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: Kathie G. Brooks, Interim City Manager for KGB

DATE: February 13, 2013

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

BACKGROUND/ ANALYSIS:

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.

On January 23, 2013, Land Use and Development Committee discussed and referred the following proposed Ordinance Amendments to the Planning Board:

- 'Minimum Unit Sizes For Historic Hotels & RM-2 Tower Setbacks'
- 'RM-3 Accessory Use Signage'
- 'Pool Setbacks and Accessory & Mechanical Equipment Setback Encroachments'

Each of these Ordinances is intended to help streamline the development review process and eliminate the need for common variances. The variance requests related to these Ordinances are fairly routine and common before the Board of Adjustment.

During the January 23, 2013 discussion, the Land Use Committee also directed the Administration to keep this item on the agenda of the Committee, for future discussion and policy direction.

Attached is the memo drafted by the City Attorney's Office, addressing the issue of appeals to Land Use Board decisions. 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.

CONCLUSION

The Administration recommends that the Land Use and Development Committee provide any additional policy direction regarding this matter.

KGB/JGG/RGL/TRM

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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 Preserva-tion Board, and Planning and Zoning Board (PZB) (recommend ation 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 (ordin-ances and resolu-tions 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 administra-tive 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	Planning, Zoning and Appeals Board – (PZAB) the local planning agency - handles appeals of zoning interpreta-tions, planning determina-tions of use, waivers, warrants and revocations or rescissions of such special permits or uses PZAB has advisory role of Rezoning, Special Area Plans, Alcohol exceptions, and review of Exceptions, Variances, & Street closures	City Commission handles appeals from PZAB on zoning interpreta-tions, planning determina-tions of use, waivers, warrants , and appeals of review of variances and exceptions Handles original review of rezoning, Special Area Plans, Development Agreements, Waterfront Variances, Alcohol Exceptions, Plats, Exceptions for Nonconform-ing transitional uses	Majority for City Commis-sion Super-majority for PZAB on rezoning, or special area plan, or to approve an exception. Super-majority consists of one more member than a simple majority.	De novo.	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. City Code § 62-17, 62-18 Charter § 38, § 3mm Contact: Asst. City Atty Victoria Mendez. (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
North Miami	Director of Building and Zoning Develop-ment 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 recommen dation only, subject to final decision by City Council. Majority plus 1 vote to approve; 2/3 vote to overrule a recommen dation 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	Develop-ment 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 Develop-ment Review Board (acts as planning comm'n for dntn)	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 Preserva-tion 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 Administra-tor Variance Review Board Architectural Review Committee Historic Preserva-tion Commission	City Council	Four votes (of 7) required	In reviewing a board decision, city council shall apply a *de novo* 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, administra-tive appeals) & County Commission (appeals by Mayor or District Commission-er 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 administra-tive 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 modifica-tion of covenants require 2/3 vote.	De Novo Review §33-313	Miami-Dade County Code, §33-312 – 314. Contact- Asst. County Atty Craig Coller. (review by county complete)

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ARTICLE 3 - DEVELOPMENT REVIEW

Development approvals	*Refer to Article 3, Divisions 2 and 3 See also ...*	*Preliminary review*	*Recommendation after public hearing of ...*	*Final decision made by ...*
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

Development approvals	*Refer to Article 3, Divisions 2 and 3 See also ...*	*Preliminary review*	*Recommendation after public hearing of ...*	*Final decision made by ...*
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#37

North Miami Beach City Code

Section 24-170. Development Permits

* * *

(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"