



MIAMIBEACH

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 JMG*

DATE: May 16, 2012

SUBJECT: **DISCUSSION ON WAYS TO ENHANCE THE LAND USE BOARDS OF MIAMI BEACH IN ORDER TO IMPROVE THE CITY OF MIAMI BEACH BUILDING AND PLANNING DEPARTMENT AND PROCESSES.**

BACKGROUND

This item was referred to the Land Use and Development Committee by the City Commission on March 21, 2012, at the request of Commissioner Góngora.

Attached are letters from participants in the Miami Beach Chamber of Commerce Chamber breakfast entitled "for the love of Miami Beach". The letters detail five recommendations that were put forward by the meeting attendees, related to the Planning Department and the planning and development process of the City. The five recommendations are:

1. Everyone who is a member of a power board should be required to live or work on Miami Beach
2. Every decision of a power board should be appealable to the commission that is elected by the citizens!
3. Any member of a power board that misses two meetings in any year should automatically be disqualified and an alternate be placed in his stead.
4. All boards should meet in same week of month and all matters should be heard co-terminously that relate to multiple boards.
5. The department and administration should be empowered to make many more decisions than they currently are thus allowing appeals to the power boards if agreement with staff cannot be accomplished. This would allow many minor projects to move forward expeditiously and without the costs of over-burdensome government.

ANALYSIS

Below is a brief overview of those Code provisions and policies which relate to the above recommendation, along with comments from the Planning Department staff, where appropriate.

1. *Everyone who is a member of a power board should be required to live or work on Miami Beach*

Below are the relevant code sections for each land use board. The Planning Board requires residency in the City, but permits the Commission to waive this requirement with a 5/7 vote. Board of Adjustment members must either live or work in the City. Some members of the Historic Preservation Board and Design Review Board must reside in the City, but other professional categories do not have that requirement.

Planning Board

Sec. 118-53 (c)(d)

Residency in the city for at least one year; City Commission may waive the residency requirements by a 5/7ths vote in the event a person not meeting these requirements is available to serve on the board and is exceptionally qualified by training and/or experience.

Design Review Board

Sec. 118-72 (c)

Residency in or have their primary place of business in the county. The two citizens at large members and one of the registered landscape architects, registered architects, professional designers or professional urban planners shall be residents of the city.

Historic Preservation Board

Sec. 118-103 (b)

All members of the board except the architect, engineer, landscape architect, professional designer or professional urban planner and university faculty member shall be residents of, the City; City Commission may waive this requirement by a 5/7ths vote in the event a person not meeting these residency requirements is available to serve on the board and is exceptionally qualified by training and/or experience in historic preservation matters.

Board of Adjustment

Sec. 118-131

Members of the board must be either residents of or have their principal place of business in the city.

Staff notes that the vast majority of all current and former board members have been residents of the City. However, with respect to the detailed professional categories required for the Design boards (DRB and HPB), there have been difficulties in the past finding appropriate persons to fill those categories, and sometimes those spots have been filled with non-resident design professionals. Staff would caution against changes that result in additional difficulties in filling Board positions, as vacant positions and lack of quorums would result in less efficiency and longer timeframes for the development process.

2. Every decision of a power board should be appealable to the commission that is elected by the citizens.

Below are the relevant code sections for each land use board. Appeals of the Planning Board and Board of Adjustment go to Circuit Court. Appeals of Historic Preservation Board decisions go to a Special Master, and appeals of the Special Master go to Circuit Court as well. Only appeals of the Design Review Board currently go to the City Commission, and appeals of those decisions go then to Circuit Court.

Planning Board – Conditional Use

Sec. 118-197 (c) Review of a conditional use decision of the planning board shall be to a court of competent jurisdiction by petition for writ of certiorari.

Design Review Board

Sec. 118-262 An applicant may seek review of any order of the design review board by the City Commission. In order to reverse, or remand for amendment, modification or rehearing, a decision of the design review board, the city commission shall find that the design review board did not do one of the following: (1) Provide procedural due process; (2) Observe essential requirements of law; or (3) Base its decision upon substantial competent evidence. In order to reverse, or remand a five-sevenths vote of the city commission is required. Appeal from a decision of the City Commission shall be to a court of competent jurisdiction by petition for writ of certiorari in accordance with the Florida Rules of Appellate Procedure.

Board of Adjustment

Sec. 118-138

The decision of the board of adjustment shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

Historic Preservation Board

Sec. 118-537 (b)

An applicant or interested party may appeal the board's decision to a special master appointed by the city commission. In order to reverse, amend, or modify any decision of the board, the special master shall find that the board did not a. provide procedural due process; b. observe essential requirements of law; or c. base its decision upon substantial competent evidence. Appeal the special master's decision is to a court of competent jurisdiction by petition for writ of certiorari.

Planning staff notes that at one time in the past appeals of the land use board decisions did go to the City Commission. That process was changed to eliminate Commission review of these cases, and instead send appeals to court or special master. The reasoning behind this was to remove these case-by-case quasi-judicial land use decisions from the political arena. The Commission would set the overall land use and zoning policies, and then these would be implemented independently by the land use boards. If appeals were returned to the City Commission, the likelihood is that there would be an increase in appeals, and a corresponding increase in both staff's and the Commission's workload.

3. Any member of a power board that misses two meetings in any year should automatically be disqualified and an alternate be placed in his stead.

Below is the Code section governing absences from land use board meetings.

Sec. 2-22 (9)

If any member of an agency, board or committee fails to attend 33 percent of the regularly scheduled meetings per calendar year, such member shall be automatically removed. To calculate the number of absences under the 33 percent formula, .4 or less rounds down to the next whole number and .5 or more rounds up to the next whole number.

Staff notes that this provision was adopted within the last year or two, and appears to be functioning well. While it is important to ensure that appointed board members attend meetings, the two absences may be too restrictive given the realities of professional life. As land use board terms are two years in length, perhaps the Commission could take into account attendance when reappointing board members.

4. All boards should meet in same week of month and all matters should be heard co-terminously that relate to multiple boards.

There is no code provision governing this proposal. Staff would note that scheduling of meetings is not a simple task, and that many factors are balanced in trying to schedule a year's worth of meetings in advance. The availability of the Commission Chambers is required, and it would be a rare week that several other activities are scheduled in the chambers. Currently, the City holds roughly one land use board meeting a week. This pattern seems to be workable for Department staff, who share many important functions relating to administering the land use boards. To have all four boards meet during the same week would seem to present logistical difficulties for planning and clerical staff.

Note also that if the concern that prompted this request is the experience with projects that require more than one board approval, staff would point out that in general there is no prohibition that prevents going to multiple boards at the same approximate time. As an example, the Saxony West / Faena project at the west side of Collins Avenue between 32nd and 34th Streets received approval from the Board of Adjustment on January 6, 2012, and then received approval from the Historic Preservation Board on February 14th, and from the Planning Board on February 28th. By running all the applications simultaneously, significant time was able to be reduced in the overall approval process.

Only in one specific instance is this not the case, the Planning Board review of projects over 50,000 s.f., which by code is required to be approved prior to Design Review or Historic Preservation Board review. The Commission may wish to revisit that provision.

5. The Department and Administration should be empowered to make many more decisions than they currently are thus allowing appeals to the power boards if agreement with staff cannot be accomplished. This would allow many minor projects to move forward expeditiously and without the costs of over-burdensome government.

Below are the two code sections which authorize staff level review of projects, which otherwise would require Design Review Board or Historic Preservation Board review and approval.

Design Review Board – Staff Level Review

Sec. 118-260

The planning director or designated representative, shall have the authority to approve, approve with conditions or deny an application on behalf of the board, for the following:

- (1) Ground level additions to existing structures, not to exceed two stories in height, which are not substantially visible from the public right-of-way, any waterfront or public park. For those lots which are greater than 10,000 square feet, the floor area of the proposed addition may not exceed ten percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 5,000 square feet.
- (2) Replacement of windows, doors, storefront frames and windows, or the approval of awnings, canopies, exterior surface colors, storm shutters and signs.
- (3) Facade and building alterations, renovations and restorations which are minor in nature.
- (4) Minor demolition and alterations to address accessibility, life safety, mechanical and other applicable code requirements.
- (5) Minor demolition and alterations to rear and secondary facades to accommodate utilities, refuse disposal and storage.
- (6) Minor work associated with the public interiors of buildings and those interior portions of commercial structures which front a street or sidewalk.
- (7) Minor work involving public improvements upon public rights-of-way and easements.
- (8) Minor work which is associated with rehabilitations and additions to existing buildings, or the construction, repair, or rehabilitation of new or existing walls, at-grade parking lots, fences.

The director's decision shall be based upon the criteria listed in this article. The applicant may appeal a decision of the planning director to the design review board, pursuant to all application and notice requirements. The applicant shall be responsible for providing and effectuating all noticing requirements, according to planning department procedures, as well as the duplication of all pertinent plans and exhibits for distribution to the board.

Historic Preservation Board – Staff Level Review

Sec. 118-563(d)

Applications for certificates of appropriateness involving minor repairs, demolition, alterations and improvements shall be reviewed by the staff of the board. The staff shall approve, approve with conditions, or deny a certificate of appropriateness or a certificate

to dig after the date of receipt of a completed application. Such minor repairs, alterations and improvements include the following:

- (1) Ground level additions to existing structures, not to exceed two stories in height, which are not substantially visible from the public right-of-way (excluding rear alleys), any waterfront or public parks, provided such ground level additions do not require the demolition or alteration of architecturally significant portions of a building or structure. For those lots under 5,000 square feet, the floor area of the proposed addition may not exceed 30 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 1,500 square feet. For those lots between 5,000 square feet and 10,000 square feet, the floor area of the proposed addition may not exceed 20 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 2,000 square feet. For those lots greater than 10,000 square feet, the floor area of the proposed addition may not exceed 10 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 5,000 square feet.
- (2) Replacement of windows, doors, storefront frames and windows, or the approval of awnings, canopies, exterior surface colors, storm shutters and signs.
- (3) Facade and building restorations, recommended by staff, which are consistent with historic documentation, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
- (4) Minor demolition and alterations to address accessibility, life safety, mechanical and other applicable code requirements, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
- (5) Minor demolition and alterations to rear and secondary facades to accommodate utilities, refuse disposal and storage, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.

Staff would also note that this process of staff level design review is currently working extremely well, and the vast majority of building permits are reviewed under this provision without the requirement to go to a board.

It should be noted that the Code does not allow staff level review of Conditional Uses or provide for administrative variances as these are under the jurisdiction of the Planning Board and Board of Adjustment respectively.

CONCLUSION

The Administration seeks the Committee's guidance on the matter.

JMG/JGG/RGL/



MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Michael Góngora, Commissioner

DATE: March 13, 2012

SUBJECT: Referral Item for March 21 Commission Meeting

Please place on the March 21 Commission meeting consent agenda a referral to the March 28 Land Use Committee for a discussion on ways to enhance the land use boards of Miami Beach in order to improve the City of Miami Beach Building and Planning Department and processes. If you have any questions please feel free to contact my aide Diana Fontani at ext 6087.

MG/df

145
LUDC#127

Agenda Item C4M
Date 3-21-12

Lorber, Richard

From: Russell Galbut [rgalbut@CrescentHeights.com]
Sent: Sunday, February 12, 2012 9:53 AM
To: Bower, Matti H.; Weithorn, Deede; 'Michael Gongora (michaelgongora@aol.com)'; 'Jerry Libbin'; 'Jorge Exposito'; 'Edward L. Tobin (ed@edtobin.com)'; 'Jonah Wolfson (jonahwolfson@wolfsonlawfirm.com)'; Gonzalez, Jorge
Cc: Frances, Francis; Lorber, Richard; Mooney, Thomas; Cary, William; Gomez, Jorge; Scott, Stephen; McConachie, Richard
Subject: Results of Miami Beach Chamber quarterly meeting: Real Estate Council presents "For the Love of Miami Beach - why live, invest, and work on the beach" Friday, Feb, 10

Dear Mayor, Commissioners and Jorge our city manager,

This past Friday at the Chamber breakfast I had the good fortune to be on a panel discussing the City of Miami Beach entitled "for the love of Miami Beach".

A wide cross section of our community was there and a wonderful lively discussion took place. With over a hundred people contributing there was real excitement expressed for the great efforts being undertaken by Steve Scott, Jorge Gomez, Richard McConachie and this administration to revamp the building department and make it more friendly and easier to deal with by the community. Simply put everyone is looking forward to the hard work and commitment made by the manager and his team for positive and immediate change relating to the building department.

As it relates to the planning department after much discussion there were 5 take away points that everyone agreed should happen immediately to improve that department and the functioning of its power boards:

1. Everyone who is a member of a power board should be required to live or work on Miami Beach
2. Every decision of a power board should be appealable to the commission that is elected by the citizens!
3. Any member of a power board that misses two meetings in any year should automatically be disqualified and an alternate be placed in his stead.
4. All boards should meet in same week of month and all matters should be heard co-terminously that relate to multiple boards.
5. The department and administration should be empowered to make many more decisions than they currently are thus allowing appeals to the power boards if agreement with staff cannot be accomplished. This would allow many minor projects to move forward expeditiously and without the costs of over-burdensome government.

While I am sure there is much discussion to be had both pros and cons on the above 5 points I think they are a start to bettering our community. I would humbly suggest the empanelment of another red ribbon committee just like the building department one, to assist in the immediate review of our planning department. Citizen involvement goes to the core of good governance and we are fortunate on Miami Beach to have such wonderful citizens willing to get involved and assist our community.

Thanks for all you do for our community and looking forward to the positive changes coming. Believe me they will be very much appreciated by all.

Russell W. Galbut
Managing Principal
Crescent Heights®
2200 Biscayne Boulevard
Miami, FL 33137
Tel: (305) 573-4127 (direct)
Tel: (305) 374-5700 Ext. 7282 (office)
Fax: (305) 573-8489

Lorber, Richard

From: Miroslav Mladenovic [misha@m2econsulting.com]
Sent: Friday, March 16, 2012 12:21 PM
To: Russell Galbut; Bower, Matti H.; Weithorn, Deede; Michael Gongora; Jerry Libbin; Jorge Exposito; Edward L. Tobin; Jonah Wolfson; Gonzalez, Jorge
Cc: Frances, Francis; Lorber, Richard; Mooney, Thomas; Cary, William; Gomez, Jorge; Scott, Stephen; McConachie, Richard
Subject: RE: Results of Miami Beach Chamber quarterly meeting: Real Estate Council presents "For the Love of Miami Beach - why live, invest, and work on the beach" Friday, Feb, 10

Dear Mayor, Commissioners and Jorge our city manager,

I am an engineer and business owner with multiple business interest on the Beach, and one of the members of the development team that brought La Tour to Miami Beach, after 15 years of non-building. Subsequently, I was in various capacities involved with different development efforts, most recently as the engineer of record and commissioning agent of the Waldorf, the first Gold LEED Certified historic hotel in our community. AS such, I am wholeheartedly supporting the efforts of the Chamber in helping us make our community more business-friendly as it relates to development.

At our last meeting, the Real Estate Council came up with 5 take away points that everyone agreed should happen immediately to improve that department and the functioning of its power boards:

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While this may look as a lot, one needs a roadmap in order to reach his/her goal. I think if we agree that this is the roadmap, we could then discuss the milestones on that road.

Thanks for all you do for our community and looking forward to the positive changes coming. Believe me they will be very much appreciated by all.

Miroslav "Misha" Mladenovic, P.E.
President

 **m²e** consulting engineers

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Lorber, Richard

From: Paola Rengifo [paola@akarramjr.com]
Sent: Friday, March 16, 2012 5:49 PM
To: Bower, Matti H.; Weithorn, Deede; Michael Gongora; Jerry Libbin; 'Jorge Exposito'; Edward L. Tobin; Jonah Wolfson; Gonzalez, Jorge
Cc: Frances, Francis; Lorber, Richard; Mooney, Thomas; Cary, William; Gomez, Jorge; Scott, Stephen; McConachie, Richard; Russell Galbut; Madeleine Romanello
Subject: Results of Miami Beach Chamber quarterly meeting: Real Estate Council presents "For the Love of Miami Beach - why live, invest, and work on the beach" Friday, Feb, 10

Dear Mayor, Commissioners and Jorge our city manager,

As a member of the Miami Beach Chamber of Commerce Pillar Board and member of the Real Estate Council, I attended last month the Chamber breakfast entitled "for the love of Miami Beach".

The panel discussion lead by Russell W. Galbut expressed some very important issues regarding our community and the problems involving the existing process at the City's building Department. With over a hundred people contributing there was real excitement expressed for the great efforts being undertaken by Steve Scott, Jorge Gomez, Richard McConachie and this administration to revamp the building department and make it more friendly and easier to deal with by the community. Simply put everyone is looking forward to the hard work and commitment made by the manager and his team for positive and immediate change relating to the building department.

As it relates to the planning department after much discussion there were 5 take away points that everyone agreed should happen immediately to improve that department and the functioning of its power boards:

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Thanks for all you do for our community and looking forward to the positive changes coming. Believe me they will be very much appreciated by all.

Thank you,

(NOTE: please update your records with our new mailing address below)

Paola Rengifo

Partner



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AKJ Design Concepts LLC
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Gomez, Jorge

From: madeleine.romanello@realmiamibeach.com
Sent: Thursday, March 22, 2012 4:34 PM
To: Bower, Matti H.; Weithorn, Deede; 'Michael Gongora'; 'Jerry Libbin'; 'Jorge Exposito'; 'Edward L. Tobin'; 'Jonah Wolfson'; Gonzalez, Jorge
Cc: Frances, Francis; Lorber, Richard; Mooney, Thomas; Cary, William; Gomez, Jorge; Scott, Stephen; McConachie, Richard; 'Russell Galbut'; Ruiz, Maria
Subject: Results of Miami Beach Chamber quarterly meeting: Real Estate Council presents "For the Love of Miami Beach - why live, invest, and work on the beach" Friday, Feb, 10

Dear Mayor, Commissioners and Jorge our city manager,

As the Chair of the Real Estate Council, I led the planning and moderated the Chamber breakfast panel entitled "for the love of Miami Beach" last month.

The panel discussion led by Russell W. Galbut expressed some very important issues regarding our community and the problems involving the existing process at the City's building Department. With over a hundred people contributing there was real excitement expressed for the great efforts being undertaken by Steve Scott, Jorge Gomez and this administration to revamp the building department and make it more friendly and easier to deal with by the community. Simply put everyone is looking forward to the hard work and commitment made by the manager and his team for positive and immediate change relating to the building department.

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Thanks for all you do for our community and looking forward to the positive changes coming. Believe me they will be very much appreciated by all.

Thank you,

Madeleine Romanello P.A.

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RSVP



THE REAL ESTATE COUNCIL OF THE
MIAMI BEACH CHAMBER OF COMMERCE PRESENTS

FOR THE LOVE OF MIAMI BEACH

-why live, invest, and work on the beach

AT



FRI. FEB. 10

8:00am - 10:00am

ALEXANDER ALL SUITE OCEANFRONT RESORT

5225 Collins Avenue,
Miami Beach, FL 33140

COST TO ATTEND

Chamber Members: \$30

Non-Members: \$35

RSVP NOW

Blending needs of Miami Beach residents with being a top tourist destination: future redevelopment and importance of planning so we can continue to grow responsibly; why developers and hotels are investing in Miami Beach and why others are choosing Miami now; how can we compete against Miami, Midtown and Design District: is the City of MB too tough to attract new businesses and development or can we debunk the myth : what is Miami Beach's "culture" vs mainland Miami and who are our residents

PANELISTS



LYLE STERN
CEO
Koniver Stern Group
RETAIL REAL ESTATE EXPERT



MARIA RUIZ
Director
Office of Community Services
CITY OF MIAMI BEACH



RUSSELL GALBUT
Managing Principal
Crescent Heights
RESIDENTIAL/COMMERCIAL
DEVELOPMENT



MICHAEL LARKIN ESQ
Shareholder
Bercow Radell & Fernandez, P.A.
LAND USE AND ZONING ATTORNEY

FOR MORE INFORMATION CONTACT THE CHAMBER AT 305.674.1300
OR EMAIL SUSANA@MIAMIBEACHCHAMBER.COM

Friday, Feb. 10

8:00am - 10:00am

Alexander All Suite
Oceanfront Resort

5225 Collins Avnue

THE REAL ESTATE COUNCIL
MIAMI BEACH CHAMBER OF COMMERCE PRESENTS

FOR THE LOVE OF

Miami Beach, FL

Cost to attend

Chamber Members \$30

Non-Members \$35

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MIAMI BEACH

why live, invest and work on the beach

Blending needs of Miami Beach residents with being a top tourist destination: future redevelopment and importance of planning so we can continue to grow responsibly; why developers and hotels are investing in Miami Beach and why others are choosing Miami now; how can we compete against Miami, Midtown and Design District: is the City of MB too tough to attract new businesses and development or can we debunk the myth : what is Miami Beach's "culture" vs mainland Miami and who are our residents

PANELISTS

Lyle Stern, CEO

Koniver Stern Group RETAIL REAL ESTATE EXPERT

Maria Ruiz, Director

Office of Community Services, City of Miami Beach

Russell Galbut, Managing Principal

Crescent Heights

RESIDENTIAL/COMMERCIAL DEVELOPER

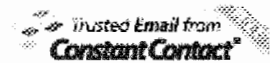
Michael Larkin Esq, Shareholder

Bercow Radell & Fernandez P.A. LAND USE AND ZONING ATTORNEY

For more information contact the Chamber at 305.674.1300 or email susana@miamibeachchamber.com

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