)>; Klopp, Keven <[kklopp@hallandalebeachfl.gov](mailto:kklopp@hallandalebeachfl.gov)>  
**Subject:** RE: HOA

Good Morning Ms. Merino.

I was unsuccessful in convincing the PZ board last night how inappropriate these conditions were for these types of cases. The deferral of zoning matters to the HOA or COA first, for approval, prior to a zoning matter is not sound policy in any jurisdiction.

What if the HOA has a dictator, like the one I live next to, and there are vendettas and factions amongst the community? Is the city going to be embroiled in these private matters because the HOA refuses or delays an architectural element? Some of these HOAs don't meet because of lack of quorums due to snowbirds, or have long summer breaks, how does the homeowner can get timely zoning review? What if the HOA's denial is based on the aesthetics, but has no bearings on the zoning matter, which is primarily the setback issue, is the City allowed to receive the application? If not, aren't we denying due process to that homeowner? That condition sends a chilling effect to homeowners and barriers that we are using enforcement of private covenants as a prerequisite to even apply and seek city approval. The condition does not set precedent on the zoning merits, but it does set precedent on the procedural matter. COAs and HOAs talk to each other, and word will get out there that the city now requires COA and HOA sign off even prior to getting a permit. The final order reflects that. Will this now be the practice for ALL building permits, that we have to have HOA and COA's approval as part of the permit submittal?

One thing that greatly troubled me that was stated into the record, was a board member recognized that this HOA is special, and hence comfortable with this condition. I fail to see how that is germane to zoning matter at hand. How does the perceived competence of an HOA come into the discussion? If the HOA was incompetent, would we delete the condition? This defies logic.

Worse case: The city approved the variance, but then the HOA denied it, that action voided the city approval. You said the same application will come back. Actually the zoning code has a provision that the same application cannot be presented back to the city within a period of time. Even it came back, how can the PZ board deny it after it approved it? The circumstances and standards are the same. If the PZ board denied it the second time, the city will then be exposed. Why and what purpose to go through all this and to reach the same conclusion. It makes no sense from a procedural, policy or planning stand point.

HOA and COA covenants are private agreements between two private parties, the homeowner and the HOA or COA. The city should not insert those agreements into its zoning review as we have in this circumstance.

It is one of those things, that no good deed goes unpunished. Yes, I do have serious policy issues with this condition and practice.

*Charles K. Wu, AICP CUD, CNU-A*

Interim Development Services Director

405 Biltmore Way, 3<sup>rd</sup> Floor

Coral Gables, FL 33134

Tel: 305-460-5244

Fax: 305-476-7225



---

**From:** Merino, Jennifer [<mailto:jmerino@hallandalebeachfl.gov>]

**Sent:** Wednesday, August 23, 2017 4:59 PM

**To:** Carlton, Roger M.; Klopp, Keven; Wu, Charles

**Cc:** Dominguez, Christy; Leroy, Vanessa; Graham, Jane

**Subject:** RE: HOA

Mr. Wu,

First, this order is not the preferred order recommended by my office during the hearing. The proposed minutes are incomplete. Ms. Graham asked the board to defer the item more than once, the same course of action you prefer below, but the board went its own way, which they are entitled to do.

Given the fact that the order now exists as it is, we have studied the issue and determined a few things relevant to your concern: 1) no precedent will be created 2) this is not a delegation of authority. The Board is entitled to take special conditions and injury to the area into consideration, and this arguably falls within that criteria. This does not equate to enforcement by the City of HOA covenants (speaking legally, as we all agree it wasn't a great idea policy-wise) (see #4 below). 3) the City has no legal authority to negate or alter the order issued by the P&Z under these circumstances 4) if the HOA denies the application, by the very terms of the condition, the P&Z will reconsider the application and still has every right to approve it.

If you have serious POLICY (vs. legal) concerns, you can move at today's meeting to reconsider it regardless of the HOA's action. The reconsideration cannot take place today as the item is Quasi-judicial in nature, but you can schedule it for a future meeting. We would not object to this course of action. I note that, to the best of my knowledge, the applicant has not objected to the condition.

I am out sick today, but I would be available to discuss the matter further with you at 305-336-5604.

Sincerely,

**Jennifer Merino** | City Attorney

City of Hallandale Beach

400 South Federal Highway

Hallandale Beach, FL 33009 | 954-457-1325



---

**From:** Carlton, Roger M.

**Sent:** Wednesday, August 23, 2017 4:29 PM

**To:** Klopp, Keven <[kklopp@hallandalebeachfl.gov](mailto:kklopp@hallandalebeachfl.gov)>

**Cc:** Merino, Jennifer <[jmerino@hallandalebeachfl.gov](mailto:jmerino@hallandalebeachfl.gov)>; Dominguez, Christy <[cdominguez@hallandalebeachfl.gov](mailto:cdominguez@hallandalebeachfl.gov)>; Leroy, Vanessa <[vleroy@hallandalebeachfl.gov](mailto:vleroy@hallandalebeachfl.gov)>; Graham, Jane <[jagraham@hallandalebeachfl.gov](mailto:jagraham@hallandalebeachfl.gov)>

**Subject:** Re: HOA

Jennifer needs to rule on this. The City should not be in the business of enforcing HOA rules or deed restrictions. Nor should we delegate or defer to HOA's. Please either send it back to the PZB or eliminate that piece of their findings a

Sent from my iPhone

On Aug 23, 2017, at 4:20 PM, Klopp, Keven <[kklopp@hallandalebeachfl.gov](mailto:kklopp@hallandalebeachfl.gov)> wrote:

Please see preceding e-mail. While I did not speak to Mr. Wu about this, I have expressed similar concerns in discussing this with each of you.

---

**From:** Wu, Charles [<mailto:cwu@coralgables.com>]

**Sent:** Wednesday, August 23, 2017 4:13 PM

**To:** Graham, Jennae

**Cc:** Klopp, Keven; Leroy, Vanessa; Dominguez, Christy

**Subject:** HOA

Hi Jane. I re-read the minutes. I still feel the three following conditions are improper for the following reasons:

1. The variance was conditioned that the HOA approve the plans. That means the city is delegating its zoning authority to an HOA, giving the HOA veto power over a city approval. If the HOA denies the variance for whatever reason, the city variance is null and void. That is in essence delegating city zoning authority to the HOA. Such a condition has no place in a zoning approval.

2. If the HOA denies the variance, it does not change the findings of the board that it met the variance criteria. Further, if the HOA wants to change the design such as the material, or the height of the cover, it has to come back to the PZ Board. Those changes do not affect the variance standards. This condition is wide-reaching, vague and improper.
3. The City's review of the contractual restrictions, even if it exists, has no bearing on the application.

As you know, the agreement between the homeowners and the HOA is a private agreement, whose remedies reside via a civil proceeding. The variance is a zoning matter that is evaluated based on the zoning code criteria. One should not supersede the other.

If anything, the Board may defer the case for the HOA to offer input but NOT to unduly hold up the process if the application is a complete application, nor should it be the basis to DENY the application if the HOA denied it.

I am seriously concerned about setting a precedent by this action. Please share this with the Board.

*Charles K. Wu, AICP CUD, CNU-A*

Interim Development Services Director

405 Biltmore Way, 3<sup>rd</sup> Floor

Coral Gables, FL 33134

Tel: 305-460-5244

Fax: 305-476-7225

<image001.png>

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.

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.