



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: Jimmy L. Morales, City Manager

DATE: July 22, 2013

SUBJECT: **ACCESSORY SETBACK ENCROACHMENTS**

BACKGROUND

At the June 13, 2012 Land Use Committee meeting, Planning Department staff presented 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, Planning staff proposed three (3) separate Ordinances to the Land Use Committee; these Ordinances pertained to

- RM-3 Accessory Use Signage
- Accessory Setback Encroachments
- Minimum Units Sizes for Historic Hotels and RM-2 Setback Requirements

Each of these proposed Ordinances was referred to the Planning Board by the Land Use Committee on January 23, 2013 and by the City Commission on February 6, 2013.

The Planning Board reviewed the subject Ordinance, pertaining to Accessory Setback Encroachments, on April 3, 2013, and transmitted it to the City Commission with a favorable recommendation by a vote of 6 to 1.

ANALYSIS

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.

The proposed ordinance also addresses setback encroachments for the perimeter portions of infinity edge pools, which are becoming more common in single family homes.

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.

Finally, staff has revised the encroachment requirements pertaining to driveways and carports, which are currently allowable encroachments within a front yard. In this regard, there are some instances, particularly on corner properties, where the main entrance to the home faces a side street, and not the front yard. In these particular instances, it is not possible for a home owner to have a carport where the car is typically parked, without a variance. The proposed Ordinance would extend the allowable projection for carports and driveways to a side street yard, if the main entrance of the home is located on the side street.

On May 8, 2013, the City Commission approved the subject Ordinance at First Reading and referred the matter back to the land Use Committee for further discussion, prior to Second Reading. Specifically, the City Commission requested that additional language regarding neighbor notification for the relaxation of mechanical equipment setbacks be included in the ordinance. Staff has revised this section of the Ordinance to include this revision.

CONCLUSION

The Administration recommends that the Land Use and Development Committee provide any additional policy direction regarding the specific language of the proposed Ordinance and refer the revised Ordinance to the City Commission for Second Reading with a favorable recommendation.

JLM/JMJ/RGL/TRM

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**ACCESSORY 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, "ZONING DISTRICTS AND REGULATIONS", ARTICLE IV, "SUPPLEMENTARY DISTRICT REGULATIONS", SECTION "142-1132" TO MODIFY THE SETBACKS FOR ALLOWABLE ENCROACHMENTS INCLUDING DRIVEWAYS, CARPORTS AND MECHANICAL EQUIPMENT; BY AMENDING SECTION "142-1133" TO MODIFY THE SETBACK REQUIREMENTS FOR SWIMMING POOLS AND THE REQUIREMENTS FOR THE CONSTRUCTION OF SWIMMING POOLS ON CORNER AND THRU LOTS WITHIN SINGLE FAMILY DISTRICTS; PROVIDING FOR CODIFICATION; 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 low intensity residential 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 are critical in order to maintain the scale, character and architectural context of the single family and low intensity residential 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. City Code Chapter 142, Article IV, "Supplementary District Regulations", is hereby amended as follows:

* * *

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

(e)Carports. Carports shall be constructed of canvas and pipe for the express purpose of shading automobiles and shall have a minimum required interior side yard setback of four feet. The carport shall be permitted to extend into any front yard of a single-family residence, provided such carport is at least 18 inches from the property line or sidewalk, and provided it is attached to the main building. When the main entrance to a house is located on a side of the house facing the street, the carport shall be permitted to extend into the side yard facing the street, provided such carport is at least 18 inches from the property line or sidewalk and provided it is attached to the main building. The side of the carport that faces the required rear yard may be permitted to align with the walls of the existing residence, provided the residence is located a minimum of five feet from the rear property line. When a carport is detached it shall not be located in the required front or side-facing-the-street yards. Carports shall not be permitted to exceed 20 feet in width, 20 feet in length and ten feet in height and shall not be screened or enclosed in any manner. An unobstructed view between the grade and the lower ceiling edge of the carport of at least seven

feet shall be maintained. Only one carport shall be erected within a required yard. Carports constructed prior to the adoption of this section shall be considered as legal nonconforming structures. Such nonconforming canopies may be repaired or replaced; however, the degree of their nonconformity shall not be increased thereby.

~~(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 lot line 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) The abutting property owners are notified, in writing, of the proposed encroachment(s).
- (6) 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.

* * *

(g) Driveways. Driveways and parking spaces leading into a property located in single-family and townhome districts shall have a minimum setback of four feet from the side property lines. Driveways and parking spaces parallel to the front property line shall have a minimum setback of five feet from the front property line. Driveways and parking spaces located within the side yard facing the street shall have a minimum setback of five feet to the rear property line.

* * *

Sec. 142-1133. - Swimming pools.

This section applies to swimming pools in all districts, except where specified. 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, the exterior face of an infinity edge pool catch basin, 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 or to the waterline of the catch basin of an infinity edge 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, the exterior face of an infinity edge pool catch basin, 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 or to the waterline of the catch basin of an infinity edge 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, the exterior face of an infinity edge pool catch basin, 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, the exterior face of an infinity edge pool catch basin, 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 lot line facing the street to the swimming pool, deck, platform or screen enclosure. For corner lots with radial corners, the front setback and the side setback 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 114-1 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. 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 3. REPEALER.

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

SECTION 4. SEVERABILITY.

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

SECTION 5. 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: May 8, 2013
Second Reading: July 17, 2013

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

Underscore denotes new language
06/06/2013

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7:38:55 p.m.**R5G Sunset Harbour Residential Parking Requirements**

An Ordinance Amending The Code Of The City Of Miami Beach, Florida By Amending Chapter 130, "Off-Street Parking," Article II "District; Requirements," Section 130-33 "Off-Street Parking Requirements For Parking Districts Nos. 2, 3, 4 And 5," By Amending The Parking Requirements For Sunset Harbour Parking District No. 5 For Residential And Live-Work Type Uses; Providing For Codification; Repealer; Severability; Applicability; And An Effective Date. **First Reading**
(Requested by the Land Use & Development Committee)
(Legislative Tracking: Planning Department)

ACTION: Title of the ordinance read into the record. **Ordinance approved on first reading.** Motion made by Commissioner Weithorn to approve the ordinance; seconded by Commissioner Libbin; Ballot vote: 7-0. Second reading and Public Hearing scheduled for June 5, 2013. Rafael E. Granado to notice. Lilia Cardillo to place on the Commission Agenda when received. **Richard Lorber to handle.**

Richard Lorber, Acting Planning Director, introduced the item. Mr. Lober stated that the purpose of this ordinance is to encourage small projects and live/work units in the Sunset Harbour area. The previous ordinance, adopted a few months ago, focused on retail, restaurants and commercial businesses. During the adoption process, questions were asked if this could not be expanded to live/work units to encourage the restoration and retention of existing buildings.

7:41:42 p.m.**X-R5H Accessory Setback Encroachments**

An Ordinance 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, "Supplementary District Regulations," Section "142-1132" To Modify The Setbacks For Allowable Encroachments Including Driveways, Carports And Mechanical Equipment; By Amending Section "142-1133" To Modify The Setback Requirements For Swimming Pools And The Requirements For The Construction Of Swimming Pools On Corner And Thru Lots Within Single Family Districts; Providing For Codification; Providing For Repealer, Severability And An Effective Date. **First Reading**
(Requested by the Land Use & Development Committee)
(Legislative Tracking: Planning Department)

ACTION: Title of the ordinance read into the record. **Ordinance approved on first reading as amended, requiring noticing to the neighbors, and referred to the Land Use and Development Committee between first and second reading.** Motion made by Commissioner Góngora to approve the ordinance and refer to committee; seconded by Commissioner Exposito; Ballot vote: 6-0; Absent: Vice-Mayor Wolfson. Second reading and Public Hearing scheduled for July 17, 2013. Rafael E. Granado to notice. Lilia Cardillo to place on the Commission Agenda when received. **Richard Lorber to place on the committee agenda and to handle.**

Amendment:

Add language that advance notice to the neighbors is required.

Referral:

Referred to the Land Use and Development Committee between first and second reading.

Richard Lorber, Acting Planning Director, introduced the item.

Mayor Bower asked if the neighbors have been advised of this change on the setback. Mr. Lorber

replied that there was no notice requirement.

Discussion held.

Amendment:

Motions made by Commissioner Góngora, with additional language to be included in the ordinance giving notice to the immediate neighbors, and allow some time.

Richard Lorber, Acting Planning Director, stated that this language would be reviewed between first and second reading.

Jorge Gomez, Assistant City Manager, stated that if they stay with the current setbacks and it does not need a variance, they can obtain a permit and in lieu of a variance, and it will require a proper noticing period.

Jose Smith, City Attorney, inquired what would occur if the neighbors object to the setback. **Legal to draft appeals provision.**

7:47:53 p.m.

R5| Minimum Unit Sizes For Historic Hotels And RM-2 Tower Setbacks
An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 142, "Zoning Districts And Regulations," By Amending Article II, "District Regulations," By Amending Division 3, "Residential Multifamily Districts," By Amending Section "142-155" To Modify The Requirements For Minimum Hotel Room Size For Historic Hotels Within The RM-1 District; By Amending Section "142-217" To Modify The Requirements For Minimum 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 Hotel Room Size For Historic Hotels Within The RM-3 District; Providing For Codification; Repealer, Severability And An Effective Date. **First Reading**

(Requested by the Land Use & Development Committee)
(Legislative Tracking: Planning Department)

ACTION: Title of the ordinance read into the record. **Ordinance referred to the Historic Preservation Board.** Motion made by Commissioner Weithorn to refer the ordinance to the Historic Preservation Board; seconded by Commissioner Exposito; Voice vote: 6-0; Absent: Vice-Mayor Wolfson. Thomas Mooney to place on the board agenda. **Richard Lorber to handle.**

Referred:

Historic Preservation Board