



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: March 28, 2012

SUBJECT: **DISCUSSION REGARDING NONCONFORMING COMMERCIAL BUILDINGS IN SINGLE FAMILY ZONING DISTRICTS TO BE USED AS SCHOOLS AND DAYCARE CENTERS AS A CONDITIONAL USE**

This item was deferred at the February 15, 2012 meeting.

BACKGROUND

February 9, 2011: A discussion regarding schools and daycare centers within existing nonconforming commercial buildings in single family zoning districts, as a conditional use, was referred to the Land Use and Development Committee by the City Commission at the request of Commissioner Libbin.

March 16, 2011: The LUDC discussed this issue and referred an ordinance to the Planning Board for its review and recommendation.

July 26, 2011: The Planning Board, by a vote of 4-0 (3 members absent) recommended against the adoption of the proposed ordinance to the City Commission. The Board members present expressed serious concerns relative to the intrusion of commercial uses in a single family district, as well as potential detrimental impacts to the quality of life and quiet enjoyment of home life.

October 19, 2011: During the setting of public hearing, the City Commission referred this item to the Land Use and Development Committee for further discussion.

ANALYSIS

Chapter 118, Article IX of the Land Development Regulations regulates nonconforming buildings and uses, and permits the continued use of a building although such use does not conform to the permitted uses of the zoning district within which it is located. As long as the building remains in use, and does not become idle for a continuous period of six months, or for 18 months during any three-year period, it remains legal non-conforming, or "grandfathered-in". However, there are limitations on legal nonconforming uses; a nonconforming use is not permitted to change to any use other than the grandfathered use, or one permitted in the zoning district in which the use is located.

There are a very small number of legal nonconforming commercial buildings which are located in districts that do not permit them as of right. One example is a building located

on 51st Street within a single-family neighborhood. This property is also zoned single-family residential, despite the fact that the commercial building has existed for decades at this site. The nonconforming regulations referenced above permit the building to continue in commercial use as retail or offices, as these are the past and current uses located within the building. However, the use of this building for any other use except single-family residential is not permitted.

An inquiry from a local church group looking for space for a satellite location for an existing school/daycare facility brought this property to staff's attention, and the rental agent for the building expressed the desire to be able to bring this type of tenant into the building. In order to achieve this, however, an amendment to the Land Development Regulations would be required, as school/daycare facilities are not a permitted use in single-family zoning districts, and this would constitute a different nonconforming use than the currently permitted retail and office.

This type of code amendment should not seek to permit such school or daycare facilities as of right within single-family neighborhoods; that would be a broad reaching change to existing land use policies. Rather, the amendment, if desired, should seek to permit these uses to occupy legal nonconforming commercial buildings existing in single family areas at the time of the ordinance. This would limit the potential impact of such a change while permitting the adaptive reuse of existing buildings. Any ordinance of this type should require these uses to be approved as Conditional Uses by the Planning Board. Schools and children day care centers are listed as conditional uses in those districts that permit such uses.

Although the Conditional Use process requires a public hearing in front of the Planning Board, there are concerns related to the quality of life in the neighborhood. Such public hearings are noticed by mail to the neighborhood (property owners within 375 ft. radius of the subject site), allowing the people most affected and the general public to express concerns or approval. Notwithstanding the process, there is a concern that schools or daycare centers in single-family district would be somewhat detrimental because of the adverse impacts of the traffic that is created, possibly lack of parking for staff and parents, and potential noise disrupting the quiet enjoyment of home life. Traffic and circulations concerns are usually mitigated through operational restrictions or conditions; however, in the context of a single family district, it may be difficult to mitigate these concerns.

RECOMMENDATION

Although in agreement with the recommendation of the Planning Board and recommends **against** adopting the proposed ordinance, since this item was referred again to the LUDC, the Administration seeks guidance on how to proceed.

JMG/JGG/RGL/ML

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE BY AMENDING CHAPTER 118, "ADMINISTRATIVE AND REVIEW PROCEDURES," ARTICLE IX, "NONCONFORMANCES," SECTION 118-393 "NONCONFORMING USE OF BUILDINGS;" AND CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 2, "RS-1, RS-2, RS-3, RS-4 SINGLE FAMILY RESIDENTIAL DISTRICTS," TO PERMIT AN EXISTING LEGAL NONCONFORMING COMMERCIAL BUILDING TO BE USED AS A CHILD CARE CENTER OR SCHOOL AS A CONDITIONAL USE; PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Chapter 118, Article IX of the Land Development Regulations regulates nonconforming buildings and uses, and permits the continued use of a building although such use does not conform to the permitted uses of the zoning district within which it is located; and

WHEREAS, a nonconforming use is not permitted to change to any use other than the grandfathered use, or one permitted in the zoning district in which the use is located; and

WHEREAS, there are a very small number of legal nonconforming commercial buildings which are located in single-family districts which do not permit them as of right; and

WHEREAS, it is in the best interest of the City and property owners to permit certain uses that are compatible with the character of the surrounding neighborhoods, such as schools or child care facilities, in these existing legal nonconforming commercial buildings; and

WHEREAS, in order to achieve this, an amendment to the Land Development Regulations would be required, as school/daycare facilities are not a permitted use in single-family zoning districts; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 118, "Administration and Review Procedures," Article IX, "Nonconformances," Section 118-393 "Nonconforming Use Of Buildings;" is hereby amended as follows:

- (a) Except as otherwise provided in these land development regulations, the lawful use of a building existing at the effective date of these land development regulations may be continued, although such use does not conform to the

provisions hereof. Whenever a nonconforming use has been changed to a conforming use, the former nonconforming use shall not be permitted at a later date. A nonconforming use shall not be permitted to change to any use other than one permitted in the zoning district in which the use is located.

- (b) A nonconforming use of a building shall not be permitted to extend throughout other parts of that building.
- (c) **A legal nonconforming commercial building existing in these districts as of June, 2011 may contain a child care or school if approved as a conditional use.**

Section 2. That Chapter 142, "Zoning Districts and Regulations," Section 142-103, "Conditional Uses" is hereby amended as follows:

Conditional uses in the RS-1, RS-2, RS-3, RS-4 single-family residential districts include an at-grade parking lot in the RS-4 district when located immediately adjacent, without a gap due to alley, road, waterway or any other cause, to a CD-3 district. See subsection 142-105(c). And except as provided for in Section 118-393, "Nonconforming use of buildings," of these land development regulations.

Section 3. Repealer.

All ordinances or parts of ordinances and all sections and parts of sections in conflict herewith be and the same are hereby repealed.

Section 4. Codification.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 5. Severability.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 6. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this ____ day of _____, 2011.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

City Attorney

Date

First Reading:
Second Reading:

Verified by: _____
Richard G. Lorber, AICP
Acting Planning Director

Underscore denotes new language.
~~Strikethrough~~ denotes deleted language.

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