

# Grand Birch Condominium

Case Number: 53-R12

Fort Lauderdale Commission Meeting

April 16, 2013

Presentation by

Keith Poliakoff, Esq. , Michelle Klymko, Esq. and  
Michele C. Mellgren

on behalf of

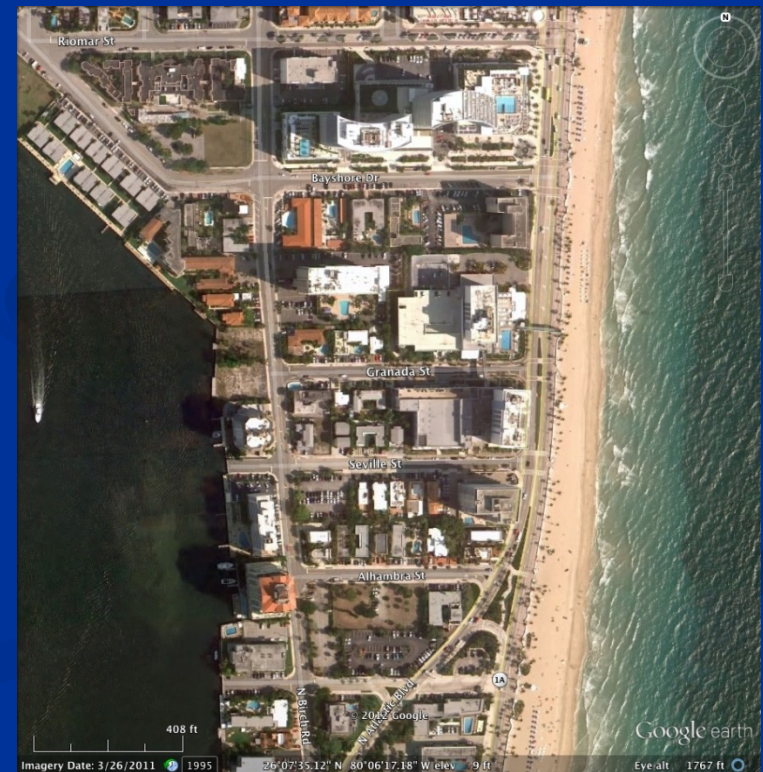
Residents for Responsible Growth, LLC

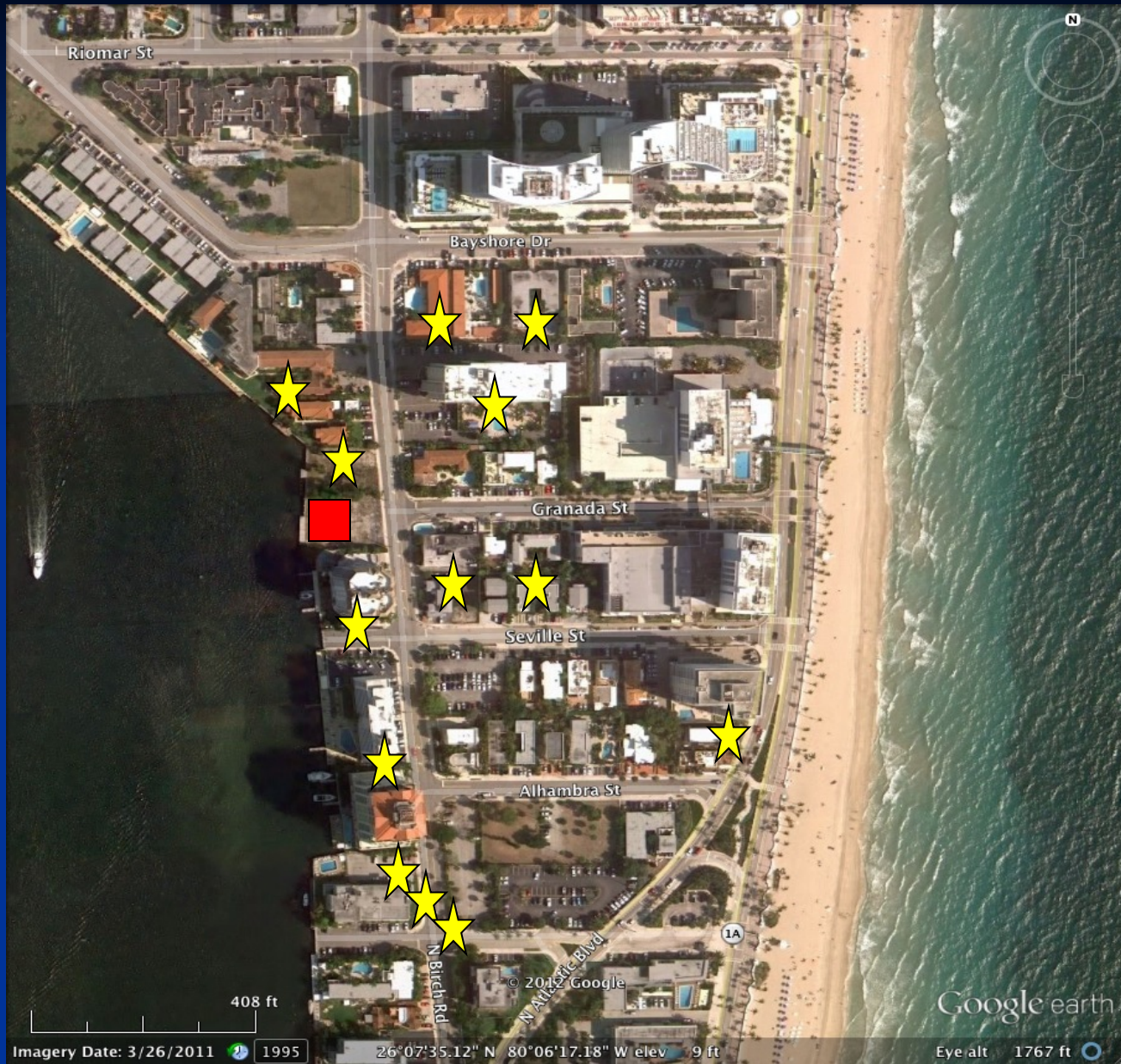
**BECKER &  
POLIAKOFF**  
Legal and Business Strategists

# Residents for Responsible Growth (RRG)

The RRG is comprised of **hundreds of residents, tourists and businesses** that will be impacted by the Grand Birch Condo Project.

Birch Pointe Condominium Association  
Cormona Apartments  
Alhambra Place Condominium Association  
Lauderdale Surf Club Apartments  
The Seasons of Ft. Lauderdale Condominium Association  
Granada Inn Luxury Bed & Breakfast  
3000 Granada Inn  
La Casa del Mar  
Coconutcove Guest House  
Versailles Cooperative Association





**RRG is NOT  
Opposed to a  
Development on  
this Lot, Rather the  
Residents want to  
Work with the  
Developer to  
Develop a Project  
that can be  
Supported By  
Everyone**

**Note: Developer's has provided letters  
of support for this Project buy those  
partners (red star) don't even appear on  
this map.**



# Area & Site History

- 2006 - Michael Shiff had option contract on subject property for \$11 million
- Shiff submitted plans to DRC – DRC said the proposed Shiff project was too high, set-backs of 30' too close and insufficient parking.
- 2006 - Central Beach Alliance (CBA) voted Shiff project down 120-5
- 2011 - Subject property sold for approximately \$8 million
- 2012 - Bank foreclosed on \$8 million loan
- May 2012 - Grand Birch, LLC purchased Subject Property for \$2.45 million
- May 2012 – Developer met with Birch Pointe and Birch Crest Boards only, and said project would only be a Level 3 review, and would have NO significant impact to area and no variations from City Code.
- September 13, 2012 – Developer presented before CBA and represented that there was no opposition to the project.
- September 13, 2012 – CBA voted against project 170-11 (this is 94% against!)
- November 28, 2012 – PZ recommended approval 7-2

# Standard of Review

- Applicant is NOT entitled to a “Level 4” development as of right, otherwise it would not be before this Commission tonight.
- Code sets maximums allowed. These maximums can be adjusted by Commission to make this building “compatible” within this unique community that gives the Beach its character.
- Developer must prove by competent, substantial evidence, its project is **compatible** with the surrounding area.

# Standard of Review

- The Applicant must prove by **competent and substantial evidence** that its site plan application is in conformity with the relevant plans and laws of the State of Florida, Broward County and City of Fort Lauderdale.

Developer, rather than city commission, has initial burden to show that its proposed site plan meets the statutory criteria for approval ...”

*(Premier Developers III Associates v. City of Fort Lauderdale; 920 So.2d 852, 31)*

**The Applicant needs to prove that it is in full compliance with the City's Code**

# Evidence Will Show

## That the City's Code is Not Being Followed:

- Swimming Pool is clearly within the rear set-back (7'10" proposed, required is 20')
- Applicant contends that PZ waived this requirement pursuant to Section 47-23.8
- Section 47-23.8 specifically does not apply to the Central Beach. Further, even if it did, the PZ did not specifically waive this requirement.
- If the Code was actually followed, the building's mass would need to be reduced to accommodate the pool.

# Grand Birch Facts

- Site is only slightly more than a half-acre (.63 acre), totaling 25,510 square feet.
- Developer proposing to place 163,740 square feet on this site.
- Only 48 parking spots, most of which are only 8 feet wide. (2 spots per unit, 3 guest, 1 manager)
- Proposed building is 129.2 feet tall (nearly 13 stories)
- 22 large units – 82 bedrooms (Application states 3 bedrooms per unit, plus den)



# Grand Birch Facts

- Total Building height of **129.2 feet**
- Only 60 feet of separation between Grand Birch and Birch Pointe.
- – Grand Birch and its AC Units Will Be 38 Feet From the 1947 Historic Cormona



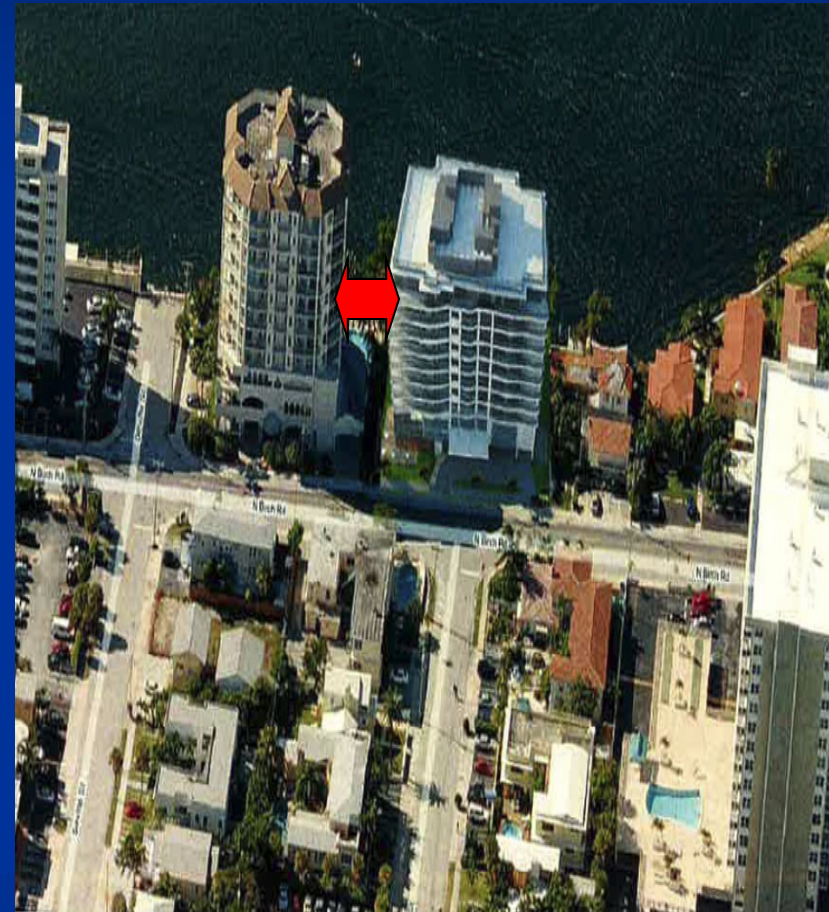
# Current Separation between Birch Pointe and Versailles is 150 feet



# Set-Backs and Spacing

Not in conformity with:

- Fort Lauderdale ULDR Sec. 47-25.3(A)(3)(e)(iv)(e): “*Building Separation: Buildings should allow adequate space between structural masses for the passage of natural breezes.*”
- *New building masses should be sited to the extent feasible so they maintain reasonable views to the ocean and Intracoastal Waterway from existing structures.”*

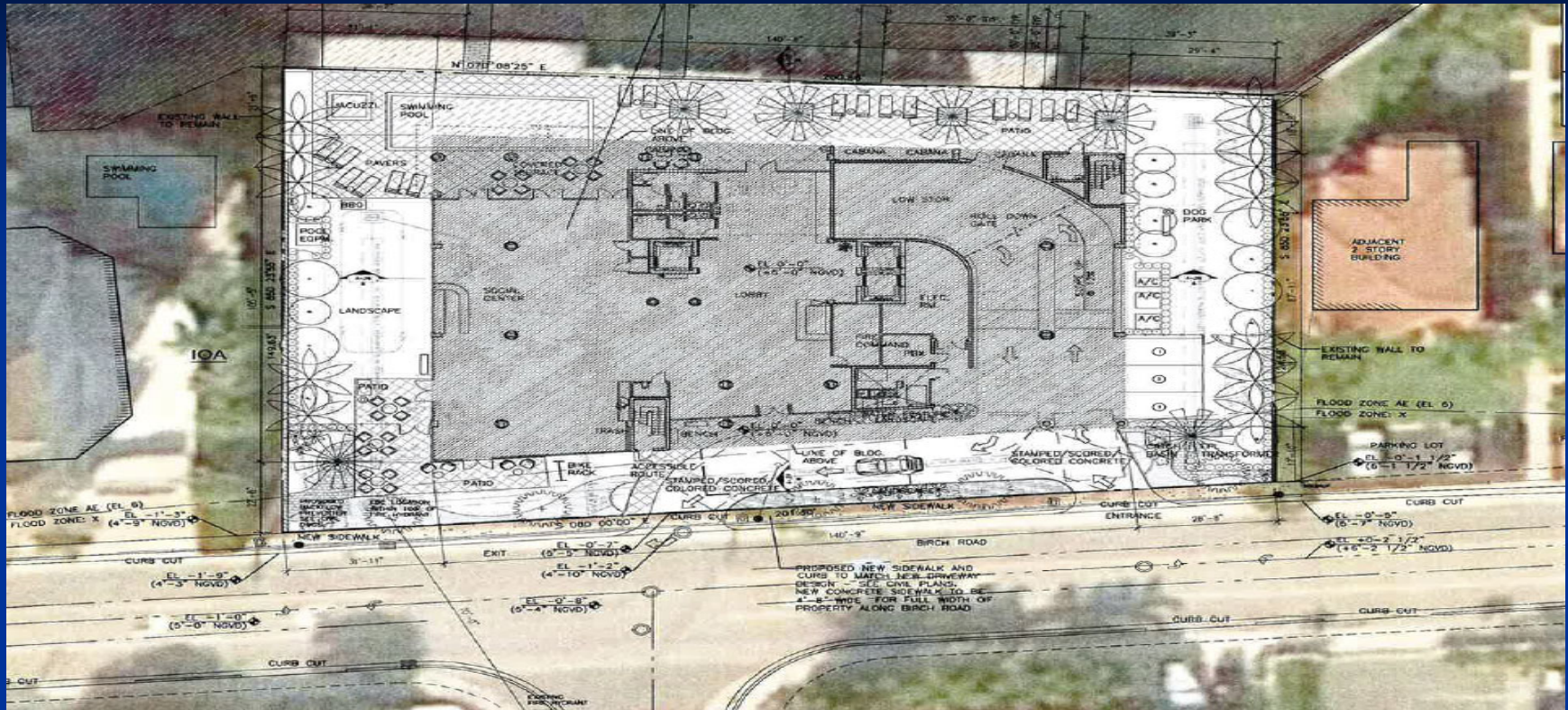


# Traffic & Parking

Developer's Plan shows insufficient bypass lane for the ingress and egress



# Traffic & Parking

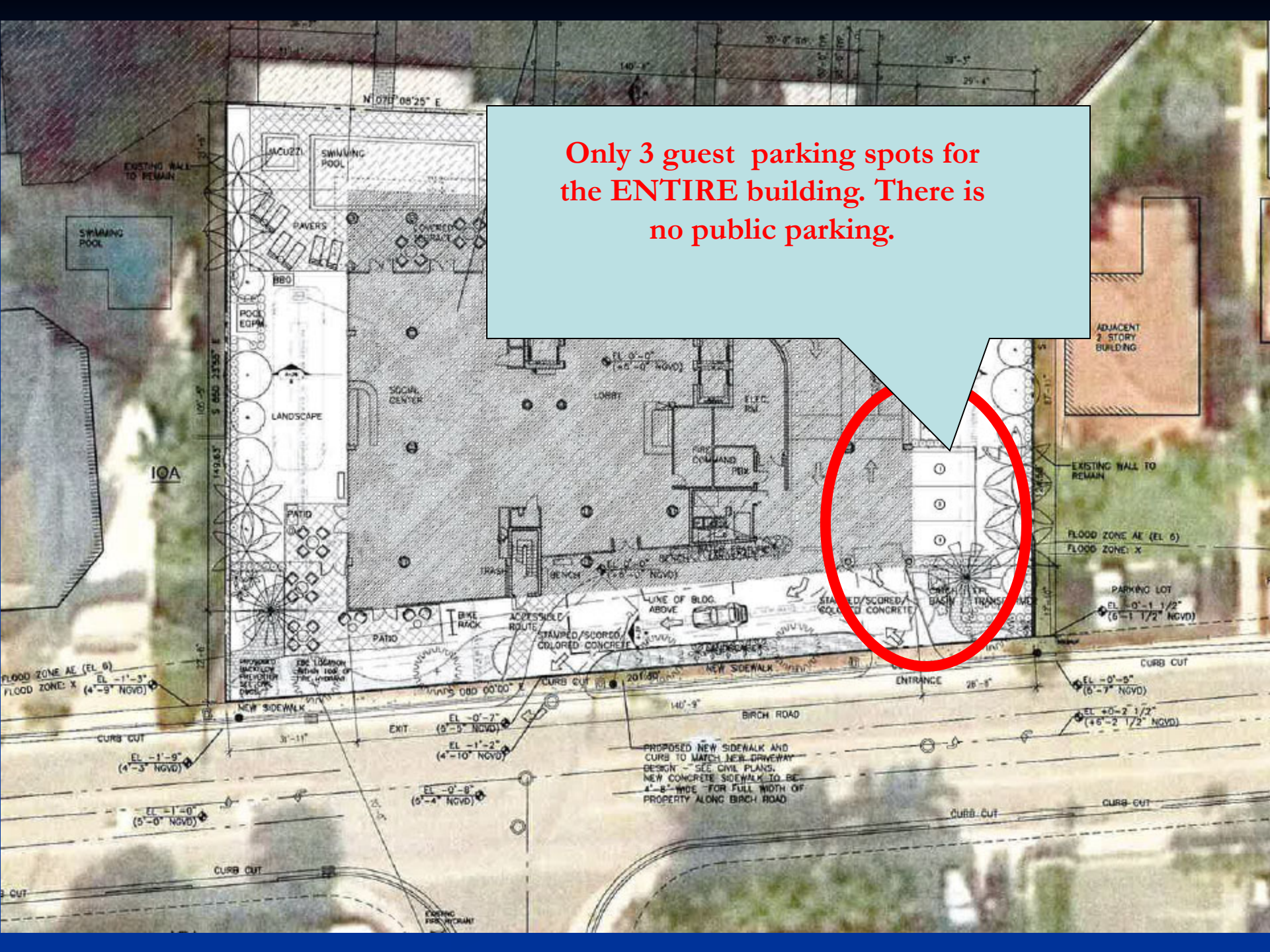


- Site plan only allows for 2 - 3 vehicles to stack on North Birch Road.
- No Loading Zone has been proposed.

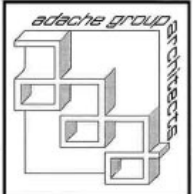
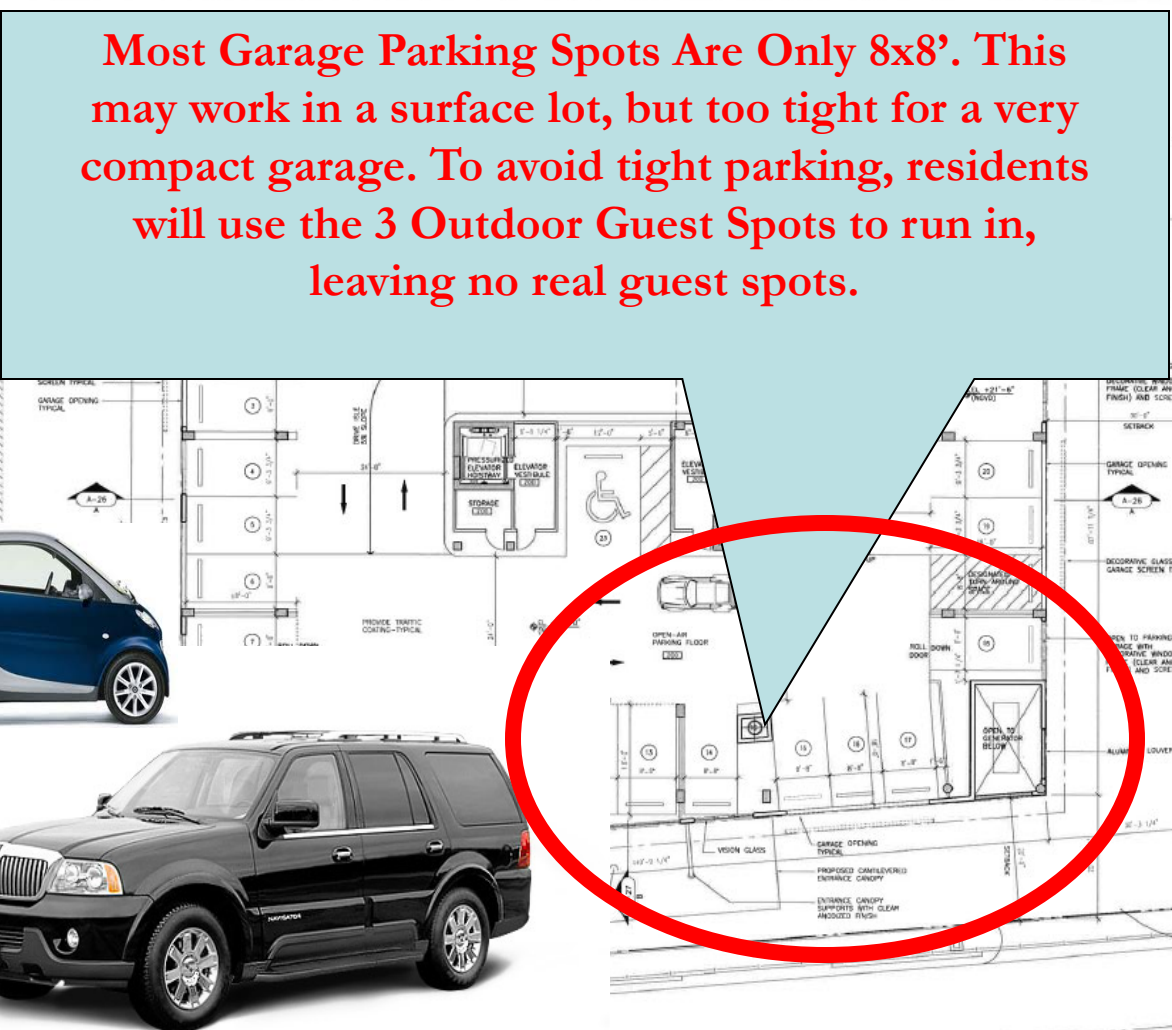
**Where do guests park? Where do delivery trucks park?**

**This plan will cause guests and delivery trucks to block Birch Road.**

Only 3 guest parking spots for the ENTIRE building. There is no public parking.



**Most Garage Parking Spots Are Only 8x8'. This may work in a surface lot, but too tight for a very compact garage. To avoid tight parking, residents will use the 3 Outdoor Guest Spots to run in, leaving no real guest spots.**



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**OWNER:**  
 GRAND BIRCH LLC  
 3000 N. UNIVERSITY BLVD.  
 FT. LAUDERDALE, FLORIDA 33309  
 PHONE: (305) 489-1100

**PROJECT:**  
**GRAND BIRCH CONDOMINIUM**  
 301 NORTH BIRCH ROAD  
 FORT LAUDERDALE, FL 33304

**ISSUED FOR: PAZ SUBMISSION**  
 DATE: 9/13/12

**REVISIONS:**

No.	DATE	REMARKS

**SHEET TITLE:**  
**3RD FLOOR PLAN (UPPER PARKING FLOOR)**

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DATE: 7/31/12  
 SCALE: 1/8" = 1'-0"  
 DRAWN BY: SW  
 CHECKED BY: JB  
 JOB NO.: 22.01A

**SHEET NO.:**  
**A-17**

**1 3RD FLOOR PLAN (PARKING)**  
 SCALE: 1/8" = 1'-0"



# Planning Expert

**Michele C. Mellgren, AICP**

The Mellgren Planning Group

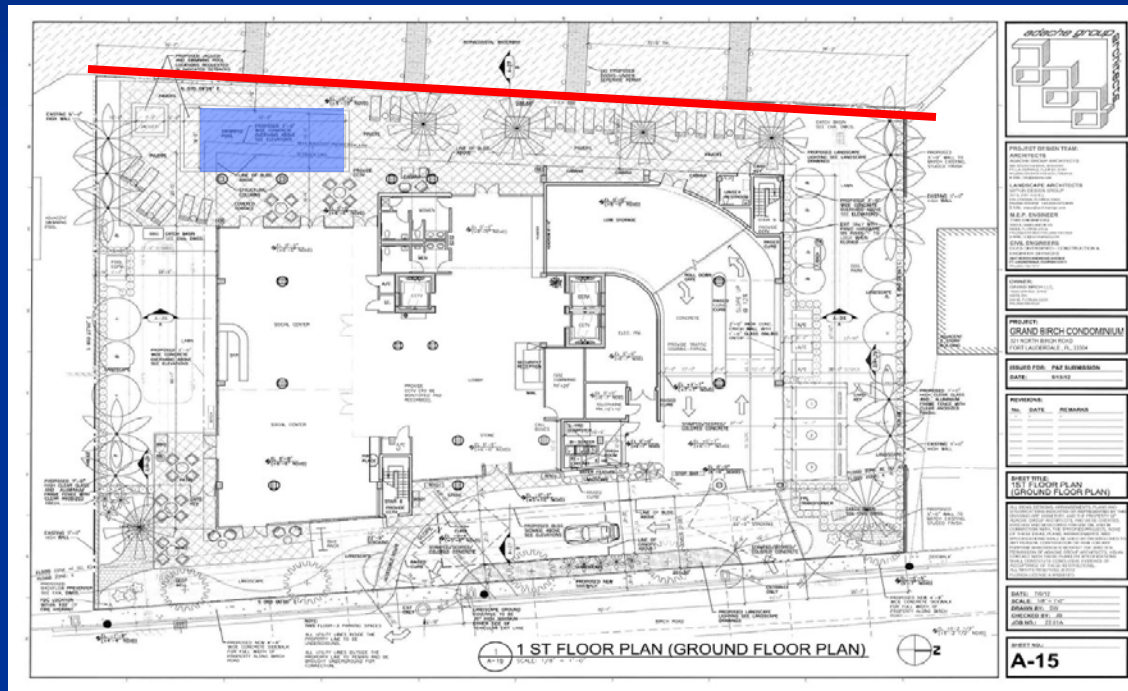
- Masters Degree in Urban and Regional Planning from The George Washington University
- Certified by the American Institute of Certified Planners
- More than 25 years of experience
- Qualified in Circuit Court as an Expert in Planning and Zoning matters
- Former City of Fort Lauderdale Development Program Manager Implementing Beach Redevelopment.



# Evidence Will Show

Applicant does not comply  
with the set-back requirements  
under the Code.

# Violation of Technical Requirements of the Code



The proposed site plan has a pool, deck, Jacuzzi and outdoor amenities within the 20-foot yard setback.

# Violation of Technical Requirements of the Code

Section 47.19.BB.2 states: “**a swimming pool**, hot tub or spa, **when accessory** to a hotel or **multifamily dwelling**, shall be subject to the **minimum yard requirements** of the zoning district in which it is located.”

The minimum required rear yard set-back **is 20 feet, per Code**. The proposed Application violates Sec. 47.19.BB.2 of the ULDR.

# Violation of Technical Requirements of the Code

- Section 47-12.5.D.1.dii states the rear yard set-back in the IOA District is 20 feet.
- Section 47-12.5.D.1.e states that “the final reviewing authority may permit the minimum **“SIDE” set-back** to be reduced to ten (10) feet...” in the IOA District.
- The Applicant believes it has obtained a waiver of the **“REAR” set-back** requirement as part of a site plan level IV review. This is impossible under 47-12.5.D.1 of the ULDR since the Applicant can only receive a SIDE yard reduction and not a rear yard reduction. Further, they are seeking to be reduced to 7’10” and not to 10 feet.

# Violation of Technical Requirements of the Code

- The Applicant's waiver argument further relies on **Section 47-23.8.B**. This Section states that it does not apply to the "Central Beach Area Districts."
- Since this Project is within the Central Beach Area, Section 47-23.8.B is **inapplicable**.
- As such, the location of the **pool violates the zoning regulations** and the Project **cannot be approved as presented**.

# Violation of Technical Requirements of the Code

Section 47.24.2.A.3.d.vi  
requires the City  
Commission to determine  
that the proposed  
development meets the  
requirements of the  
ULDR.

As demonstrated, this site  
plan does not meet the  
requirements and it  
**must be denied.**



# Violation of Technical Requirements of the Code

In summary, the proposed site plan violates the following sections of the ULDR:

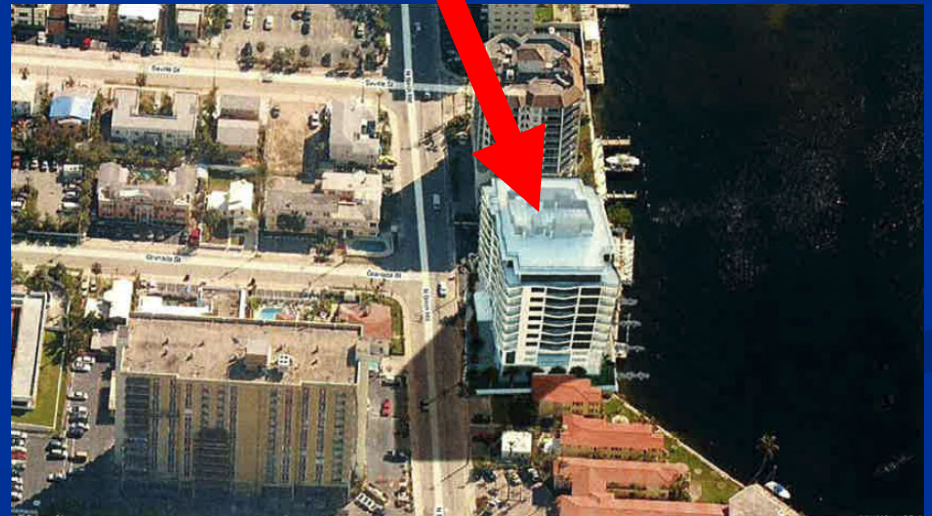
- 47.19.BB.2 (requires 20-foot set-back for Pool)
- 47-24.2.A.3.d.vi (Site Plan does not meet Code)

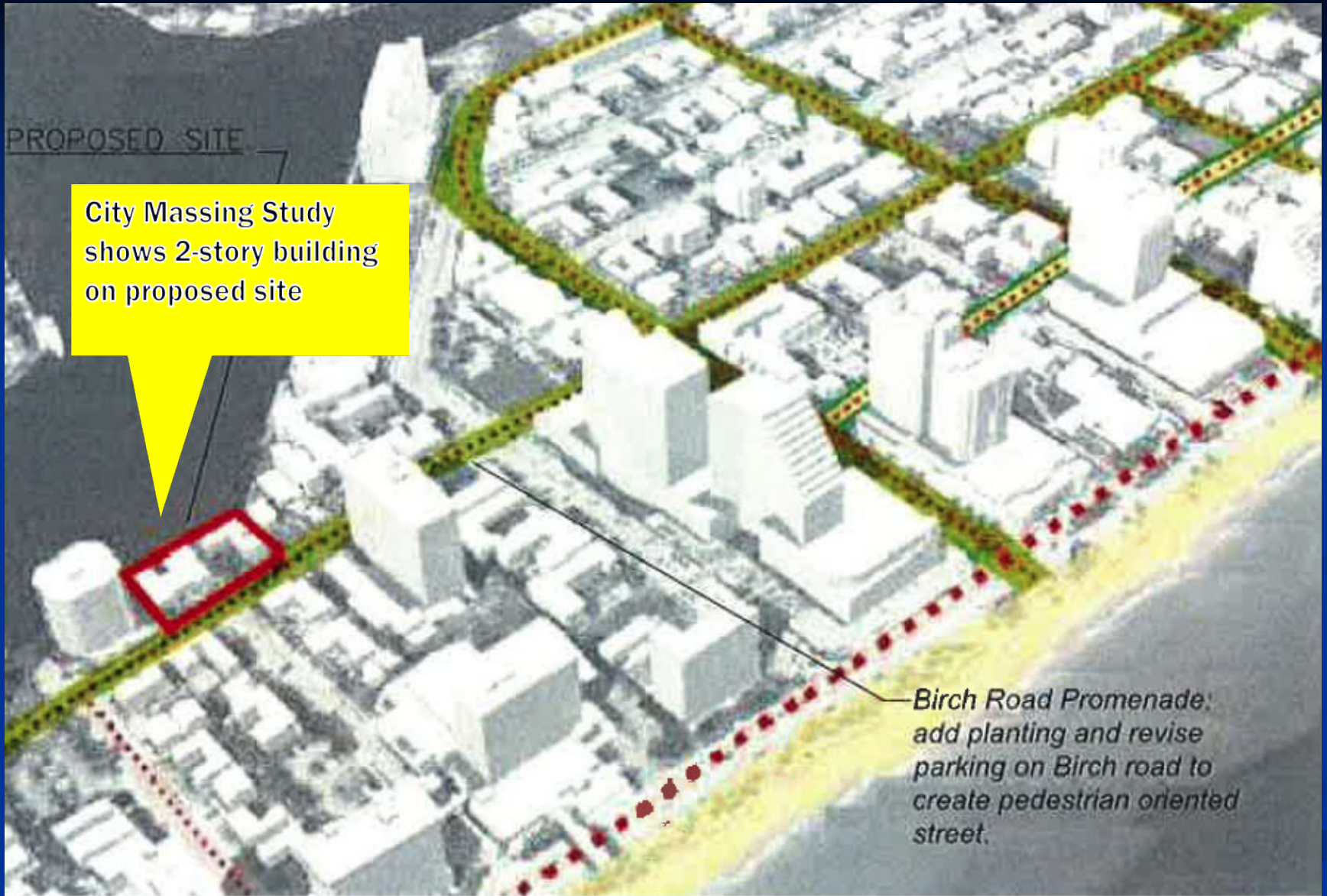
# Neighborhood Compatibility

- Section 47-25.3.A.3.e.i.a. requires a development to be compatible with the **character and integrity of adjacent neighborhoods**, and shall mitigate adverse impacts such as **shadow and scale**.
- The proposed building , at a total height of almost 130 feet, **will result in significant shadow impact on the adjacent neighborhood**, and is of a **scale** that is **not compatible** with surrounding neighborhoods.



This Project **NOT** only violates the technical requirements of the Code, but is not compatible with the surrounding community as the impact is too significant.





MASSING STUDY

# Neighborhood Compatibility

## Not in conformity with:

- Fort Lauderdale ULDR Sec. 47-25.3 (A)(3)(e)(i)(a): *“Development will be compatible with, and preserve the character and integrity of adjacent neighborhoods, the development shall include improvements or modifications either on-site or within the public rights-of-way to mitigate adverse impacts, such as traffic, noise, odors, shadow, scale, visual nuisances, or other similar adverse effects to adjacent neighborhoods...”*

TABLE 1. DEVELOPMENT PERMITS AND PROCEDURES

TABLE INSET:

Permit	Department	Development Review Committee	Planning & Zoning Board (Local Planning Agency)	Historic Preservation Board	City Commission	Board of Adjustment	Criteria for Review
CENTRAL BEACH AREA DISTRICTS - see Section 47-12 and other regulations provided in this Table 1.	--	--	--	--	--	--	1. Adequacy Review Sec. 47-25.2 2. Neighborhood Compatibility Review Sec. 47-25.3
SITE PLAN--LEVEL I DEPARTMENT							

# RRG Has Tried to Work with the Developer

- Greater Set-Backs which comply with Code Requirements
- A/C Units to be Mounted on Roof
- Sufficient Parking to Accommodate Guests
- Full Landscape Buffer
- Loading Zone and By-Pass Lane

**Despite multiple meetings developer's  
counsel, the Developer has  
not agreed to a single concession**

# You May Ask...Isn't This Project Like Birch Pointe?

- Section 47-23.8.B, which is improperly relied upon by the Developer to claim that it can violate the setbacks, was approved by the Commission on June 18, 1997 pursuant to Ordinance C-97-19
- Birch Pointe was completed in 1996

**As such, Birch Pointe fell  
under an alternate Code requirement.**

# In Summary

- The Project violates the Code by failing to meet the required set-backs
- Section 47-23.8.B., which the applicant relies upon is inapplicable to the Central Beach
- The Project lacks neighborhood compatibility

*We Are Happy to  
Answer Any Questions*

**BECKER &  
POLIAKOFF**  
Legal and Business Strategists