



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 JMG*

DATE: June 13, 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

The item was originally referred to the Land Use and Development Committee by the City Commission on March 21, 2012, at the request of Commissioner Góngora. At the May 16, 2012 meeting, the Committee discussed the proposals, including residency requirements, appeals of board decisions, and the other points, as detailed below. Although the Committee expressed the sentiment that some of the suggestions might not be feasible, they requested that the item be brought back to the Committee along with any additional suggestions from the Planning Department.

Since that meeting, staff has begun to look at aspects of the development review process that might be areas for improving efficiency and reducing the costs and timeframes associated with the Board review process. A preliminary examination has produced the following three points:

- 1 When multiple Board review is required (i.e. Design Review/HPB, in addition to Planning Board and/or Board of Adjustment) staff endeavors to process the applications simultaneously, in order to streamline the amount of time required. However, one section of the Code prevents this in cases of projects being reviewed by the Planning Board because they are over 50,000 s.f. which specifies that the Planning Board review must come first, prior to any other board review. Perhaps this restriction could be eliminated to help streamline the process.
- 2 The Consultant Review Ordinances that have been passed in the past few years are well intentioned. However, staff has identified that in practice, they are difficult to implement in every case, and some of these requirements have caused significant delays to the development review process. While the intention of the ordinances was to inform the Boards regarding such technical issues as noise and traffic impacts, in practice, several of the reports generated by the existing process have been somewhat less than useful. Staff has been struggling to work through these issues; it may be beneficial to examine these policies again, in light of the past several years experience.
- 3 There have been past discussions about identifying minor variances that could be eligible for more streamlined processing, such as reducing the amount of time prior to public hearings that these would have to be noticed. This could be in the

realm of single family home variances, which might affect a fewer number of surrounding neighbors. An expedited review process requiring shorter notice (of course still notifying nearby neighbors by mail in advance) could be created for a subset of variances which are felt to be more minimal in nature.

- 4 The Planning Board's experience with approving docks greater than 40 feet in length has proven unsatisfactory. Since the County environmental permitting process mandates that docks clear the seagrass beds found near to the seawall, many residential docks are required to extend past the City's 40 foot threshold. The Board has found that since the dock length requirement is mandatory on the part of the County, there is really no discretion on their part. The Board has approved all such dock applications, even in cases where an adjacent neighbor is in objection, on the basis of fairness and uniformity. One idea to streamline this would be to eliminate the Planning Board review of such docks, and replace it with the standard set of conditions that are usually applied by the Board to these application approvals.

These may be ideas that merit further examination. This does not imply that the Planning Department has fully examined all aspects of these issues, and certainly some of the above ideas may be somewhat controversial. Staff is looking for additional direction on these matters, as well as the points already discussed at the previous meeting.

Previously Discussed Items:

Below are the five recommendations that were put forward by at the Miami Beach Chamber of Commerce Chamber breakfast entitled "for the love of Miami Beach", related to the Planning Department and the planning and development process of the City:

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/