



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 *JMG For Job*

DATE: May 16, 2012

SUBJECT: **DISCUSSION ON RM-2 ZONING DISTRICT REGULATIONS:**

POSSIBLE AMENDMENT TO THE ACCESSORY USE REGULATIONS TO PERMIT A LIMITED NUMBER OF COMMERCIAL ACCESSORY USES IN AN APARTMENT BUILDING ADJACENT TO A PUBLIC BAYWALK TO BE OPEN TO THE PUBLIC.

UPDATE

This item was last discussed at the March 28, 2012 Land Use and Development Committee meeting, at which time the Committee requested that the parties are to meet and try to reach consensus, with City staff in attendance, and come back to the Committee with a more limited proposal which would permit very limited commercial office uses as accessory uses within apartment buildings in the RM-2 district that is acceptable to the surrounding neighbors.

Subsequently, staff met with the proponent and attorneys Rosen and Polisar and by telephone conference with Mr. Del Vecchio and Mr. Marcus. At that meeting, staff explored introducing restrictions that are found elsewhere in the Land Development Regulations, primarily in the Home Based Business Office ordinance. Such a concept would include the following:

- (1) Accessory office activities shall be accessory and clearly incidental to the primary apartment building use.
- (2) Accessory office activities shall occur entirely within office unit; no outdoor activities may be conducted.
- (3) No goods or services shall be dispensed, sold, distributed or provided directly from the accessory office unit, except for those transmitted by telephone, computer modem, facsimile or other similar electronic means, with the exception of one business pickup by courier per day in addition to regular U.S. Postal Service. Bulk mailing shall not be allowed.
- (4) The aggregate of deliveries of any kind required by, received by, or made in connection with an accessory office unit shall not exceed one business delivery by courier per day in addition to regular U.S. Postal Service.
- (5) No inventory or storage of materials, goods, products or supplies shall be permitted at the accessory office unit, except those minor supplies necessary for the operation of the accessory office.

- (6) No materials, goods, products or supplies shall be displayed for sale or kept as samples at the subject single family residence or apartment unit, except those which can be readily transported in a hand carried sample case.
- (7) The exterior of the accessory office unit shall not be altered in any manner to attract attention to the accessory office or the apartment building as a place of business.
- (8) No signs indicating the presence of the accessory office shall be located on or about the unit or the apartment building.
- (9) No noise, odor, smoke, hazard or other nuisance of any type shall arise from the conduct of the accessory office.
- (10) No vehicle with the name of an Accessory office business shall be parked or stored on the site, except in a closed garage.

An office use on the ground floor of an apartment building in the RM-2 zoning district that was subject to the above restrictions would most likely have minimal impact upon the surrounding residential neighborhood. However, in an abundance of caution, staff would suggest that the proposal also include the requirement for Conditional Use approval by the Planning Board, to ensure compliance with the above conditions, and recourse if there were to be problems with the operation of the office in future.

This type of proposal appeared to be acceptable to Mr. Marcus and Mr. Del Vecchio as representatives of the neighborhood.

BACKGROUND

This item was previously discussed at the June 6, 2011 and July 20, 2011 Land Use and Development meetings. At the June meeting, the history of this item and the differences between the RM-2 and the RM-3 districts were explained. Representatives of the Lincoln West neighborhood association voiced concerns relative to the introduction of commercial uses into the Capri apartment building. Although there was some discussion of a broader initiative involving the RM-3 district (item b), there was broad consensus that the main issue of discussion was the introduction of commercial accessory uses into apartment buildings in the RM-2 zoning district.

The Committee deferred the item to July, and at the July meeting, residents again raised concerns regarding the potential for commercialization of residential buildings within this neighborhood, and voiced their opposition to allowing commercial uses in this area. At this time, the Committee decided not to vote on this issue as the proponent was not able to attend, but they did express that they were inclined not to support this proposal and that this should be related to the proponent.

Subsequently, staff has received a revised proposal from the proponent, along with a request to go back to the LUDC to present it to the Committee. The request has been scaled back to designate only a small number of office uses as proposed to be permitted as accessory commercial uses in apartment buildings in the RM-2 district. Such uses

would include real estate offices, property management offices, and other similar types of non-medical office uses.

However, it appears that the proponent has not gained support from surrounding residents, who continue to oppose any proposal to introduce new accessory commercial uses into this neighborhood.

ANALYSIS

Section 142-902 of the Land Development Regulations governs the permitted accessory uses in various types of buildings throughout the City. For example, hotels are permitted in many zoning districts to have restaurants and retail stores as accessory uses within the building. The permitted accessory uses within apartment buildings are generally more restrictive, with some commercial uses permitted within buildings in the highest intensity zoning districts (RM-3), and limited accessory uses permitted in other districts (RM-2). An amendment to Section 142-902 would be required to expand the allowable accessory uses within buildings.

A possible amendment to the accessory use regulations to permit a limited number of commercial accessory uses in apartment buildings adjacent to a public baywalk was referred to the Land Use and Development Committee (LUDC) on April 13, 2011 at the request of Commissioner Tobin. Subsequently, in response to the above referral, a discussion regarding a "Baywalk Conservation District" proposal put forth by members of the Lincoln West Neighborhood Association, which would prevent additional commercial uses in the areas adjacent to the Baywalk, was referred to the LUDC on May 11, 2011, at the request of Mayor Bower and Commissioner Wolfson.

Note also that a similar proposal was discussed by the LUDC on January 28, 2010, and was indefinitely deferred in order to permit the proponent to meet with neighborhood residents and gain community support. Although a meeting of this nature did take place, it appears that community sentiment remains against commercial accessory food and beverage uses in residential neighborhoods.

Currently the City Code permits only very limited commercial accessory uses in apartment buildings in the RM-2. Although some exceptions exist for a small area of the City, in general the existing regulations limit apartment buildings in the RM-2 district to only solariums, saunas, exercise studios, health clubs or massage services.

A request to permit an expansion of the permitted accessory uses within a space on the ground floor of the Capri apartment building has again initiated this discussion (both a grocery store and a restaurant use have been discussed). The building is located along the Baywalk south of Lincoln Road, and the space in question was approved as a spa or gym in the original approval from the City.

The conversion of this type of space to a slightly more intense use, such as a real estate office or similar non-medical office use, might be able to satisfy Planning requirements for compatibility with the surrounding neighborhood, if properly controlled. Adequate parking requirements must also be considered; the space in question is limited to only three or four parking spaces; this could permit limited office use up to 300 s.f. per parking space provided. The use of the Fee In-Lieu of Parking should be discouraged from being used to further intensify such spaces within residential areas.

The proposal for limited office use does not have any relationship to the adjacent baywalk facility, and any linkage with that concept should be abandoned. Any introduction of limited accessory commercial use in apartment buildings should be of the type and intensity that would be compatible with the RM-2 zoning district, regardless of proximity to any baywalk. If such an idea were to be implemented, the types of office uses permitted would be needed to be limited to those most directly related to the apartment building use. Current code permits property management office of up to 100 offsite units, all under the same beneficial ownership. Likewise, a sales office is a typical accessory use when a new apartment building is first occupied. Allowing only uses that are similar to the above might be one way to limit concerns about increased commercialization. If the ordinance were to permit only real estate offices and property management offices, but without the limitation on the number of units or ownership, an argument could be made that these uses are similar in intensity to those already permitted.

Staff has been informed that there have been a series of discussions of the above proposal with neighbors and the Lincoln West Neighborhood group. Subsequently, the City has received correspondence which strongly opposes such a change to the permitted accessory uses in the RM-2 zoning district, as they believe that such accessory use would be detrimental to the residents and neighborhood, and to the success of a baywalk as an amenity for public use, for the reasons stated above.

CONCLUSION

Although the Administration believes a very limited ordinance could be crafted that would minimize the impacts of commercialization on the surrounding neighborhood, staff also notes that nearby residents remain extremely opposed to such an ordinance amendment. Staff requests further policy direction on this issue, and recommends that this item either be continued again, to permit further discussions of the concept with neighborhood residents, or, conversely, if it appears that the neighborhood's concerns are unable to be addressed, then this issue should be resolved by directing staff that no further action is to be taken on this referral.

JMG/JGG/RGL/

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2012\May\RM-2 accessory uses-LUDC May 2012.docx