




# 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: May 16, 2012

SUBJECT: Discussion of Jurisdiction of Land Use Boards over Appeals

**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 II, "BOARDS," DIVISION 2, "PLANNING BOARD," SECTION 118-51, "POWERS AND DUTIES," DIVISION 3, "DESIGN REVIEW BOARD," SECTION 118-71, "POWERS AND DUTIES," DIVISION 4, "HISTORIC PRESERVATION BOARD," SECTION 118-102, "POWERS AND DUTIES," DIVISION 5, "BOARD OF ADJUSTMENT," SECTION 118-136, "POWERS AND DUTIES," TO CLARIFY AND AMEND THE POWERS AND JURISDICTIONS OF THESE LAND USE BOARDS WHEN APPEALS ARE FILED FROM ANY ORDER, REQUIREMENT, DECISION, OR DETERMINATION MADE BY THE PLANNING DIRECTOR OR HIS DESIGNEE, INCLUDING ADMINISTRATIVE DETERMINATIONS, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.**

This item was deferred at the March 28, 2012 Land Use and Development Committee meeting.

### **BACKGROUND**

A discussion relative to the stay of proceedings of City Code Section 118-136 and Section 118-137, resulting from appeals of administrative decisions to the Board of Adjustment was referred to the Land Use and Development Committee and the Planning Board by the City Commission. This was discussed at the Committee of the Whole on April 13, 2011, and the City Commission adopted Ordinance 2011-3742 at its meeting of October 19, 2011, on that subject.

In addition to the above referral, there was also discussion concerning whether appeals of requirements, decisions or determinations made by the planning director concerning notice, procedure, staff reports, or review criteria of the land development regulations or a particular land use board's by-laws, arising from an application for Development Review Board Hearing filed for consideration by the respective land use boards, should be heard by the land use board to which such application has been filed. This report addresses the jurisdiction and procedure regarding these types of appeals.

## **ANALYSIS**

The amended stay provisions of the Code under Ordinance 2011-3742 have the effect of putting Orders arising from all land use board hearings on hold until the appeal can be ruled on by the Board of Adjustment or the courts. While the appeal provision is generally used only in cases where serious concerns about a planning interpretation or other administrative determinations are involved, there are also appeals filed on matters of administrative issues, or matters that can be resolved by the board to which application was made.

The proposed ordinance would amend the jurisdiction and procedure of land use boards concerning appeals. This proposal would clarify and amend the jurisdiction of each respective board to hear and decide appeals of any order, requirement, decision or determination made by the planning director concerning notice, procedure, staff reports, or review criteria of these land development regulations or the boards' by-laws, arising from an application for Development Review Board Hearing filed for consideration by the planning board.

The City Attorney has the requirements for adoption of this ordinance, which includes amendments to the Related Acts, and has concluded that the ordinance require a referendum before adoption.

## **PLANNING BOARD ACTION**

At the Planning Board meeting of August 23, 2011 the ordinance was reviewed and by a vote of 6-0 (one member absent), the Board recommended that the City Commission adopt the ordinance.

## **CONCLUSION**

The Administration seeks guidance the Committee in light of the City Attorney's opinion that a referendum is required prior to adoption of this ordinance.

JMG/JGG/RGL/ML

c: Jorge G. Gomez, Assistant City Manager

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**JURISDICTION OF LAND USE BOARDS OVER APPEALS**

**DRAFT 7-22-2011**

**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 II, "BOARDS," DIVISION 2, "PLANNING BOARD," SECTION 118-51, "POWERS AND DUTIES," DIVISION 3, "DESIGN REVIEW BOARD," SECTION 118-71, "POWERS AND DUTIES," DIVISION 4, "HISTORIC PRESERVATION BOARD," SECTION 118-102, "POWERS AND DUTIES," DIVISION 5, "BOARD OF ADJUSTMENT," SECTION 118-136, "POWERS AND DUTIES," TO CLARIFY AND AMEND THE POWERS AND JURISDICTIONS OF THESE LAND USE BOARDS WHEN APPEALS ARE FILED FROM ANY ORDER, REQUIREMENT, DECISION, OR DETERMINATION MADE BY THE PLANNING DIRECTOR OR HIS DESIGNEE, INCLUDING ADMINISTRATIVE DETERMINATIONS, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the land development regulations provide for appeals to the Board of Adjustment of any order, requirement, decision, or determination made by an administrative official in the enforcement of the City's land development regulations; and

**WHEREAS**, it has become apparent that appeals of any order, requirement, decision or determination made by the planning director, concerning notice, procedure, staff reports, or review criteria of these land development regulations or a particular land use board's by-laws, arising from an application for Development Review Board Hearing filed for consideration by the respective land use boards, should be heard by the land use board to which such application has been filed; and

**WHEREAS**, the amendments set forth below are necessary to accomplish 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.** Chapter 118, "Administrative And Review Procedures," Article II, "Boards," Division 2, "Planning Board," Section 118-51, "Powers and duties," is hereby amended as follows:

**Sec. 118-51 – Powers and duties.**

The planning board shall have the following powers and duties:

\* \* \* \*

(12) To hear and decide appeals of the planning director when deciding matters pursuant to section 118-197.

13) To hear and decide appeals of any order, requirement, decision or determination made by the planning director, concerning notice, procedure, staff reports, or review criteria of these land development regulations or the planning board's by-laws, arising from an application for Development Review Board Hearing filed for consideration by the planning board.

**SECTION 2.** Chapter 118, "Administrative And Review Procedures," Article II, "Boards," Division 3, "Design Review Board," Section 118-71, "Powers and duties," is hereby amended as follows:

**Sec. 118-71. – Powers and duties.**

The design review board shall have the following powers and duties:

\* \* \* \*

(5) To hear and decide appeals of the planning director when deciding matters pursuant to section 118-260.

(6) To hear and decide appeals of any order, requirement, decision or determination made by the planning director, concerning notice, procedure, staff reports, or review criteria of these land development regulations or the design review board's by-laws, arising from an application for Development Review Board Hearing filed for consideration by the design review board.

**SECTION 3.** Chapter 118, "Administrative And Review Procedures," Article II, "Boards," Division 4, "Historic Preservation Board," Section 118-102, "Powers and duties," is hereby amended as follows:

**Sec. 118-102 – Powers and duties.**

The historic preservation board shall:

(13) To hear and decide appeals of any order, requirement, decision or determination made by the planning director, concerning notice, procedure, staff reports, or review criteria of these land development regulations or the historic preservation board's by-laws, arising from an application for Development Review Board Hearing filed for consideration by the historic preservation board.

**SECTION 4.** Chapter 118, "Administrative And Review Procedures," Article II, "Boards," Division 5, "Board Of Adjustment," Section 118-136, "Powers and duties," is hereby amended as follows:

**Sec. 118-136 - Powers and duties.**

(a) The board of adjustment shall have the following powers and duties:

(1) a. To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations with the following exceptions:

(i) of appeals pursuant to section 118-197 and section 118-262 -260; and

(ii) appeals of any order, requirement, decision, or determination made by the planning director concerning notice, procedure, staff reports, or review criteria of these land development regulations or by-laws, arising from an application for Development Review Board Hearing filed for consideration by the planning board, design review board, or historic preservation board. Such appeals shall be heard by the board to which the application has been filed.

b. The board of adjustment shall hear and decide appeals of any order, requirement, decision or determination made by the planning director, concerning notice, procedure, staff reports, or review criteria of these land development regulations or the board of adjustment's by-laws, arising from an application for Development Review Board Hearing filed for consideration by the board of adjustment.

In the event of an administrative appeal to a land use board, the board of adjustment, the planning director may engage the services of an attorney, in consultation with the City Attorney, for the purpose of representing the administrative officer who made the decision that is the subject of the appeal.

In exercising this power, the board of adjustment, may upon appeal, reverse or affirm, wholly or partly, the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of five members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under these land development regulations.

(2) To authorize, upon application such variance from the terms of these land development regulations as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of a provision of these land development regulations would result in unnecessary and undue hardship. An affirmative vote of five-sevenths of all members of the board shall be necessary to approve any variance request.

(b) The board of adjustment shall serve as the city's floodplain management board and shall have the authority to exercise all powers and perform all duties assigned to such board pursuant to section 54-31 et seq. and Resolution No. 93-20698, and in accordance with the procedures set forth therein as such ordinance and resolution may be amended from time to time.

