

# reflections

## The Grand Conundrum

As developers move in on Grand Avenue, what will be left for long-time residents – and at what cost? BY ANTHONY R. PARRISH, JR.

The question following the long awaited ribbon cutting for the new \$4.2 million Grand Avenue renovation is: Who will enjoy the fruits of eight years of hard work by community organizations and neighborhood activists?

For generations the residents of Grand Avenue have been predominantly African-American. That is about to change. A development group has purchased most of the properties from Margaret Street to Plaza Street, on both sides of Grand. This group has reportedly sued the City of Miami claiming their proposed mixed-use buildings are entitled, either by right or by variance, to rise to seven stories.

The City's NCD-2 (Village West Island Special Overlay District) zoning allows a maximum of 62 ft. in no more than 5 stories. The "Neighborhood Conservation District" also encourages "island style" architecture with arcades, balconies and other such detailing to preserve the Bahamian heritage of the early settlers of the West Grove.

The five-story height limitation was settled upon after dozens of community meetings and weekend workshops, all publicly noticed and advertised. These meetings were led by The Coconut Grove Collaborative and the University of Miami Center for Urban and Community Design ("CUCD"). The resulting "Grand Avenue Vision Plan" was the culmination of hundreds of hours of work.

Meanwhile, starting in June 1999, developers began buying properties on Grand Avenue. Their acquisitions accelerated when the Blumenthal Family Trust put 87 properties up for sale in 2001. Land prices on Grand Avenue went from \$20 per sq. ft. to \$100 per sq. ft. in less than two years. The group's latest acquisition contract is reportedly almost \$200 per sq. ft. Now developers are arguing they can't make their projected profit unless they are allowed to build to seven stories, claiming they never knew until too late that

the NCD-2 zoning would limit them to five stories.

The word from City Hall is that the group's main argument is a "vested rights" claim based on the city's Zoning Ordinance. Prior to enactment of the NCD-2 "overlay district" (so called because it is "overlaid on top of" the underlying zoning) the zoning on Grand Avenue from Margaret Street to Plaza Street was primarily "O" for Office with no height limitation. The NCD-2 overlay (which became law on January 27, 2005) imposed a "62 ft. in no more than 5 stories" height limitation on all of Grand. The developers say this repre-

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sents a "taking" of their property because their former "O" property had no height limitation.

They want to have their "vested rights" recognized, or alternatively, to be granted a variance, so they can build to seven stories on all their properties. To gain support, they are negotiating with Village West community leaders. The negotiations cover a wide range of hopes and dreams including jobs and "set aside" condo units for local residents. The community leaders' goal: to keep a black presence on Grand Avenue.

What a heartbreaking choice. If they don't allow the undoing of years of work envisioning a new and appropriately scaled Grand Avenue, then the developer will not be obligated to provide jobs or allocate any condo units at affordable prices.

So what's wrong with a compromise? Plenty. Seven story buildings would create a "canyon effect" on Grand and completely overshadow the small single-family homes on neighboring streets, blocking out both sunlight and bay breezes.

To get around the NCD's height limitation, the developers must argue they have "vested rights" to unlimited height. That requires proof of two prerequisites on or before the effective date of the subsequent zoning: (1) The developer must have ownership rights to each of the properties involved; and (2) The developer must have a completed city building permit application for each of the properties.

These developers apparently can meet this two-pronged test only on portions of their assemblages, so they are reportedly seeking a variance for all their properties. But a claim based on the prior "O" zoning would apply, at best, to only some of their properties. This circular conundrum, in my opinion, is why they are seeking to cut a deal with neighborhood residents, to gain political support for busting the NCD's five-story height restriction.

Even if they cut a deal with neighbors, their "vested rights" claim would fail the two-pronged test and be subject to court challenge. Nor can the city commission delegate its power to zone to local residents, no matter how sympathetic it might be to the residents' desires to salvage something for themselves.

What these developers must do, as a matter of law, is live with five stories. What they can do, as a matter of conscience, is continue to include the Village West residents in their development plans. The Coconut Grove Collaborative may even be able to bring subsidies to the developers' table to help with their bottom line while they keep some units "affordable" to existing residents. If they try this route, maybe these developers can make some lemonade for themselves and the community. Wouldn't that be sweet? ■