



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: Kathie G. Brooks, Interim City Manager *KGB for KGB*

DATE: November 5, 2012

SUBJECT: **ORDINANCES TO ENHANCE AND IMPROVE THE CITY OF MIAMI BEACH PLANNING DEPARTMENT PROCESS.**

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 Land Use Committee discussed a number of different proposals including residency requirements, appeals of board decisions, and several other points. Although the Committee acknowledged that some of the suggestions might not be feasible, they requested that the item be brought back along with any additional suggestions from the Planning Department. At the June 13, 2012 Land Use Committee meeting, Planning Department staff presented additional ideas for improving efficiency and reducing the costs and timeframes associated with the Board review process. The Committee requested that staff bring back a list of common variances that go to the Board of Adjustment.

At the July 25, 2012 Land Use Committee meeting, Planning Department staff presented examples of variances that were fairly routine and common. These variances also represented areas of the existing zoning code that could be modified to reduce the number of applications that are required to go to the Board of Adjustment for public hearing. Planning staff was instructed to bring the modifications necessary to reduce and eliminate variances in these particular areas back to the Committee in Ordinance form.

ANALYSIS

The Planning Department has drafted three (3) separate Ordinances, all related to variance requests that are fairly routine and common before the Board of Adjustment. A summary of each proposed Ordinance is provided hereto:

Minimum Unit Sizes for Historic Hotels & Tower Setbacks for RM-2 zoning district

Several unit size variances have recently been granted for historic hotels, which have undergone extensive renovation, in the City Center and on the Oceanfront. When an existing building is significantly renovated, the Code requires that the minimum hotel unit size be met (315/330 sq. ft.). However, the existing room configuration in historic hotel buildings is often under this minimum required room size. Variances are consistently granted for these projects, as it is considered a true hardship, since the floor plates of historic hotel buildings often cannot be easily reconfigured. The existing building's pattern of windows match the room configuration, and the exterior of the historic building cannot be altered by removing or rearranging window placement.

Also, in the MXE district (Ocean Drive and Collins Avenue between 5th and 15th), a smaller minimum room size of 200 square feet is permitted. The historic hotels outside

the MXE district are often similar in nature to those in the MXE. In order to address this, the proposed Ordinance would permit the renovation of existing historic hotels without the need for room size variances, as long as a minimum unit size of 200 square feet is met.

As it pertains to tower setback requirements, the RM-2 residential multifamily, medium intensity district is designed for medium intensity multiple-family residences. The development regulations vary depending on what area of the City the RM-2 district is located in, with the maximum height permitted ranging from six (6) stories / 60 feet to fifteen (15) stories / 140'. Setbacks for buildings are divided into pedestal setbacks (the first 50 feet of height) and tower setbacks (that portion of a building above 50 feet in height). Any building that is proposed to be six stories is allowed to be at the required pedestal setbacks for the first five stories, but the sixth story or top floor must be set back to meet the tower setbacks.

The additional setback above 50' makes sense for taller buildings, and in the past the RM-2 district allowed much taller buildings. However, almost all the six story buildings built in the past years have sought and obtained variances for the sixth floor tower setbacks, as it is much easier to design a building that goes straight up, rather than setting back the uppermost floor to meet the different tower setback. The proposed ordinance would retain the tower setbacks as they are for all buildings higher than six stories and only allow buildings of six stories or less to follow the pedestal setback all the way to the top.

RM-3 Accessory Use Signage

Almost all the new oceanfront hotel and residential construction in the past several years has required variances in order to provide appropriate signage for permitted accessory uses. The oceanfront was rezoned from commercial zoning to RM-3 residential multifamily high-intensity in 1998. However, although accessory commercial uses are permitted within this zone, the corresponding sign regulations were not changed at that time. As a result, hotel and residential projects have required variances in order to provide building identification signs at the top of the buildings, as well as signage associated with permitted accessory uses. This has had the most profound impact on projects that incorporate individual retail stores along the Collins Avenue frontage, which is desirable from an urban design standpoint, but not accommodated by the RM-3 sign regulations in the Code.

The proposed Ordinance seeks to address this shortcoming in the current regulations by permitting the same type of signage that would be permitted on a similar building located within a commercial zoning district. Specifically, accessory commercial uses along the sidewalk would be allowed at least a 20 square foot wall sign and larger structures would be permitted to incorporate a building identification sign at the parapet. The proposed Ordinance also clarifies permitted signage for bay front and oceanfront buildings.

Swimming Pool Setbacks and Mechanical Equipment Setback Requirements

The Board of Adjustment has reviewed many variances for single family homes located on corner lots, as the narrow side of the lot is considered the front for zoning purposes. However, many corner homes face the longer side of the lot, considered for zoning purposes as the side yard facing the street. The setbacks are larger for front yards than they are for side yards facing the street. This causes problems for those corner homes oriented towards the longer side of the lot, especially when the homeowner is seeking to

install a pool. A modification of setback requirements for swimming pools has been proposed that clarifies and eases the minimum yard requirements for pools and related equipment on corner lots and through lots (2 fronts), located within single family districts.

Staff has also noted that since changes were made to FEMA regulations after Hurricane Wilma, more variances have been required for the installation of central air conditioning units and generators within interior side yards in single family and low density multi-family districts. These pieces of equipment are now required to be raised off the ground to meet minimum flood requirements. When coupled with the taller design of energy efficient equipment, the result is an encroachment that exceeds the current height limit of five (5') feet from grade. The proposed ordinance seeks to address this by increasing the maximum height for allowable setback encroachments in single family and RM-1 districts to not exceed five (5') above flood elevation, with a maximum height of 10 feet above grade. This change is expected to be able to accommodate most standard mechanical equipment within interior yards.

CONCLUSION

The Administration recommends that the Land Use and Development Committee provide any additional policy direction regarding the specific language of the proposed Ordinances and refer the proposals to the Planning Board for consideration as Ordinance Amendments. The Administration also recommends that the proposed ordinances be reviewed by the Board of Adjustment.

KGB/JGG/RGL/TRM

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2012\November 5, 2012\WAYS TO ENHANCE THE LAND USE BOARDS -LUDC November 2012.docx

MINIMUM UNIT SIZES FOR HISTORIC HOTELS & RM-2 TOWER SETBACKS

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS", BY AMENDING ARTICLE II, ENTITLED "DISTRICT REGULATIONS", BY AMENDING SECTION 142-155 TO MODIFY THE REQUIREMENTS FOR MINIMUM AND AVERAGE HOTEL ROOM SIZE FOR HISTORIC HOTELS WITHIN THE RM-1 DISTRICT; BY AMENDING SECTION 142-217 TO MODIFY THE REQUIREMENTS FOR MINIMUM AND AVERAGE HOTEL ROOM SIZE FOR HISTORIC HOTELS WITHIN THE RM-2 DISTRICT; BY AMENDING SECTION 142-218 TO MODIFY THE TOWER SETBACK REQUIREMENTS WITHIN THE RM-2 DISTRICT; BY AMENDING SECTION 142-246 TO MODIFY THE REQUIREMENTS FOR MINIMUM AND AVERAGE HOTEL ROOM SIZE FOR HISTORIC HOTELS WITHIN THE RM-3 DISTRICT; PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach endeavors to recall and promote its unique social and architectural history, as well as further the dynamic character and attraction of hotels within historic districts; and

WHEREAS, the City of Miami Beach seeks to encourage and incentivize the retention, preservation and restoration of hotel structures located within historic districts; and

WHEREAS, the City of Miami Beach desires to amend existing minimum unit size requirements for existing hotels within historic districts; and

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

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

SECTION 1. That Chapter 142, Article II, entitled "District Regulations", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-155. - Development regulations and area requirements

(b)The lot area, lot width, unit size and building height requirements for the RM-1 residential multifamily, low density district are as follows:

Minimum Unit Size (square feet):

New construction—550

Non-elderly and elderly low and moderate income housing: See section 142-1183

Rehabilitated buildings—400. For contributing hotel structures, located within a local historic district or a national register district, which are being renovated in accordance with the Secretary of the Interior Standards and Guidelines for the Rehabilitation of Historic Structures as amended, retaining the existing room configuration shall be permitted, provided all rooms are a minimum of

200 square feet.

Average Unit Size (square feet):

New construction—800

Non-elderly and elderly low and moderate income housing: See section 142-1183

Rehabilitated buildings—550, N/A for contributing hotel structures retaining the existing room configuration.

SECTION 2. That Chapter 142, Article II, entitled "District Regulations", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-217. - Area requirements.

The area requirements in the RM-2 residential multifamily, medium intensity district are as follows:

Minimum Unit Size (square feet):

New construction—550

Non-elderly and elderly low and moderate income housing: See section 142-1183

Rehabilitated buildings—400. For contributing hotel structures, located within a local historic district or a national register district, which are being renovated in accordance with the Secretary of the Interior Standards and Guidelines for the Rehabilitation of Historic Structures as amended, retaining the existing room configuration shall be permitted, provided all rooms are a minimum of 200 square feet.

Average Unit Size (square feet):

New construction—800

Non-elderly and elderly low and moderate income housing: See section 142-1183

Rehabilitated buildings—550, N/A for contributing hotel structures retaining the existing room configuration.

* * *

Sec. 142-218. - Setback requirements.

The setback requirements in the RM-2 residential multifamily, medium intensity district are as follows:

	Front	Side, Interior	Side, Facing a Street	Rear
At-grade parking lot on the same lot except where (b) below is applicable	20 feet	5 feet, or 5% of lot width, whichever is greater	5 feet, or 5% of lot width, whichever is greater	Non-oceanfront lots—5 feet Oceanfront lots—50 feet from bulkhead line

Subterranean	20 feet	5 feet, or 5% of lot width, whichever is greater. (0 feet if lot width is 50 feet or less)	5 feet, or 5% of lot width, whichever is greater	Non-oceanfront lots—0 feet Oceanfront lots—50 feet from bulkhead line
Pedestal	20 feet Except lots A and 1—30 of the Amended Plat Indian Beach Corporation Subdivision and lots 231-237 of the Amended Plat of First Ocean Front Subdivision—50 feet	Sum of the side yards shall equal 16% of lot width Minimum—7.5 feet or 8% of lot width, whichever is greater	Sum of the side yards shall equal 16% of lot width Minimum—7.5 feet or 8% of lot width, whichever is greater	Non-oceanfront lots—10% of lot depth Oceanfront lots—20% of lot depth, 50 feet from the bulkhead line whichever is greater
Tower	<u>Same as pedestal for structures with a total height of 60' or less.</u> 20 feet + 1 foot for every 1 foot increase in height above 50 feet, to a maximum of 50 feet, then shall remain constant. Except lots A and 1—30 of the Amended Plat Indian Beach Corporation Subdivision and lots 231—237 of the Amended Plat of First Ocean Front Subdivision—50 feet	<u>Same as pedestal for structures with a total height of 60' or less.</u> The required pedestal setback plus 0.10 of the height of the tower portion of the building. The total required setback shall not exceed 50 feet	<u>Same as pedestal for structures with a total height of 60' or less.</u> Sum of the side yards shall equal 16% of the lot width Minimum—7.5 feet or 8% of lot width, whichever is greater	<u>Same as pedestal for structures with a total height of 60' or less.</u> Non-oceanfront lots—15% of lot depth Oceanfront lots—25% of lot depth, 75 feet minimum from the bulkhead line whichever is greater

SECTION 3. That Chapter 142, Article II, entitled "District Regulations", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-246. - Development regulations and area requirements.

(a)The development regulations in the RM-3 residential multifamily, high intensity district are as follows:

(b)The lot area, lot width, unit size and building height requirements for the RM-3 residential multifamily, high intensity district are as follows:

Minimum Unit Size (square feet):

New construction—550

Non-elderly and elderly low and moderate income housing: See section 142-1183

Rehabilitated buildings—400. For contributing hotel structures, located within a local historic district or a national register district, which are being renovated in accordance with the Secretary of the Interior Standards and Guidelines for the Rehabilitation of Historic Structures as amended.

retaining the existing room configuration shall be permitted, provided all rooms are a minimum of 200 square feet.

Average Unit Size (square feet):

New construction—800

Non-elderly and elderly low and moderate income housing: See section 142-1183

Rehabilitated buildings—550, N/A for contributing hotel structures retaining the existing room configuration.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word “ordinance” may be changed to “section”, “article”, or other appropriate word.

SECTION 5. REPEALER.

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

SECTION 6. SEVERABILITY.

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

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2013.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

First Reading: _____, 2013

Second Reading: _____, 2013

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

Underscore denotes new language

~~Strike-Thru~~ denotes new language

10/31/2012

RM-3 ACCESSORY USE SIGNAGE

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 138, ENTITLED "SIGNS", BY AMENDING ARTICLE V, ENTITLED "SIGN REGULATIONS BY DISTRICT", BY AMENDING SECTION 138-172 TO MODIFY THE REQUIREMENTS FOR HOTELS AND APARTMENT BUILDINGS WITHIN THE RM-3 DISTRICT; BY AMENDING SECTION 138-8 TO MODIFY THE REQUIREMENTS FOR HOTELS AND APARTMENT BUILDINGS WITHIN THE RM-3 DISTRICT; BY AMENDING SECTION 138-171 TO MODIFY THE REQUIREMENTS FOR HOTELS AND APARTMENT BUILDINGS WITHIN THE RM-3 DISTRICT; PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach endeavors to recall its unique social and architectural history, as well as further the dynamic character and attraction of hotels and apartment buildings through the use of signage; and

WHEREAS, apartments and hotel structures located within RM-3 districts include allowable accessory commercial uses that are accessed directly from the street and sidewalk; and

WHEREAS, the City of Miami Beach desires to amend existing requirements and procedures for main permitted and accessory signage in the RM-3 District; and

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

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

SECTION 1. That Chapter 138, Article 1, entitled "In General", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 138-8. Signs for oceanfront buildings.

Signs located between the erosion control line (ECL) and the main structure shall be limited to the following: one sign identifying the main structure, sign area not to exceed one percent of the wall area facing the ECL with a maximum size of 75 square feet and one sign per accessory use, sign area not to exceed 20 square feet for each licensed accessory use. A flat sign located on a wall facing an extension of a dead-end street, municipal parking lot or park, and within the area designated as the dune district or the required 50-foot rear yard setback at the ground level, may be permitted with a maximum size of ten square feet of sign for only one accessory

use. No variances from this provision shall be permitted.

SECTION 2. That Chapter 138, Article V, entitled "Sign Regulations by Districts", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 138-171. General provisions.

(e) Signs fronting on an alley are prohibited unless the alley abuts or is adjacent to any parking lot or garage, or where the alley provides a means of entrance to a business. The area of any permitted sign shall be the same as if the sign fronted on a street.

* * *

(h) ~~Oceanfront~~ or Bayfront buildings shall have no more than one sign facing the bay identifying the main permitted use. The area and location of the sign shall be approved under the design review board or Certificate of Appropriateness process as applicable. In addition, one flat sign per 100 feet of lot width with copy limited to the advertisement of an accessory use is permitted. The maximum height of the sign shall not exceed 12 inches.

* * *

Section 138-172. Schedule of sign regulations for principal use signs

Zoning District	Number	Awning/ Marquee	Flat	Projecting	Detached (Monument)	Accessory Signs	Special Conditions

<p>RM-1 RM-2 RM-3 R-PS 1 R-PS 2 R-PS 3 R-PS 4 RO TC-3</p>	<p>No more than one sign identifying the main uses for each street frontage. Unless otherwise listed in <u>section 138-171</u>, all signs must front on a street; however, multiple signs for the same licensed oceanfront hotel and apartment buildings within the RM-3 district may be permitted through the design review procedure if the aggregate sign area does not exceed the maximum size permitted under this subsection.</p>	<p>Ten square feet; the height of the letters shall not exceed 12 inches. Not permitted in the RM-3 district. Not permitted in RO.</p>	<p>One per street frontage; <u>ten square feet for every 50 feet of linear frontage, or fraction thereof, up to maximum of 30 square feet.</u> Flat signs shall not be located above the ground floor, <u>except in hotels and apartment buildings within the RM-3 district.</u> Flat signs in hotels and apartment buildings within the RM-3 district shall be limited to the name of the building or the use that encompasses the largest amount of floor area on the building. Within the RM-3 district, <u>one building identification sign for hotels and apartment buildings two stories or higher, located on the parapet facing a street, is permitted with an area not to exceed one percent of the wall area on which it is placed.</u> <u>Corner buildings may provide one combined sign instead of the two permitted signs.</u> This sign shall be located on the corner of the building visible from both streets and shall have a maximum size of 40 square feet.</p>	<p>15 square feet Not permitted in the RM-3 district. Not permitted in RO.</p>	<p>15 square feet, however, if sign is set back 20 feet from front property line, area may be increased to a maximum of 30 square feet. Pole signs are not permitted. Existing pole signs may be repaired only as provided in <u>section 138-10.</u> Notwithstanding the above, a detached sign located on a perimeter wall shall be limited to five square feet and shall not have to comply with the setback requirements of <u>section 138-9.</u> The height and size of the monument structure shall be determined under the design review process except as provided herein. In the RO districts, sign area shall not exceed 10 square feet, and the monument structure shall not exceed five (5) feet in height.</p>	<p>One sign for all accessory uses; area of sign shall not exceed 75 percent of the main use sign, 20 square feet maximum. However, in the RM-3 district only detached accessory signs are permitted. For hotels and apartment buildings in the RM-3 district, one flat sign per every licensed accessory use facing or having direct access to a street or sidewalk, one per street frontage; twenty square feet for every 50 feet of linear frontage, or fraction thereof, up to maximum of 30 square feet. However, multiple signs for the same licensed accessory use of oceanfront hotel and apartment buildings within the RM-3 district may be permitted through the design review procedure if the aggregate sign area does not exceed the maximum size permitted under this subsection.</p>	<ol style="list-style-type: none"> 1. Maximum size for schools is 30 square feet. 2. Signs shall not have copy indicating prices. 3. An exterior directory sign, attached to the building up to six square feet, listing the names of all licensed uses within the building is permitted; sign material and placement shall be subject to approval through the design review process.
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SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 4. REPEALER.

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

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 _____, 2013.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

First Reading: _____, 2013
Second Reading: _____, 2013

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

Underscore denotes new language
~~Strike Thru~~ denotes deleted language
10/16/2012

POOL SETBACK AND MECHANICAL EQUIPMENT SETBACK ENCROACHMENTS

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS", BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS", BY AMENDING SECTION 142-1133 TO MODIFY THE REQUIREMENTS FOR THE CONSTRUCTION OF SWIMMING POOLS ON CORNER AND THRU LOTS WITHIN SINGLE FAMILY DISTRICTS; BY AMENDING SECTION 142-1132 TO MODIFY THE SETBACKS FOR CENTRAL AIR CONDITIONERS AND OTHER MECHANICAL EQUIPMENT; PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach places a high value on the scale, character and architectural context of its single family and RM-1 districts; and

WHEREAS, the City of Miami Beach desires to amend existing requirements and procedures for swimming pools, central air conditioners and other mechanical equipment within required yards; and

WHEREAS, regulations of swimming pools central air conditioners and other mechanical equipment is critical in order to maintain the scale, character and architectural context of the single family and RM-1 districts; and

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

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

SECTION 1. That Chapter 142, Article IV, entitled "Supplementary District Regulations", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-1133. - Swimming pools.

This section applies to swimming pools in all districts. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:

- (1) Rear yard setback. A six-foot minimum setback from rear property line to swimming pool deck or platform, or screen enclosure associated or not associated with a swimming pool, provided, however, that swimming pool decks may extend to the property line and be connected to a dock and its related decking when abutting upon any bay or canal. There shall be a minimum 7½-foot setback from the rear property line to the water's edge of the swimming pool. For oceanfront properties, the setback shall be measured from the old city bulkhead line.
- (2) Side yard setback. A 7½-foot minimum required setback from the side property line to a swimming pool deck or platform, or screen enclosures associated or not associated with

a swimming pool. Nine-foot minimum required setback from side property line to the water's edge of the swimming pool.

- (3) Side yard facing a street. For a side yard facing a street:
 - a. Single-family district. In a single-family district a ten-foot setback from the property line to the swimming pool, deck or platform or screen enclosure.
 - b. All other districts. In all other districts a 15-foot setback from the property line to the swimming pool, deck or platform or screen enclosure.
- (4) Walk space. A walk space at least 18 inches wide shall be provided between swimming pool walls and fences or screen enclosure walls. Every swimming pool shall be protected by a sturdy nonclimbable safety barrier and by a self-closing, self-locking gate approved by the building official.
 - a. The safety barrier shall be not less than four feet in height and shall be erected either around the swimming pool or around the premises or a portion thereof thereby enclosing the area entirely, thus prohibiting unrestrained admittance to the swimming pool area.
 - b. Where a wooden type fence is to be provided, the boards, pickets, louvers, or other such members shall be spaced, constructed and erected so as to make the fence not climbable and impenetrable.
 - c. The walls, whether of the stone or block type, shall be so erected to make them nonclimbable.
 - d. Where a wire fence is to be used, it shall be composed of two-inch chainlink or diamond weave nonclimbable type, or of an approved equal, with a top rail and shall be constructed of heavy galvanized material.
 - e. Gates, where provided, shall be of the spring lock type so that they shall automatically be in a closed and fastened position at all times. They shall also be equipped with a gate lock and shall be locked when the swimming pool is not in use.
- (5) Size. The minimum size of all commercial swimming pools shall be 450 square feet with a minimum dimension of 15 feet and all required walkways shall have a minimum width of four feet around the swimming pool, exclusive of the coping. Commercial swimming pools shall also satisfy all applicable requirements of any governmental agency having jurisdiction.
- (6) Visual barriers for swimming pools. Accessory swimming pools when located on any yard, facing a public street or alley, shall be screened from public view by a hedge, wall or fence not less than five feet in height. The hedge shall be planted and maintained so as to form a continuous dense row of greenery as per the requirements of this division. The maximum height of the visual barrier shall be pursuant to article IV, division 5 of this chapter.
- (7) Corner properties within Single Family Districts:
For corner lots with a home built prior to 2006, a ten-foot setback from the front property line and from the side yard facing the street property line to the swimming pool, deck or platform or screen enclosure. For corner lots with radial corners, the front setback and the side yard facing the street shall be taken from the midpoint of the curve of the corner of the property.
- (8) Homes with two fronts, or thru lots, within Single Family Districts:
Lots with two fronts, as defined by Section 114 of the City Code, shall be permitted

to place a pool and pool deck, with a minimum ten-foot setback from the front property line, at the functional rear of the house.

SECTION 2. That Chapter 142, Article IV, entitled "Supplementary District Regulations", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-1132. - Allowable encroachments within required yards.

(f)Central air conditioners and other mechanical equipment. Accessory central air conditioners and any other mechanical equipment may occupy a required side or rear yard, in single-family townhome, or in the RM-1 residential multifamily low intensity districts, provided that:

- (1)They are not closer than five feet to a rear or interior side lot line or ten feet to a side yard facing a street.
- (2)The maximum height of the A/C units does not exceed five feet above the elevation, as defined in subsection 142-105(a)2.j., of the lot at which they are located.
- (3)Any required sound buffering equipment is located outside the minimum five-foot yard area specified in subsection (f)(1) of this section.
- (4)If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), and (3) above, then such equipment shall follow the setbacks of the main structure.

(f)Central air conditioners, emergency generators and other mechanical equipment. Accessory central air conditioners, generators and any other mechanical equipment, may occupy a required side or rear yard of an existing home, in single-family, townhome, or in the RM-1 residential multifamily low intensity districts, provided that:

- (1)They are not closer than five feet to a rear or interior side lot line or ten feet to a side yard facing a street.
- (2)The maximum height of the equipment shall not exceed five feet above current flood elevation, with a maximum height not to exceed ten feet above grade, as defined in subsection 114-1, of the lot at which they are located.
- (3)If visible from the right of way, physical and/or landscape screening shall be required.
- (4)Any required sound buffering equipment is located outside the minimum five-foot yard area specified in subsection (f)(1) of this section.
- (5)If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), (3), and (4) above, then such equipment shall follow the setbacks of the main structure.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 4. REPEALER.

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

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 _____, 2013.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM &
LANGUAGE & FOR EXECUTION

City Attorney

Date

First Reading: _____, 2013
Second Reading: _____, 2013

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

Underscore denotes new language
10/16/2012

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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: Jose Smith, City Attorney
Gary M. Held, First Asst. City Attorney

CC: Kathie Brooks, Interim City Manager

DATE: September 19, 2012

SUBJECT: **REVIEW OF MIAMI BEACH LAND USE BOARDS TO IMPROVE THE CITY OF MIAMI BEACH BUILDING AND PLANNING DEPARTMENT PROCESSES.**

BACKGROUND

The item was referred to the Land Use and Development Committee by the City Commission on March 21, 2012 at the request of Commissioner Gongora. At the May 16, 2012 meeting, the Committee discussed the proposals, as detailed in the separate Committee memorandum. At the June 13, 2012 meeting, the Committee requested the City Attorney's Office to survey other local governments and ascertain the involvement of their governing bodies in the land use approval process. This memorandum responds to that request.

SUMMARY OF SURVEY PROCEDURES

The survey included thirteen different local governments: eleven cities and two counties. The survey was conducted of six local municipalities: Coral Gables, Hialeah, Key Biscayne, Miami, North Miami, and North Miami Beach; five municipalities outside of Miami-Dade County: Fort Lauderdale, Hollywood, Jacksonville, Orlando and Tampa; and two counties: Miami-Dade and Broward. The survey was conducted with the assistance of summer interns Lauren Carra and Matthew Weithorn.

Governing body authority below is in addition to the traditional roles of adoption and amendment of the comprehensive plan, land development regulations, maps, and DRI's, which are excluded from the survey as all governing bodies engage in such activities.

CONCLUSION

Many jurisdictions allow the governing body (Council or Commission) to make final land use decisions, usually by a majority vote, with either original jurisdiction (not on appeal from a lower board) or de novo review (not limited to the record below) (except e.g., Orlando which maintained an appellate review standard for all decisions, Broward County for appeals, and Coral Gables, which has a mix set forth in Exhibit "A"). Supermajority votes were often required to override recommendations or decisions below (e.g., Hialeah, Miami, North Miami Beach, Hollywood, Miami-Dade County) and in certain types of decisions (e.g., Miami-Dade County- modification of a covenant, Miami- special area plans, or an exception to the Code). Specifics are in the chart that follows.

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
Coral Gables	Board of Adjustment Board of Architects Historic Preservation Board, and Planning and Zoning Board (PZB) (recommendation authority only)	City Commission (has final decision authority over: Matters from the PZB; appeals from Board of Architects, Board of Adjustment, and HPB, conditional uses, DRI's, planned area development, building site splits, vested rights & other matters) See Chart -- Exhibit "A"	Majority (ordinances and resolutions require majority of the whole; the remainder are majority of a quorum)	Appeal based on record below; except on matters from PZB, which are de novo.	Voting: City Charter §13 (ordinances & resolutions by majority vote) Development Review Code – chart; Zoning Code Article 3: Appeals Contact: City Atty Craig Leen (review by city complete)
Hialeah	Planning and Zoning Bd.: Area Variances, Sign variances pursuant to §74-116, appeals of administrative variances pursuant to	City Council	Majority of a quorum (min. 3 votes)	De novo	Charter §4.07(a)(2); Code §§ 98-36, 98-132 Contact: Asst. City Atty Lorena Bravo (review by city complete)

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
	§98-261				
Hialeah cont'd	Recom- mendation by Planning and Zoning Bd.: Use variances, conditional use permits, special use permits, zoning changes, final plats	City Council by ordinance	Majority of Quorum (min. 3 votes) 5/7 votes required if overriding recommen- dation of denial by PZ Board	De novo	Charter §4.07(a)(3); Code §98-132
Key Biscayne		Village Council- appeals of administrative decisions; original jurisdiction over conditional uses; site plan review; variances.	Majority	De Novo	City Code §§ 30-63 – 30-68; 30-70; 30-72 – 30-73. Contact: Village Atty Stephen Helfman (review by city complete)

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
Miami	<p>Planning, Zoning and Appeals Board – (PZAB) the local planning agency - handles appeals of zoning interpretations, planning determinations of use, waivers, warrants and revocations or rescissions of such special permits or uses</p> <p>PZAB has advisory role of Rezoning, Special Area Plans, Alcohol exceptions, and review of Exceptions, Variances, & Street closures</p>	<p>City Commission handles appeals from PZAB on zoning interpretations, planning determinations of use, waivers, warrants, and appeals of review of variances and exceptions</p> <p>Handles original review of rezoning, Special Area Plans, Development Agreements, Waterfront Variances, Alcohol Exceptions, Plats, Exceptions for Nonconforming transitional uses</p>	<p>Majority for City Commission</p> <p>Supermajority for PZAB on rezoning, or special area plan, or to approve an exception. Supermajority consists of one more member than a simple majority.</p>	De novo.	<p>Miami 21 Zoning Ordinance Article 7 §7.1.1, 7.1.1.4 and 7.1.1.5; and 7.1.2.2 - 7.1.2.8.</p> <p>City Code § 62-17, 62-18</p> <p>Charter § 38, § 3mm</p> <p>Contact: Asst. City Atty Victoria Mendez. (review by city complete)</p>

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
North Miami	Director of Building and Zoning Development Review Committee Board of Adjustment Planning Commission	City Council (appeals from Board of Adjustment/ variances; conditional uses/planned development; platting/sub-division; vested rights; special exceptions)	Majority	De novo (quasi-judicial public hearing).	City Code, Chapter 29, §2-101 - City Council; Division 4-Conditional Uses; Division 5- Special Exceptions; Division 6-Variances; Division 7- Appeals. Contact: City Atty Regine Monestime (review by city complete)
North Miami Beach	Planning and Zoning Board	City Council (appeals, conditional uses, variances, site plans)	All matters under jurisdiction of P&Z Board are recommendation only, subject to final decision by City Council. Majority plus 1 vote to approve; 2/3 vote to overrule a recommendation of denial on variance. Except as	De novo (per City Attorney).	City Code §24-179(C); City Charter §106. Contact: City Atty Darcee Seigel. (review by city complete)

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
			noted in Exhibit "B"		
Fort Lauderdale	Department (Site Plan Level I) Further review by City Comm'n is allowed in some cases. see §47-26A.2	Planning and Zoning Board	Majority	De novo	Chapter 47, Unified Land Development Regulations, § 47-24.1, Table 1 (discusses each permit and board or comm'n review). §47-24.2, site plan development permit; § 47-24.3, conditional use permit requirements. VI: Appeals §47-26B.1.A. Contact: City Atty D'Wayne Spence (review by city complete)
Fort Lauderdale cont'd	Development review committee (Site Plan Level II) Further review by City Comm'n is allowed in some cases. see §47-	Planning and Zoning Board	Majority	De novo	

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
	26A.2				
Fort Lauderdale cont'd	Planning and Zoning Board (Site Plan Level III) Further review by City Comm'n is allowed in some cases. see §47- 26A.2	City Commission	Majority	Appellate review standards (departure from essential requirements of law, and competent substantial evidence), if the Comm'n finds that these standards were violated, it can then conduct a de novo hearing on the application. (see §47-26B.1.A.1).	
Fort Lauderdale cont'd	City Commission (Site Plan Level IV)	Circuit Court (Petition for Writ of Certiorari)			
Hollywood	Planning and Develop- ment Board, Historic Preserva-tion Board, and Administra- tive Decisions.	City Commission (initiated as a request for review of a board decision either by 3 commission- ers, or by appeal)	Action on merits of Comm'n Request Review- majority vote. Appeals- rev. or mod.- 5/7 vote; affirm. - 3/7 vote.	De novo.	City Code, Zoning and Land Development Regulations, Article 5, §§5.6 - 5.7. Contact: Asst. City Atty Debra- Ann Reese (review by city complete)

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
Jacksonville	Planning Commission Downtown Development Review Board (acts as planning comm'n for dntrn)	City Council - appeals of zoning exception & variances; appeals of waivers of liquor distance; original jurisdiction over road frontage and signs; an appeal of an interpretation of or enforcement of the comprehensive plan by the Planning Director	Majority	De novo.	§656.140 - §656.145 Contact: Asst. City Atty Dylan Reingold (review by city complete)
Orlando	Municipal Planning Board Board of Zoning Adjustment Historic Preservation Board Appearance Review Board	Appeals first go to a hearing officer, and then all may be appealed to City Council (conditional use permit, development plan review, master plan (project) review, variances)	Majority	De novo before the hearing officer. Appellate review standard before City Council.	City Code, Chapter 65, Officers, Boards and Procedures, 2D- Conditional Use Permit; 2E-Development Plan Review; 2G, Planning & Zoning Appeals; 2H-Site Plan Review; 2J- Admin & BOA Variances; Contact: City Atty. David Bass (review by city complete)

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
Tampa	Zoning Administrator Variance Review Board Architectural Review Committee Historic Preservation Commission	City Council	Four votes (of 7) required	In reviewing a board decision, city council shall apply a <i>de novo</i> standard of review, and shall not be limited in its review to that information, documentation, or evidence upon which the board based its determination. City council review of zoning administrator decision shall follow a hearing officer's review, and be based upon appellate review standards.	Chapter 27 ZONING ARTICLE XV ADMINISTRATI ON §27-373 Contact: Asst. City Atty Julia Mandell Cole (review by city complete)
Broward County	Zoning	Hearing Officer (variances, administrative appeals) & County Commission (appeals by Mayor or District Commissioner from hearing	Majority	The hearing officer shall conduct quasi-judicial hearings, take testimony, and review documentary evidence submitted by parties requesting a variance from the terms of the Code, and by parties concerning appeals from an administrative	Chapter 39: Zoning Article V, Variances, Admin Determinations & Appeals, §§39-35 thru 39-44 Contact: Deputy County Attorney Maite Azcoitia (review by

City/ County	Authority/ Board(s)	Review or Appeal by ...	Vote On Review or Appeal	Standard of Review	City Code Provision/ References
		officer)		decision rendered by the zoning official relating to any provision of the Code. Appeals to County Comm'n are based on record below.	county complete)
Miami-Dade County	Community Zoning Appeals Board-note appeals of decisions go directly to Court unless rezoning which appeals go to the County Commission	County Commission (appeals, applications in more than one CZAB district, appeals of admin decisions; application where takings is alleged and takings administrative process is filed; other direct zoning applications to County Commission as set forth in 33-314 (A) and 33-314 (C).	Appeals: 2/3 vote if the decision was for denial before the CZAB; otherwise, majority. Certain modification of covenants require 2/3 vote.	De Novo Review §33-313	Miami-Dade County Code, §33-312 – 314. Contact- Asst. County Atty Craig Collier. (review by county complete)

ARTICLE 3 - DEVELOPMENT REVIEW

<i>Development approvals</i>	<i>Refer to Article 3, Divisions 2 and 3 See also</i>	<i>Preliminary review</i>	<i>Recommendation after public hearing of</i>	<i>Final decision made by</i>
Abandonment and Vacations	Division 12	Development Review Committee	Planning and Zoning Board	City Commission
Appeals				
Appeals from City Architect	Division 6		Not Required	Board of Architects
Appeals from City Officials (other than HPO)	Division 6		Not Required	Board of Adjustment
Appeals from Decisions of the Board of Architects	Division 6		Not Required	City Commission
Appeals from Decisions of the Board of Adjustment	Division 6		Not Required	City Commission
Appeals from Historic Preservation Board	Divisions 6 & 11		Not Required	City Commission
Appeals from Historic Preservation Officer	Divisions 6 & 11			Historic Preservation Board
Comprehensive Plan (CP)				
Map Change	Division 15	Planning Department	Planning and Zoning Board	City Commission
Text Change	Division 15	Planning Department	Planning and Zoning Board	City Commission
Conditional Uses	Division 4	Development Review Committee, Board of Adjustment	Board of Architects, Planning and Zoning Board	City Commission
Development Agreement	Division 19		Board of Architects, Planning and Zoning Board	City Commission
Development of Regional Impact	Division 16	Development Review Official	Planning and Zoning Board	City Commission
Historic Preservation				
Historic Designation	Division 11	Historical Resources Department, Historic Preservation Officer	NA	Historic Preservation Board
Standard Certificate of Appropriateness	Division 11	Historic Preservation Officer	NA	Historic Preservation Officer
Special Certificate of Appropriateness	Division 11	HPO, Building and Zoning Department	NA	Historic Preservation Board

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ARTICLE 3 - DEVELOPMENT REVIEW

<i>Development approvals</i>	<i>Refer to Article 3, Divisions 2 and 3 See also ...</i>	<i>Preliminary review</i>	<i>Recommendation after public hearing of ...</i>	<i>Final decision made by ...</i>
Planned Area Development	Division 5		Planning and Zoning Board	City Commission
Separation or Establishment of a Building Site	Section 3-206; Article 3, Division 4	Development Review Official	Planning and Zoning Board	City Commission
Subdivision/Platting	Division 9	Development Review Official	Planning and Zoning Board	City Commission
Transfer of Development Rights	Division 10	Development Review Committee, Board of Adjustment	Planning and Zoning Board & Historic Preservation Board	City Commission
Variances	Division 8	Historical Resources Department or Department of Building and Zoning	Not Required	Board of Adjustment or Historic Preservation Board
Vested Rights	Division 18	Development Review Official	Planning and Zoning Board	City Commission
Zoning in Progress / Moratorium	Division 7	Planning Department		
Zoning Code				
Map Amendment	Division 14	Development Review Official	Planning and Zoning Board	City Commission
Text Amendment	Division 14	Development Review Official	Planning and Zoning Board	City Commission

LUDC#43

North Miami Beach City Code

Section 24-170. Development Permits

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(B) Super-Majority City Council approval required for comprehensive land use plan, comprehensive plan amendments and development orders. Any City comprehensive land use plan, City comprehensive land use plan (text and map) amendment, land development code amendment, rezoning, conditional use, subdivision plat, variance, site plan, special limited conditional use, planned unit development zoning and or any development order (defined by Florida Statutes) subject to a City Council vote shall only be adopted or approved by the City Council by majority plus one (1) vote of the Council, with the following exceptions: development orders relating to any proposed project that complies with the height and density cap established in Section 24-33 above and contains only standard site variances or only de minimus dimensional variances, may be approved by a simple majority vote of the Council: development orders to allow residential building height above fifteen (15) stories may only be approved by a majority plus two (2) votes of City Council. This provision may be amended or repealed only by a majority plus one (1) vote of the City Council or by voter referendum. (Ord. No. 2007-12, 12/18/2007).

Exhibit "B"

LUDC#44



