

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Members of the Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: October 7, 2015

SUBJECT: **LAND USE AND DEVELOPMENT COMMITTEE MEETING OF OCTOBER 7, 2015**

A meeting of the Land Use and Development Committee has been scheduled for October 7, 2015 at 3:00 p.m. in the City Commission Chambers.

1. Sidewalk Café Ocean Drive Umbrellas

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Chapter 82, Entitled "Public Property," Article Iv, Entitled "Uses In Public Rights-Of-Way," Division 5, Entitled "Sidewalk Cafes," Subdivision 2, Entitled "Permit," By Creating Section 82-389, Entitled "Additional Minimum Standards, Criteria, And Conditions For Operation Of Sidewalk Cafes On Ocean Drive Between 5th Street And 15th Street" To Provide Minimum Standards For Umbrellas And Awnings, Require Regular Maintenance Of Umbrellas, And Provide Prohibitions; And Providing For Repealer, Severability, Codification, And An Effective Date.

(Continued from the July 29, 2015 LUDC Meeting
Sponsored By City Commission
May 20, 2015 City Commission Meeting, Item R5B)

2. Discussion Regarding The Review Of All Planning Fees, Including Fees Associated With Plans Review, Board Applications And Other Ministerial Functions.

(Returning from the June 17, 2015 LUDC Meeting
Sponsored By Commissioner Joy Malakoff
June 10, 2015 City Commission Meeting, Item C4C)

3. Discussion Regarding Grade Elevations for New Construction.

(Returning from the June 17, 2015 LUDC Meeting
Sponsored By City Commission
June 10, 2015 City Commission Meeting, Item C4E)

- 4. Discussion Regarding A Modification To The Notice Procedures For Quasi-Judicial Applications Before Historic Preservation Board, Board Of Adjustment, Planning Board, And Design Review Board.**
(Returning from the June 17, 2015 LUDC Meeting
Sponsored By Commissioner Deede Weithorn
June 10, 2015 City Commission Meeting, Item C4F)
- 5. Discussion Regarding Traffic Studies.**
(Returning From the September 9, 2015 LUDC Meeting
Sponsored By Commissioner Micky Steinberg
June 10, 2015 City Commission Meeting, Item C4H)
- 6. Discussion: Legal Opinion Concerning Whether A Vacancy On The Historic Preservation Board Renders The Board Improperly Constituted And Without Power To Act, And To Discuss An Amendment To Sec.2-22(21) To Require The Mayor And City Commission To Fill Board Vacancies Within 90 Days.**
(Returning From the September 9, 2015 LUDC Meeting
Sponsored By Vice-Mayor Jonah Wolfson
June 10, 2015 City Commission Meeting, Item C4M)
Verbal Report
- 7. Discussion Regarding Amending The City Charter And City Code To Provide That, Instead Of The Board Of Adjustment, The Chief Special Master Shall Hear And Decide Appeals From, And Review, Any Order, Requirements, Decision Or Determination Made By An Administrative Official Charged With The Enforcement Of The Zoning Ordinance Of The City Of Miami Beach.**
(Returning From the September 9, 2015 LUDC Meeting
Sponsored By Vice Mayor Jonah Wolfson)
June 10, 2015 City Commission Meeting, Item R9I)
Verbal Report
- 8. Proposed Alton Road Alcoholic Beverage Establishment Overlay.**
(Returning from the September 9, 2015 LUDC meeting
Requested By the LUDC Committee
July 29, 2015 LUDC Meeting)
- 9. Discussion Regarding The Vacation Of A Portion Of The Alley Between Alton Road And West Avenue, Just South Of 17th Street – As Part Of A Proposed Mixed Use Project That Will Include Residential, Retail And Structured Parking, Including Public Parking.**
(Returning from the September 9, 2015 LUDC Meeting
Sponsored By Commissioner Joy Malakoff
September 2, 2015 City Commission Meeting, Item C4I)
Verbal Report
- 10. Proposed Amendment To Section 146-306 – Development Regulations In The CD-2 Commercial Medium Intensity District.**
(Returning from the September 9, 2015 LUDC Meeting
Sponsored By Commissioner Michael Grieco
September 2, 2015 City Commission Meeting, Item C4J)

11. Washington Avenue Zoning Incentives

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending The Land Development Regulations (Ldr's) Of The City Code, By Amending Chapter 142, "Zoning Districts And Regulations," Article Ii, "District Regulations," Division 5, "Cd-2 Commercial, Medium Intensity District," To Establish Section 13-309, "Washington Avenue Development Regulations And Area Requirements," To Modify The Development Regulations For Properties Fronting Washington Avenue Between 6th Street And Lincoln Road; By Amending Chapter 130, "Off-Street Parking," Article Ii, "Districts; Requirements," To Establish Parking District 7 To Modify The Parking Requirements For The Properties Fronting Washington Avenue Between 6th Street And Lincoln; Providing For Codification; Repealer; Severability; And An Effective Date.

(Returning from the September 9, 2015 LUDC Meeting
Sponsored By Commissioner Joy Malakoff
September 2, 2015 City Commission Meeting, Item R5E)

2015 Meeting Schedule

Wednesday, November 18, 2015

Wednesday, December 2, 2015

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To: Mayor Philip Levine
Members of the City Commission
Jimmy Morales, City Manager

Date: June 17, 2015

MEMORANDUM

From: Raul Aguila, City Attorney

Subject: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82, ENTITLED "PUBLIC PROPERTY," ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," DIVISION 5, ENTITLED "SIDEWALK CAFES," SUBDIVISION 2, ENTITLED "PERMIT," BY CREATING SECTION 82-389, ENTITLED "ADDITIONAL MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES ON OCEAN DRIVE BETWEEN 5TH STREET AND 15TH STREET" TO PROVIDE MINIMUM STANDARDS FOR UMBRELLAS AND AWNINGS, REQUIRE REGULAR MAINTENANCE OF UMBRELLAS, AND PROVIDE PROHIBITIONS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Introduction

This item was heard during the May 20, 2015 City Commission meeting, and was referred by the Commission to the Land Use Committee.

The attached Ordinance is submitted for consideration by the Mayor and City Commission. The ordinance modifies Chapter 82, at Article IV, Division 5, which regulates Sidewalk Cafes. Section 82-389 was added to the code to incorporate specific provisions relating to the utilization of umbrellas along the sidewalk cafes located on Ocean Drive between 5th Street and 15th Street (hereinafter Ocean Drive sidewalk cafes).

There is an existing need for outdoor eating establishments (sidewalk cafes) in certain areas of the city to provide a unique environment for relaxation and food and/or beverage consumption. Sidewalk cafes encourages additional pedestrian traffic to the city's historic districts, and commercial use areas. The sidewalk widths along Ocean Drive are narrow, and the presence of sidewalk cafes may impede the free and safe flow of pedestrian traffic. As a result, there is a need for additional regulation and standards for the existence and operation of sidewalk cafes along Ocean Drive between 5th Street and 15th Street, to facilitate and ensure a safe pedestrian environment in these areas. In addition, it is important to regulate the use of umbrellas within the sidewalk cafe, particularly as the conditions on Ocean Drive have deteriorated by having large umbrellas attached to one another, which are then attached to awnings projecting from the buildings, thus creating a tunnel effect along the pedestrian pathway.

A majority of the buildings along Ocean Drive between 5th Street and 15th Street are listed as contributing buildings within the Ocean Drive – Collins Avenue Local Historic District, and the National Register of Historic Places Miami Beach Architectural District, the umbrellas and awnings hide all the architectural beauty that is South Beach. Oversized umbrellas and awnings have the potential to block historically and aesthetically significant architectural features.

In order to protect the health, safety, welfare and tranquility of the community, has established permit conditions and safety standards, including conditions and standards relating to street furniture, for sidewalk cafes within the Ocean Drive sidewalk café area, which are necessary to protect and promote the general health, safety, and welfare of the residents of the City. The draft ordinance is a second step by the City (the first step being the Mayor's ordinance amendment as to the hours of alcohol consumption and sales at sidewalk cafes) to protect the integrity of Ocean Drive.

Content of Ordinance:

The proposed supplemental regulations would provide the following requirements as it relates to the use of umbrellas within the Ocean Drive sidewalk café area:

- (1) All umbrella canopies shall be supported by no more than one center post or one cantilevered post.
- (2) All umbrella canopies shall provide a minimum clearance of seven (7) feet in height as measured from the sidewalk. The highest point of the umbrella canopy or frame shall not exceed nine (9) feet in height as measured from the sidewalk.
- (3) All umbrella canopies shall be installed parallel to the sidewalk. No canopy shall be allowed to tilt or be installed on a bias. All open canopies shall remain in a horizontal position, parallel to the sidewalk.
- (4) All umbrella posts or frames shall be installed perpendicular to the sidewalk. No post or frame may be allowed to tilt or be installed on a bias.
- (5) When the canopy is closed the umbrella shall be removed from the sidewalk café and stored inside the permittee's restaurant, cafe, or bar.
- (6) All umbrella canopies shall be round or octagonal.
- (7) The umbrella canopy shall bear a circumference of no greater than 36 square feet.
- (8) All umbrella bases shall be bolted down into the sidewalk, and the sidewalk cafe permittee shall obtain a right-of-way revocable permit pursuant to chapter 82, article III, division 2 of this Code. The pole or frame shall be removable from the base.
- (9) The minimum distance or spacing between umbrella canopies shall be two (2) feet.

(10) Each sidewalk café permit shall require a uniform color pattern for installed umbrellas subject to planning staff approval. The umbrella canopy may consist of no more than two colors. No umbrella canopies may contain fringes, scallops, or other ornamentation.

(11) The business name or logo may be placed on the umbrella, but may not exceed one foot in height.

(12) All umbrella canopies shall be fire-retardant, pressure-treated or manufactured of fire-resistant material.

(13) Rechargeable – battery operated lights facing the table may be installed on the post or frame, within inside of canopy.

Advertising would be prohibited. Also prohibited would be the clipping, zipping, or fastening of umbrellas together. No clear plastic or other material could be fastened to the umbrellas. Further, no awnings or canopies other than those umbrellas specifically authorized in this new ordinance may be installed on or over a sidewalk cafe.

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COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: October 7, 2015

SUBJECT: **DISCUSSION REGARDING GRADE ELEVATIONS FOR NEW CONSTRUCTION**

BACKGROUND

On June 10, 2015, the City Commission referred the item to the Land Use and Development Committee (Item C4E). On June 17, 2015, the Land Use and Development Committee discussed the item, directed the Administration to prepare a draft Ordinance, and continued the item to the July 29, 2015 meeting.

On July 29, 2015, the item was continued to October 7, 2015.

ANALYSIS

Recently, the City Commission amended the requirements for raising yards within Single Family Districts as an adaptation measure to address the effects of sea level rise.

Within single family districts, the maximum elevation of a required front yard and side yards facing a street is limited to no higher than the greater of 'adjusted grade', which is the midpoint between the minimum required flood elevation and 'sidewalk grade', or 30 inches above 'sidewalk grade'. As part of its overall review, AECOM has recommended that if the elevation of required yards is less than elevation 2.5 feet NAVD, then required yards may be elevated to 5.0 feet NAVD. Grade is the sidewalk elevation at the center of the property. For example, if grade is 4' NGVD, and the minimum flood elevation is 8' NGVD, then adjusted grade is 6' NGVD. Since the 'adjusted grade' is only 24 inches above 'grade', in this instance the maximum elevation of a required yard could be raised to 30 inches above grade or 6'6" NGVD.

Similar regulations apply to required side and rear yards, except that they can be raised further if the adjacent property's yard, 'average grade', exceeds adjusted grade, then the required yard can be raised to 30 inches above adjusted grade. Waterfront lots are permitted to have higher rear yards as well.

While the previous amendments reflect improvements in addressing concerns over sea level rise, there needs to be better agreement between the Land Development Regulations (LDR's) and the Miami Beach Stormwater Management Master Plan (SMP). The adopted SMP calls for the raising of the minimum crowns of roadways in various parts of the City to approximately 5.26 NGVD (3.7 NAVD). In order to improve

consistency between the SMP and LDR's, the proposed ordinance establishes a definition for the 'future crown of the road', where the SMP is referenced. It also establishes a 'future adjusted grade' which is the midpoint elevation between the future crown of the road and the minimum required flood elevation.

In order to accommodate the raising of the roadways, the proposed ordinance would require that front yards and side yards facing a street be raised to a minimum of 30 inches above grade, with the exception of driveways, walkways, grade transition areas, surface Stormwater shallow conveyance and LID features and areas where landscaping is to be preserved. However, it would still require that fences within front yards be measured from the existing 'sidewalk grade'. This will allow for better transitions between the public right of way and private property as the Stormwater Master Plan is implemented over time.

The proposed ordinance does not require that rear yards be raised to a minimum level; however, it allows for the rear to yard to be raised according to criteria that are similar to side yards. Staff has included photos of various examples where raised front yards are located in single family neighborhoods that do not create problems with compatibility for the surrounding community.

UPDATE

On September 8, 2015, AECOM presented a series of recommendations for Code changes to the Mayors Blue Ribbon Panel on Flooding and Sea Level Rise. The Panel is scheduled to discuss these recommendations further on September 29, 2015. The Administration will provide an update to the Land Use Committee at the October 7, 2015 meeting.

CONCLUSION

The Administration recommends that the Land Use and Development Committee discuss the item further and provide appropriate policy direction. In order to further refine the proposed Ordinance, as well as take into consideration the proposed code modifications suggested by AECOM, it is further recommended that the item be continued to the December 2, 2015 Land Use Committee meeting.


JLM/SMT/TRM/MAB/RAM

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Miami Shores examples of raised front yards



406 NE 103 ST. - Front yard at sidewalk elevation.



442 NE 103 ST. - Front yard about 36" above sidewalk elevation.



460 NE 103 ST. - Front yard about 48" above sidewalk elevation.



429 NE 102 ST. - Front yard - retaining wall about 18" above sidewalk elevation.



429 NE 102 ST. - Front yard - retaining wall about 24" above sidewalk elevation.



10205 NE 4 AVE. - Front yard - retaining wall about 30" above sidewalk elevation.



10208 NE 4 AVE. - Front yard - retaining wall about 30" above sidewalk elevation.



375 NE 102 ST. - Front yard - retaining wall about 12" above sidewalk elevation.

SINGLE FAMILY DEVELOPMENT REGULATIONS – GRADE ELEVATIONS

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, FLORIDA, BY AMENDING CHAPTER 114, “GENERAL PROVISIONS,” SECTION 114-1, “DEFINITIONS,” INCLUDING A DEFINITION FOR MAXIMUM ADJUSTED GRADE AND FUTURE CROWN OF THE ROAD; AND BY AMENDING CHAPTER 142, “ZONING DISTRICTS AND REGULATIONS,” DIVISION 2, “RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS,” BY AMENDING AND CLARIFYING THE MAXIMUM ELEVATION WITHIN A REQUIRED YARD; PROVIDING CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, sea level rise and flooding is an ongoing concern of the City; and

WHEREAS, the City has previously implemented increased height requirements for sea walls in order to more fully protect the City from flooding; and

WHEREAS, it is appropriate to amend the maximum elevation requirements within required yards of single family districts to eliminate or mitigate any conflict with corresponding legislation enacted to address sea level rise and flood mitigation; and

WHEREAS, the regulation of grade elevations in single family districts is necessary in order to ensure compatible development within the built character of the single-family neighborhoods in the City; and

WHEREAS, these regulations will accomplish these goals and ensure that the public health, safety and welfare will be preserved in the City’s single-family districts.

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

SECTION 1. That Section 114-1, “Definitions”, is hereby amended as follows:

* * *

Crown of the road, future means the expected elevation of the crown of a roadway as described in the adopted Miami Beach Stormwater Master Plan.

* * *

Grade, adjusted means the midpoint elevation between grade and the minimum required flood elevation for a lot or lots.

Grade, future adjusted, means the midpoint elevation between the future crown of the road and the minimum flood elevation for a lot or lots.

* * *

Grade, existing, means the elevation at the center of the existing sidewalk or the existing crown of the road.

SECTION 2. That Section 142-105, "Development regulations and area requirements", is hereby amended as follows:

- (a) The review criteria and application requirements for the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

* * *

- (8) *Exterior building and lot standards.* The following shall apply to all buildings and properties in the RS-1, RS-2, RS-3, RS-4 single-family residential districts:

a. Exterior bars on entryways, doors and windows shall be prohibited on front and side elevations, which face a street or right-of-way.

b. The minimum and maximum elevation of a required yard shall be in accordance with the following, however in no instance shall the elevation of a required yard, exceed the minimum flood elevation:

1. *Front Yard.* The minimum yard elevation within a required front yard shall be no less than 30 inches above grade, with the exception of driveways, walkways, transition areas, surface stormwater shallow conveyance and LID features, and areas where existing landscaping is to be preserved, which may have a lower elevation. The maximum elevation within a required front yard shall not exceed adjusted grade, or 30 inches above grade, or future adjusted grade, whichever is greater. In this instance the maximum height of any fences or walls in the required front yard, constructed in accordance with Section 142-1132 (h), Allowable encroachments within required yards, shall be measured from existing sidewalk grade.

2. *Interior Side Yards* (located between the front setback line and rear property line). The maximum elevation shall not exceed adjusted grade, or 30 inches above grade, whichever is greater, except:

a. When the average grade of an adjacent lot along the abutting side yard is equal or greater than adjusted grade, the maximum elevation within the required side yard shall not exceed 30 inches above adjusted grade.

b. When abutting a vacant property, the maximum elevation within the required side yard shall not exceed 30 inches above adjusted grade.

c.. Notwithstanding the above, when abutting property owners have jointly agreed to a higher elevation, both side yards may be elevated to the same higher elevation through the submission of concurrent building permits, not to exceed the minimum required flood elevation. In this instance the maximum height of any fences or walls along the adjoining property lines, constructed in accordance with Section 142-1132 (h), *Allowable encroachments within required yards*, shall be measured from the new average grade of the required side yards.

3. *Side Yard Facing a Street.* The minimum yard elevation within a Side Yard facing a Street shall be no less than 30 inches above grade, with the

exception of driveways, walkways, transition areas, surface stormwater shallow conveyance and LID features, and areas where existing landscaping is to be preserved, which may have a lower elevation. The maximum elevation within a required side yard facing a street shall not exceed adjusted grade or 30 inches above grade, or future adjusted grade, whichever is greater. In this instance the maximum height of any fences or walls in the required side yard facing a street, constructed in accordance with Section 142-1132 (h), *Allowable encroachments within required yards*, shall be measured from existing sidewalk grade.

4. *Rear Yard.*) The maximum elevation for a required rear yard, (not including portions located within a required sideyard or sideyard facing the street), shall be calculated according to the following:
 - a. *Waterfront.* The maximum elevation shall not exceed the minimum required flood elevation.
 - b. *Non-waterfront.* The maximum elevation shall not exceed adjusted grade, or 30 inches above grade, whichever is greater, except:
 - i. When the average grade of an adjacent lot along the abutting rear yard is equal or greater than adjusted grade, the maximum elevation within the required rear yard shall not exceed 30 inches above adjusted grade.
 - ii. When abutting a vacant property, the maximum elevation within the required rear yard shall not exceed 30 inches above adjusted grade.
 - iii. Notwithstanding the above, when abutting property owners have jointly agreed to a higher elevation, both rear yards may be elevated to the same higher elevation through the submission of concurrent building permits, not to exceed the minimum required flood elevation. In this instance the maximum height of any fences or walls along the adjoining property lines, constructed in accordance with Section 142-1132 (h), *Allowable encroachments within required yards*, shall be measured from the new average grade of the required rear yards.
5. In all instances where the existing elevation of a site is modified, a site shall be designed with adequate infrastructure to retain all stormwater on site in accordance with all applicable state and local regulations.

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 _____, 2015.

Philip Levine, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney Date

First Reading: _____, 2015

Second Reading: _____, 2015

Verified By: _____
Thomas R. Mooney, AICP
Planning Director

Underline = new language
~~Strikethrough~~ = deleted language

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COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager 

DATE: October 7, 2015

SUBJECT: **DISCUSSION OF A PROPOSED MODIFICATION TO THE NOTICE AND APPEAL PROCEDURES FOR QUASI-JUDICIAL APPLICATIONS BEFORE HISTORIC PRESERVATION BOARD, BOARD OF ADJUSTMENT, PLANNING BOARD, AND DESIGN REVIEW BOARD.**

HISTORY

On June 10, 2015, at the request of Commissioner Deede Weithorn, the City Commission referred this item to both the Land Use and Development Committee and the Planning Board (Item C4F).

BACKGROUND/ANALYSIS

The City of Miami Beach is in the process of updating the City's procedures and on-line capabilities through the use of Energov and NOVUS Agenda. These systems will allow for an online collaboration in processing board applications and creating agendas for all City Commission and quasi-judicial board meetings. As part of this initiative, City departments are in the process of configuring the workflows which include the type of notice needed for the type of application being heard – whether there is a public hearing notice requirement, whether mailed notice or posting is required, and the time tables for producing said notice.

Currently, the notice provisions for each board are located throughout the code, and are not easy to find. Often, the notice provision is subsumed within a larger ordinance, and differ from board to board making it very difficult for the general public to understand the type of notice they can expect. The administration is recommending that the various notice provisions contained in the Land Development Code be consolidated in one ordinance, in one section of the Code, and be uniform for the various land use board applications. This would also facilitate the implementation of the Energov and NOVUS Agenda software systems and ensure that staff does not err in providing proper notice.

The notice requirements have not changed in the proposed **Consolidation and Standardizing of Notification Procedures Ordinance**, with the exception of the inclusion of additional language regarding requirements for posting, as noted in the underlined section below:

118-8 Notice Procedures.

Applications requiring notice shall be noticed in accordance with the following provisions, unless otherwise more specifically provided for in these Land Development Regulations:

- (a) *Advertisement.* At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be noticed in a newspaper of general circulation. Applicant shall pay advertisement fee as applicable.
- (b) *Mail Notice.* At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be given by mail to the owners of record of land lying within 375 feet of property. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the department. Additionally, courtesy notice shall also be given to any state nonprofit community organization which has requested of the director in writing to be notified of board hearings. Applicant shall pay mailing fees as applicable.
- (c) *Posting.* At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be posted on the property. Such posting shall be a minimum dimension of 11 inches by 17 inches, and located in a visible location at the front of the property, and shall not be posted on a fence or wall that would be obstructed by the operation of a gate. The applicant shall pay posting fee as applicable.

Similarly, the rehearing and appeal procedures are also scattered throughout the City Code, are difficult to find, and are inconsistent in listing the requirements for filing such an application. The proposed **Rehearing and Appeal Procedures Ordinance** has been organized as follows:

Sec. 118-9 – Rehearing and appeal procedures.

- (a) *Rehearings*
 - (1) *Decisions eligible for a rehearing*
 - (2) *Eligible rehearing filing requirements*
 - A. *Timeframe to file.*
 - B. *Eligible parties*
 - C. *Application requirements.*
 - D. *Notice requirements.*
 - (3) *Actions by the board.*
 - (4) *Stay of work.*
 - (5) *Tolling.*
- (b) *Administrative appeal procedures*
 - (1) *Decisions eligible for administrative appeals*
 - (2) *Eligible appeal filing requirements:*
 - A. *Timeframe to file:*
 - B. *Eligible parties*
 - C. *Application requirements.*
 - D. *Notice requirements.*
 - (3) *Outside Council to the Planning Department.*
 - (4) *Actions by the board.*
 - (5) *Stay of work and proceedings on appeal.*
 - (6) *Tolling.*

- (c) *Appeals of land use board applications.*
- (1) *Decisions ineligible for appeal except to circuit court*
 - (2) *Decisions eligible for appeal*
 - (3) *Eligible appeal filing requirements*
 - A. *Timeframe to file.*
 - B. *Eligible parties*
 - C. *Application requirements:*
 - D. *Notice requirements.*
 - (4) *Action.*
 - (5) *Stay of work and proceedings on appeal.*

The substance of the regulations have not changed in the proposed ordinance, with the following noted exceptions:

1. Section 118-193. – Applications for conditional uses. Currently the timeframe to obtain a building permit for an adult congregate living facility is 12 months, and any the Planning Board may only approve an extension of time for up to three months. The Ordinance changes the timeframe to obtain a building permit to 18 months, and an additional 12 months for an extension of time, in order be consistent with all other conditional use applications. Also, an appeal of an extension of time for an ALF currently is required to go to the City Commission, and the proposed ordinance eliminates this provision; defaulting instead to the standard appeal procedures of a Planning Board application.
2. Section 118-537. – Rehearings and appeals. The proposed ordinance relocates this entire section into the newly incorporated Section 118-9. – Rehearing and appeal procedures.
3. To keep all appeals consistent as to timing, an appeal of an HPB administrative decision from 10 days to 15 days to be consistent with all other administrative appeals to the DRB.
4. Under the sections relating to hiring of outside counsel, we have added language to include the ability to use another attorney from the City Attorney's office that would be independent from the attorney presiding over the Boards.

CONCLUSION

The Administration recommends that the Land Use and Development Committee discuss the item further and provide appropriate policy direction. If there is a consensus on the item, it is further recommended that the subject ordinances be forwarded to the Planning Board with a favorable recommendation.


JLM/SMT/TRM/MAB

CONSOLIDATION AND STANDARDIZING OF NOTIFICATION PROCEDURES

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, BY CREATING SECTION 118-8 ENTITLED “NOTICE PROCEDURES” AT CHAPTER 118, “ADMINISTRATION AND REVIEW PROCEDURES,” IN ORDER TO CONSOLIDATE AND STANDARDIZE THE NOTICE PROVISIONS FROM THE VARIOUS SUBSECTIONS OF THE LAND DEVELOPMENT CODE IN ONE SECTION; AMENDING AND/OR STRIKING THE VARIOUS NOTICE PROVISIONS FROM ARTICLE II “BOARDS,” DIVISION 5 “BOARD OF ADJUSTMENT” AT SECTION 118-134; ARTICLE IV “CONDITIONAL USE PROCEDURE” AT SECTION 118-193; ARTICLE VI “DESIGN REVIEW PROCEDURES” AT SECTION 118-254; ARTICLE X “HISTORIC PRESERVATION” DIVISION 3 “ISSUANCE OF CERTIFICATE OF APPROPRIATENESS/CERTIFICATE TO DIG/CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION” AT SECTION 118-563; AND DIVISION 4 “DESIGNATION” AT SECTION 118-591; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach is in the process of updating the City’s procedures and on-line capabilities through the use of Energov and NOVUS Agenda, which systems, will allow for an online collaboration in processing board applications and creating agendas for all City Commission and quasi-judicial board meetings; and

WHEREAS, as part of this initiative, City departments are in the process of configuring the workflows which include the type of notice need for the type of application being heard – whether there is a public hearing notice requirement, whether mailed notice or posting is required, and the time tables for producing said notice; and,

WHEREAS, Currently, the notice provisions for each board are located throughout the code, and are not easy to find. Often, the notice provision is subsumed within a larger ordinance, and differ from board to board making it very difficult for the general public to understand the type of notice they can expect.

WHEREAS, in an effort to foster transparency and facilitate ease of use, the City Planning Department has requested that the various notice provisions contained in the Land Development Code, for each type of application is consolidated in one ordinance, in one section of the Code, and be uniform for the various land use board applications; and

WHEREAS, consolidation would also facilitate the implementation of the Energov and NOVUS Agenda software systems and ensure that staff does not err in providing proper notice.

WHEREAS, the notice requirements have not changed in the draft **Consolidation and Standardizing of Notification Procedures Ordinance**, with the exception of the inclusion of additional language regarding requirements for posting, which language ensures that the posting is clearly visible from the street.

WHEREAS, the amendment set forth below is necessary to accomplish the objectives identified above.

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

SECTION 1. That Chapter 118, "Administrative and Review Procedures", Article I "In General", Section 118-8 "Notice Procedures for Quasi-Judicial, Public Hearing Land Use Board Actions" hereby established as follows:

118-8 Notice Procedures For Quasi-Judicial, Public Hearing Quasi-Judicial Land Use Board Actions.

Quasi-judicial, public hearing, applications for land use board actions (Board of Adjustment, Design Review Board, Historic Preservation Board, and Planning Board) that require notice shall be noticed in accordance with the following provisions, unless otherwise more specifically provided for in these Land Development Regulations, and shall pay a fee pursuant to Section 118-7, and Appendix A.

- (a) Advertisement. At least 30 days prior to the quasi-judicial, public hearing date, a description of the request, and the date, start time of the meeting and location of the hearing shall be noticed in a newspaper of general circulation. Applicant shall be required to pay all associated costs relating to the advertisement.
- (b) Mail Notice. At least 30 days prior to the quasi-judicial, public hearing date, a description of the request, and the date, start time of the meeting, and location of the hearing shall be given by mail to the owners of record of land lying within 375 feet of the property subject to the application. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the department. Additionally, courtesy notice shall also be given to any Florida nonprofit community organization which has requested of the director in writing to be notified of board hearings. Applicant shall be required to pay all associated costs relating to the mailed notice.
- (c) Posting. At least 30 days prior to the quasi-judicial, public hearing date, a description of the request, and the date, time and place of such hearing shall be posted on the property. Such posting shall be a minimum dimension of 11 inches by 17 inches, and located in a visible location at the front of the property, and shall not be posted on a fence or wall that would be obstructed by the operation of a gate. Applicant shall be required to pay all associated costs relating to the posting.

SECTION 2. That Chapter 118, "Administrative and Review Procedures", Article II "Boards", Division 5 "Board of Adjustment" at Sec. 118-134, "Applications", is hereby amended as follows:

Sec. 118-134. – Applications. Notification of hearings.

~~Quasi-judicial public hearing applications shall be submitted to the planning department, which shall prepare a report and recommendation for consideration by the board of adjustment. The board of adjustment shall not vary or modify any regulation or provision of these land development regulations or hear an appeal of an administrative decision until a public hearing has been held. At least 30 days prior to the public hearing date, a description of the request,~~

~~and the date, time and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) given by mail to the owners of record of land lying within 375 feet of the property. This mailed notification requirement shall be the responsibility of the applicant. Where the application is for an appeal of an administrative decision the preceding information shall be supplemented by an explanation of what is being appealed.~~

SECTION 3. That Chapter 118, "Administrative and Review Procedures", Article IV "Conditional Use Procedures," at Section 118-193, "Applications for conditional uses", is hereby amended as follows:

Sec. 118-193. - Applications for conditional uses.

~~Quasi-judicial, public hearing~~ Applications for approval of a conditional use shall be submitted to the planning department, which shall prepare a report and recommendation for consideration by the planning board, and when required, by the city commission. ~~Within a reasonable time, but in no instance less than 30 days after receipt of a completed application, the board shall hold a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) given by mail to the owners of record of land lying within 375 feet of the property. This mailed notification requirement shall be the responsibility of the applicant.~~

* * *

SECTION 4. That Chapter 118, "Administrative and Review Procedures", Article VI "Design Review Procedures" at Section 118-254, "Decision of design review board", is hereby amended as follows:

Sec. 118-254. - Decision of design review board.

- (a) The design review board shall consider each application at a quasi-judicial, public hearing, at which the applicant and interested persons shall have an opportunity to express their opinions, present evidence and rebut all evidence presented. The planning department, shall provide the applicant with advance notice of the hearing date and time, including a copy of the agenda and the recommendation of the planning department.
- (b) ~~At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) given by mail to the owners of record of land lying within 375 feet of property. The mail notification requirement shall be the responsibility of the applicant. Additionally, courtesy notice shall also be given to any state nonprofit community organization which has requested of the director in writing to be notified of board hearings. The board shall approve, approve with conditions or deny applications.~~

* * *

SECTION 5. That Chapter 118, "Administrative and Review Procedures", Article X "Historic Preservation", Division 3 " Issuance of Certificate of Appropriateness/Certificate to Dig/Certificate of Appropriateness for Demolition" at Section 118-563, "Review procedure", is hereby amended as follows:

Sec. 118-563. - Review procedure.

- (a) All quasi-judicial public hearing applications involving demolition, new construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, significant landscape feature, public interior or site individually designated in accordance with sections 118-591, 118-592 and 118-593, or located within an historic district shall be placed on the next available agenda of the historic preservation board for its review and consideration after the date of receipt of a completed application.
- ~~(b) The board shall hold a public hearing regarding each application in accordance with the notice and hearing procedures set forth in subsection (c) of this section. The board shall approve, deny, approve with conditions or continue action on all applications for a certificate of appropriateness.~~
- ~~(c) All applications for a certificate of appropriateness for the demolition or partial demolition of any building, structure, improvement, significant landscape feature, public interior or site individually designated in accordance with sections 118-591, 118-592 and 118-593, or located within an historic district and all applications for a certificate of appropriateness for new building construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, significant landscape feature, public interior or site individually designated in accordance with sections 118-591, 118-592 and 118-593, or located within an historic district shall only be considered by the board following a public hearing. At least 30 days prior to the public hearing date, a description of the request with the date, time, and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) be given by mail to the owners of record of land lying within 375 feet of the property. The mail notification requirement shall be the responsibility of the applicant.~~
- (b) The historic preservation board shall decide, based upon the criteria set forth in subsection 118-564(f)(4), whether or not to issue a certificate of appropriateness for demolition. A demolition permit shall not be issued until all of the following criteria are satisfied, except as permitted under subsection 118-564(f)(6):

* * *

SECTION 6. That Chapter 118, "Administrative and Review Procedures", Article X "Historic Preservation", Division 4, "Designation" at Section 118-591, "Historic designation procedure", is hereby amended as follows:

Sec. 118-591. - Historic designation procedure.

* * *

- (f) ~~Public hearing; notification.~~ A quasi-judicial public hearing on a proposed historic preservation designation shall be conducted by the historic preservation board after the date a designation report has been filed. ~~The property owners of record within 375 feet of the property proposed for designation shall be notified by mail of the public hearing at least 30 days in advance of the hearing. This notification requirement shall be the responsibility of the applicant.~~
- (g) Designation procedures initiated by owners of single-family homes in single-family districts. Notwithstanding the above, the following shall apply to any request by property owners for the individual designation of their single-family homes as historic structures:

* * *

- (2) ~~Reserved. Public notice requirements.~~ At least 30 days prior to the public hearing date for the subject designation, a description of the request with the time and place of the public hearing, shall be advertised in a paper of general paid circulation in the community.

* * *

SECTION 7. 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 8. REPEALER.

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

SECTION 9. SEVERABILITY.

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

SECTION 10. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this ____ day of _____, 2015.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

City Attorney Date

First Reading:
Second Reading:

Verified by: _____
Thomas R. Mooney, AICP
Planning Director

Underscore denotes new language
~~Strikethrough~~ denotes deleted language

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2015\October 7, 2015\Notification Procedures -
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Rehearing and Appeal Procedures

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CONSOLIDATING AND STANDARDIZING THE REHEARING AND APPEAL PROCEDURES, INCLUDING ADMINISTRATIVE APPEALS AND QUASI-JUDICIAL APPLICATIONS BEFORE HISTORIC PRESERVATION BOARD, BOARD OF ADJUSTMENT, PLANNING BOARD, AND DESIGN REVIEW BOARD, BY AMENDING THE FOLLOWING SECTIONS: CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," AT SECTION 118-9, ENTITLED "APPEAL AND REHEARING PROCEDURES"; AND AMENDING ARTICLE II "BOARDS" DIVISION 3 "DESIGN REVIEW BOARD" AT SECTION 118-71; DIVISION 5 "BOARD OF ADJUSTMENT" AT SECTIONS 118-134, 118-136, 118-137, 118-138; ARTICLE IV "CONDITIONAL USE PROCEDURE" AT SECTIONS 118-193, AND 118-197; ARTICLE VI "DESIGN REVIEW PROCEDURES" AT SECTIONS 118-258, 118-260, 118-261, 118-262, 118-263; ARTICLE VIII "PROCEDURES FOR VARIANCES AND ADMINISTRATIVE APPEALS" AT SECTIONS 118-352 and 118-358; ARTICLE IX "NONCONFORMANCES" AT SECTIONS 118-395 AND 118-397; ARTICLE X "HISTORIC PRESERVATION"; DIVISION 2 "HISTORIC PRESERVATION BOARD REVIEW OF PROJECTS" AT SECTIONS 118-532, 118-536, AND 118-537; DIVISION 3 "ISSUANCE OF CERTIFICATE OF APPROPRIATENESS/CERTIFICATE TO DIG/CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION" AT SECTIONS 118-563, 118-564, 118-565; DIVISION 5 "SINGLE-FAMILY AD VALOREM TAX EXEMPTION" AT SECTION 118-609; CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS" AT ARTICLE II "DISTRICT REGULATIONS," DIVISION 2 "RS-1,RS-2, RS-3, RS-4 SINGLE FAMILY RESIDENTIAL DISTRICTS AT SECTION 142-108 IN ORDER TO REMOVE ANY CONFLICTS WITH NEWLY CREATED SECTION 118-9; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, The City of Miami Beach is in the process of updating the City's procedures and on-line capabilities through the use of Energov and NOVUS Agenda, which systems, will allow for an online collaboration in processing board applications and creating agendas for all city commission and quasi-judicial board meetings; and

WHEREAS, As part of this initiative, City departments are in the process of configuring the workflows which include the type of notice need for the type of application being heard – whether there is a public hearing notice requirement, whether mailed notice or posting is required, and the time tables for producing said notice; and

WHEREAS, the notice provisions for each board are located throughout the code, and are not easy to find, and the City is simultaneously proposing to amend Chapter 118 to create 118-8 to consolidate all notice procedures for land use boards in one, easy to read, and utilize section of the Code; and

WHEREAS, the City intends to follow the same process with notice for and process of appeal or rehearing of land use board quasi-judicial proceedings; and

WHEREAS, this consolidation would also facilitate the implementation of the Energov and NOVUS Agenda software systems and ensure that staff does not err in providing proper notice and provide applicants, as well as the public with an easier to understand appellate process; and

WHEREAS, these regulations will accomplish these goals and ensure that the public health, safety and welfare will be preserved.

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

- **SECTION 1.** That Chapter 118 “Administration And Review Procedures,” Article I “In General” at Section 118-9, “Rehearing and appeal procedures”, is hereby established, as follows:

* * *

Sec. 118-9 ~~Reserved.~~ Rehearing and appeal procedures.

The following requirements shall apply to all rehearings and appeals by land development boards unless otherwise more specifically provided for in these land development regulations, and applicable fees and costs shall be paid to the City as required under section 118-7 and Appendix A to the City Code. As used herein, “land use board(s)” shall mean the board of adjustment, design review board, historic preservation board and planning board.

(a) Rehearings.

(1) The types of land use board decisions eligible for a rehearing are as follows:

- A. Historic preservation board. historic preservation board order relating to the issuance of a Certificate of Appropriateness, dig or demolition. Bert J. Harris rehearing is separately addressed at subsection (a)(6), below.
- B. Design review board. design review board order relating to design review approval, only.
- C. Except as delineated above, rehearings are not available for any other application, or for any other land use board action.
- D. There shall only be allowed one rehearing, per application, although multiple persons may participate in or request the rehearing.

(2) Eligible rehearing applications shall be filed in accordance with the process as outlined in subsections A through D below:

- A. **Timeframe to file.** A petition for rehearing shall be submitted to the planning director on or before the 15th day after the rendition of the board order. Rendition shall be the date upon which a signed written order is executed by the board’s clerk.

Eligible parties. Parties eligible to file an application for rehearing are limited to:

- (i) Original applicant(s)

- (ii) The city manager on behalf of the city administration
- (iii) An affected person, which for purposes of this section shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project.
- (iv) Miami Design Preservation League
- (v) Dade Heritage Trust

C. Application requirements. The petition to the board shall be in a writing that contains all facts, law and argument, by or on behalf of an eligible party, and demonstrate the following:

- (i) Newly discovered evidence which is likely to be relevant to the decision of the board, or
- (ii) The board has overlooked or failed to consider something which renders the decision issued erroneous.

D. Notice requirements. All land use board applications eligible to request a rehearing are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8. The rehearing applicant shall be responsible for all associated costs and fees.

- (3) **Outside Counsel to the Planning Department.** In the event of a rehearing to the applicable land use board, the planning director may engage the services of an attorney, or utilize a separate, independent, attorney from the city attorney's office, for the purpose of representing the administrative officer and planning staff during the rehearing.
- (4) **Actions by the applicable land use board.** After the rehearing request is heard, the applicable land use board may take the actions outlined in subsections (i) through (v) below:
 - (i) Rehear or not rehear a case.
 - (ii) If the decision is to rehear the application, the board may take additional testimony.
 - (iii) Reaffirm their previous decision.
 - (iv) Issue a new decision, and/or
 - (v) Reverse or modify the previous decision.
- (5) **Stay of work.** A rehearing application to the applicable land use board stays all work on the premises and all proceedings in furtherance of the board action; however, nothing herein shall prevent the issuance of building permits or partial building permits necessary to prevent imminent peril to life, health or property, as determined by the building official.
- (6) **Tolling.** See tolling provision under (b)(6).
- (7) **Rehearings due to Bert J. Harris Claim.** A petition for rehearing pursuant to a Harris Act claim, the petition shall include the following documentation which shall be submitted no later than 15 days after the submission of the petition for rehearing:

A. A bona fide, valid appraisal supporting the claim of inordinate burden and demonstrating the loss, or expected loss, in fair market value to the real property as a result of the board's action;

B. All factual data described in subsection 118-564(c); provided, however, in the event all or any portion of the factual data was available to the applicant prior to the conclusion of the public hearing before the historic preservation or joint design review board/historic preservation board and the applicant failed to furnish same to the board's staff as specified in subsection 118-564(c), then, the board may, in its discretion, deny the applicant's request to introduce such factual data.

C. A report prepared by a licensed architect or engineer analyzing the financial implications of the requirements, conditions or restrictions imposed by the board on the property or development proposed by the applicant with respect to which the applicant is requesting a rehearing;

D. A report prepared by a licensed architect or engineer analyzing alternative uses for the real property, if any;

E. A report prepared by a licensed architect or engineer determining whether, as a result of the board action, the owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable; and

F. A report prepared by a licensed architect or engineer addressing the feasibility, or lack of feasibility, of effectuating the board's requirements, conditions or restrictions and the impact of same on the existing use of the real property or a vested right to a specific use of the real property.

(b) Administrative appeal procedures:

(1) Decisions eligible for administrative appeals:

G. Planning Board Conditional Use Applications. An eligible party may appeal a decision of the planning director to the planning board regarding a decision reached on a conditional use application.

H. Board of Adjustment administrative appeals.

(i) With the exception of those items expressly identified within this section for appeals of administrative decisions specifically delegated to the other land use boards, the board of adjustment shall have the power and duty to hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations.

(ii) An administrative appeal pursuant to subsection 118-397(b)

I. Historic preservation board administrative appeals. An eligible party may appeal a decision of the planning director regarding the following to the historic preservation board:

- (i) An administrative appeal pursuant to subsection 118-563(d)(1) or (3).
- (ii) An administrative appeal pursuant to subsection 118-565, or
- (iii) An administrative appeal pursuant to section 118-609.

J. design review board administrative appeals. An eligible party may appeal a decision of the planning director regarding the following administrative determinations to the design board:

- (i) An administrative appeal pursuant to subsection 118-395.
- (ii) An administrative appeal pursuant to subsection 118-260, or
- (iii) An administrative appeal pursuant to subsection 142-108.

(2) Eligible administrative appeals shall be filed in accordance with the process as outlined in subsections A through D below:

A. Timeframe to file:

- (i) Planning board. A petition for an administrative appeal shall be submitted to the planning director published a decision on the conditional use application on or within 15 days after the date on which the director or designee published a decision reached on a Conditional Use application. For this section of the code, published shall mean the ruling being released, in writing, and distributed by the planning director, or his designee.
- (ii) Board of adjustment. A petition for an administrative appeal shall be submitted to the planning director on or before the 30th day after the date of the publication of a refusal of a permit by, notice of violation, ruling, decision or determination of, the building official or other administrative official.
- (iii) Historic preservation board. A petition for an administrative appeal shall be submitted to the planning director on or before the 15th day after the date on which the director or designee published a decision on applications submitted pursuant to subsection 118-563(d)(1), pertaining to ground level additions to existing structures, and subsection 118-563(d)(3), pertaining to façade and building restoration.
- (iv) Design review board. The following timeframes shall apply for administrative appeals shall be submitted to the planning director on or before the 15th day after the date on which the decision is published pursuant to either subsections 118-395 or 142-108.

B. Eligible parties. Parties eligible to file an application for an administrative appeal are limited to the following:

- (i) Original applicant / property owner
- (ii) The city manager on behalf of the city administration, except for administrative appeals pursuant to sections 118-260, 118-395, and 142-108.

- (iii) An affected person, which for purposes of this section shall mean a person owning property within 375 feet of the site or application which is the subject of the administrative appeal, except for administrative appeals pursuant to sections 118-260, 118-375, and 118-260.
- (iv) Miami Design Preservation League, except for administrative appeals pursuant to sections 118-260, 118-375, and 118-260.
- (v) Dade Heritage Trust, except for administrative appeals pursuant to sections 118-260, 118-375, and 118-260.

C. Application requirements. The following shall be required for all applications for administrative appeals:

- (i) The petition to the board shall be in writing; and
- (ii) Shall be by or on behalf of an eligible party; and
- (iii) shall set forth the factual, technical, architectural, historic and legal bases for the appeal; and
- (iv) The party filing the appeal shall be responsible for providing all plans and exhibits, subject to planning department procedures, as well as the duplication of all pertinent plans and exhibits.

D. Notice requirements. All land use board applications eligible to request a rehearing are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8. The rehearing applicant shall be responsible for all associated costs and fees.

(3) **Outside Counsel to the Planning Department.** In the event of an administrative appeal to the applicable land use board, the planning director may engage the services of an attorney, or utilize a separate, independent, attorney from the city attorney's office, for the purpose of representing the administrative officer who made the decision that is the subject of the appeal.

(4) **Board Decisions on Administrative Appeals.** The applicable land use board may, upon appeal, reverse or affirm, wholly or partly, the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of five members of the applicable land use board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the applicable land use board is required to pass under these land development regulations.

No permit shall be issued for work prior to expiration of the appeal period or final disposition of any appeal.

(5) **Stay of work and proceedings on appeal.** An appeal to the applicable board stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:

A. The official from whom the appeal was taken shall certify to the applicable land use board that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board or by a

court of competent jurisdiction, upon application, with notice to the officer from whom the appeal is taken and for good cause shown; or

- B. If the appeal arises from a quasi-judicial public hearing before a land use board, the hearing before the board to which application was made may proceed, provided any approval does not vest. The final order shall contain appropriate conditions to stay its effectiveness until the final resolution of all administrative and court proceedings. No building permit, or certificate of occupancy, or business tax receipt, dependent upon such hearing approval, shall be issued until the final resolution of all administrative and court proceedings as certified by the city attorney. The applicant for such land use board hearing shall hold the city harmless and agree to indemnify the city from any liability or loss resulting from such proceedings. Notice of the final resolution of administrative and court proceedings shall be provided as required for notice of hearings under these land development regulations.
- C. Notwithstanding the foregoing, an appeal to the applicable land use board, city commission, historic preservation special master or court, or other challenge to an administrative official's decision, shall neither stay the issuance of any building permit, full building permit or phased building permit nor stay the running of the required time period set by board order or these land development regulations to obtain a full building permit or phased building permit.
- (6) **Tolling during all appeals.** Notwithstanding the provisions of Section 118-193(2), 118-258(c), 118-532(f), or 118-564(11), in the event the original decision (board order) of the applicable board, is timely appealed, the applicant shall have 18 months, or such lesser time as may be specified by the board, from the date of final resolution of all administrative and/or court proceedings to obtain a full building permit, a certificate of occupancy, a certificate of use or a certificate of completion, whichever occurs first. This tolling provision shall only be applicable to the original approval of the board and shall not apply to any subsequent requests for revisions or requests for extensions of time.

(c) Appeals of land use board applications.

- (1) Decisions of the following shall be final, and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari:
- A. Planning board.
 - B. Board of adjustment.
 - C. Design review board, with respect to variance decisions and administrative appeals, only.
 - D. Historic preservation board, with respect to variance decisions and administrative appeals, only.
 - E. Historic preservation special master.
- (2) Decisions from the following may be appealed as noted:

- A. Historic preservation board.
 - (i) Any applicant requesting an appeal of an approved application from the historic preservation board (for a Certificate of Appropriateness only) shall be made to the historic preservation special master, except that a land use board order granting or denying a request for rehearing shall not be reviewed by the Historic preservation special master.
 - (ii) The historic preservation special master shall meet the following requirements:
 - a. Historic preservation special master qualifications. Historic preservation special masters appointed to hear appeals pursuant to this subsection shall be attorneys who are members in good standing of the Florida Bar and have expertise in the area of historic preservation.
 - b. Historic preservation special master terms. Historic preservation special masters shall serve terms of three years, provided however, that they may be removed without cause upon a majority vote of the city commission. Compensation for historic preservation special masters shall be determined by the city commission.

- B. Design review board. Any applicant requesting an appeal of an approved application from the design review board (for design review approval only) shall be made to the city commission, except that orders granting or denying a request for rehearing shall not be reviewed by the city commission.

- (3) Eligible appeals of the design review board or historic preservation board shall be filed in accordance with the process as outlined in subsections (a) through (d) below:
 - A. **Timeframe to file.** A petition for an appeal shall be submitted to city clerk on or before the 20th day after the rendition of the board order. Rendition shall be the date upon which a signed written order is executed by the board's clerk.

 - B. **Eligible parties** to file an application for an appeal are limited to the following:
 - (i) Original applicant
 - (ii) The city manager on behalf of the city administration
 - (iii) An affected person, which for purposes of this section shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project.
 - (iv) Miami Design Preservation League
 - (v) Dade Heritage Trust

 - C. **Application requirements:**
 - (i) The appeal shall be in writing, and include all record evidence, facts, law and arguments necessary for the appeal (this appellate document shall be called the "brief"); and
 - (ii) shall include all applicable fees, as provided in appendix A; and
 - (iii) shall be by or on behalf of a named appellant(s); and
 - (iv) shall state the factual bases and legal argument in support of the appeal; and
 - (v) a full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition, along with a written statement identifying those specific portions of the transcript upon which the party filing it

will rely for purposes of the appeal. The verbatim transcript and written statement shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal.

- D. **Notice requirements.** All applications for an appeal of the design review board or historic preservation board are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8. The appeal applicant shall be responsible for all associated costs and fees.
- (4) **Action.** In order to reverse, amend, modify, or remand amendment, modification, or rehearing the decision of the board, the city commission (for design review board appeals), and the historic preservation special master (for historic preservation board appeals of Certificates of Appropriateness, Dig or Demolition), shall find that the board did not comply with any of the following:
- (i) Provide procedural due process;
 - (ii) Observe essential requirements of law; and
 - (iii) Based its decision upon substantial competent evidence.

The decision on the appeal shall be set forth in writing, and shall be promptly mailed to all parties to the appeal. In order to reverse, or remand, a five-sevenths vote of the city commission is required for appeals of the design review board to the city commission.

- (5) **Stay of work and proceedings on appeal.** An appeal to the board stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:
- (i) A stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board or by a court of competent jurisdiction, upon application for good cause shown; or
 - (ii) If the appeal arises from an application for development review board hearing or other approval requiring a hearing before a land use board, the hearing before the board to which application was made may proceed, provided any approval does not vest. The final order shall contain appropriate conditions to stay its effectiveness until the final resolution of all administrative and court proceedings. No building permit, or certificate of occupancy, or business tax receipt, dependent upon such hearing approval, shall be issued until the final resolution of all administrative and court proceedings as certified by the city attorney. The applicant for such land use board hearing shall hold the city harmless and agree to indemnify the city from any liability or loss resulting from such proceedings. Notice of the final resolution of administrative and court proceedings shall be provided as required for notice of hearings under these land development regulations. Notwithstanding the foregoing, an appeal to the board or court, or other challenge to an administrative official's decision, shall neither stay the issuance of any building permit, full building permit or phased building permit nor stay the running of the required time period set by board order or these land development regulations to obtain a full building permit or phased building permit.

Section 2. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 3 "Design Review Board, at Section 118-71, "Powers and Duties", is hereby amended, as follows:

Sec. 118-71. - Powers and duties.

The design review board shall have the following powers and duties:

- * * *
- (5) To hear and decide appeals of the planning director ~~when deciding matters pursuant to section 118-260.~~
- * * *

SECTION 3. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 5 "Board of Adjustment" at Section 118-134, "Notification of hearings", is hereby amended, as follows:

Sec. 118-134. - Reserved. Notification of hearings.

~~The board of adjustment shall not vary or modify any regulation or provision of these land development regulations or hear an appeal of an administrative decision until a public hearing has been held. At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) given by mail to the owners of record of land lying within 375 feet of the property. This mailed notification requirement shall be the responsibility of the applicant. Where the application is for an appeal of an administrative decision the preceding information shall be supplemented by an explanation of what is being appealed.~~

SECTION 4. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 5 "Board of Adjustment," at Section 118-136, "Powers and duties", is hereby amended, as follows:

Sec. 118-136. - Powers and duties.

(a) The board of adjustment shall have the following powers and duties:

- (1) To hear and decide appeals pursuant to the procedural requirements of Section 118-9. ~~when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations with the exception of appeals pursuant to section 118-197 and section 118-262. In the event of an administrative appeal to the board of adjustment, the planning director may engage the services of an attorney for the purpose of representing the administrative officer who made the decision that is the subject of the appeal.~~

~~In exercising this power, the board of adjustment, may upon appeal, reverse or affirm, wholly or partly, the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of five members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide~~

in favor of the applicant on any matter upon which the board is required to pass under these land development regulations.

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(b) The board of adjustment shall serve as the city's floodplain management board in reviewing applications for properties within its jurisdiction and shall have the authority to exercise all powers and perform all duties assigned to such board pursuant to section 54-31 et seq. and Resolution No. 93-20698, and in accordance with the procedures set forth therein as such ordinance and resolution may be amended from time to time. For the purposes of determining jurisdiction, the criteria in section 118-351(a) shall be utilized.

SECTION 5. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 5 "Board of Adjustment," at Section 118-137, "Stay of work and proceedings on appeal", is hereby amended, as follows:

Sec. 118-137. Reserved. ~~Stay of work and proceedings on appeal.~~

~~(1) An appeal to the board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions in subsection (2) applies.~~

~~(2) Exceptions.~~

~~(a) The official from whom the appeal was taken shall certify to the board of adjustment that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of competent jurisdiction, upon application, with notice to the officer from whom the appeal is taken and for good cause shown; or~~

~~(b) If the appeal arises from an application for development review board hearing or other approval requiring a hearing before a land use board, the hearing before the board to which application was made may proceed, provided any approval does not vest. The final order shall contain appropriate conditions to stay its effectiveness until the final resolution of all administrative and court proceedings. No building permit, or certificate of occupancy, or business tax receipt, dependent upon such hearing approval, shall be issued until the final resolution of all administrative and court proceedings as certified by the city attorney. The applicant for such land use board hearing shall hold the city harmless and agree to indemnify the city from any liability or loss resulting from such proceedings. Notice of the final resolution of administrative and court proceedings shall be provided as required for notice of hearings under these land development regulations.~~

~~(3) Notwithstanding the foregoing, an appeal to the board of adjustment or court, or other challenge to an administrative official's decision, shall neither stay the issuance of any building permit, full building permit or phased building permit nor stay the running of the required time period set by board order or these land development regulations to obtain a full building permit or phased building permit.~~

SECTION 6. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 5 "Board of Adjustment," at Section 118-138, "Appeal of board of adjustment's decision", is hereby amended, as follows:

Sec. 118-138. Reserved.—~~Appeal of board of adjustment's decision.~~

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

SECTION 7. That Chapter 118, "Administration And Review Procedures," Article IV "Conditional Use Procedures," at Section 118-193, "Applications for conditional uses", is hereby amended, as follows:

Sec. 118-193. - Applications for conditional uses.

Applications for approval of a conditional use shall be submitted to the planning department, which shall prepare a report and recommendation for consideration by the planning board, and when required, by the city commission.

- (1) Site plan required. Each application for a conditional use permit shall be accompanied by a site plan meeting the requirements of section 118-1, and such other information as may be required for a determination of the nature of the proposed use and its effect on the comprehensive plan, the neighborhood and surrounding properties.
- (2) Expiration of Orders of Planning Board ~~Time limitations.~~
 - a. An applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which a conditional use was granted to obtain a full building permit, a certificate of occupancy, a certificate of use or a certificate of completion, whichever occurs first. The foregoing 18-month time period, or lesser time period, includes the time period during which an appeal of the decision of the planning board may be filed. If the applicant fails to obtain a full building permit within 18 months, or such lesser time period as is specified, of the board meeting date at which a conditional use was granted and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the conditional use shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the planning board, provided the applicant submits a request in writing to the planning and zoning director no later than 90 calendar days after the expiration of the original approval, showing good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments. ~~Notwithstanding the foregoing, in the event the original decision of the planning board, with respect to a conditional use request, is timely appealed, the applicant shall have 18 months, or such lesser time as may be specified by the board, from the date of final resolution of all administrative and/or court proceedings to obtain a~~

~~full building permit, a certificate of occupancy, a certificate of use or a certificate of completion, whichever occurs first. This tolling provision shall only be applicable to the original approval of the board and shall not apply to any subsequent requests for revisions or requests for extensions of time.~~

Please refer to 118-9 relating to appealed orders, and tolling.

~~b. Time limitations for adult congregate living facilities:~~

- ~~1. Approval of an adult congregate living facility under the conditional use procedures shall become null and void if a building permit has not been issued within one year after the date of approval. Such conditional use shall become null and void if a certificate of occupancy, certificate of completion or an occupational license is not issued within one year after the building permit is issued.~~
- ~~2. When extenuating circumstances or compelling reasons prevent the applicant from complying with conditions of approval within the above stated time periods, the applicant may submit a request to the planning board which may approve one extension of time of up to three months to obtain a building permit, or one extension of time of up to six months to complete all construction work and obtain a certificate of occupancy, certificate of completion or occupational license.~~
- ~~3. The public notice requirements shall be satisfied by placing the request on the board's agenda. Appeal of the board's decision shall be to the city commission. A five sevenths vote of the commission shall be required to overrule a decision of the planning board relating to an extension of time requested. The appeal shall be filed within 30 days of the date on which the board's decision is reached.~~

~~* * *~~

SECTION 8. That Chapter 118, "Administration And Review Procedures," Article IV "Conditional Use Procedures," at Section 118-197, "Review of conditional use decisions", is hereby amended, as follows:

Sec. 118-197. – Reserved. Review of conditional use decisions.

- ~~(a) An applicant may appeal a decision of the planning and zoning director to the planning board pursuant to the requirements of Section 118-9, within 15 days of the date on which the director reached a decision on the conditional use application. The appeal shall be placed on the planning board agenda within 45 days of receipt of the appeal.~~
- ~~(b) In order to reverse, amend, or modify a conditional use decision of the planning and zoning director, the board shall find that the director did not do one of the following:
 - ~~(1) Provide procedural due process;~~
 - ~~(2) Observe essential requirements of law; or~~
 - ~~(3) Base his/her decision upon substantial competent evidence.~~~~

~~The board shall issue a written order setting forth its decision, which shall be promptly mailed to all parties to the appeal.~~

- ~~(c) An applicant, the city manager, on behalf of the administration, the owner of property located within 375 feet of the subject property, and in the case of a historic site or property located within a historic district, Miami Design Preservation League and Dade Heritage Trust may seek review of a conditional use decision of the planning board. Review of a conditional use decision of the planning board shall be to a court of competent jurisdiction by petition for writ of certiorari.~~
- ~~(d) Any review stays all work on the premises and all proceedings including a request for a building permit, certificate of completion or occupational license.~~

SECTION 9. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-258, "Building permit application", is hereby amended, as follows:

Sec. 118-258. - Building permit application.

* * *

- (c) Expiration of orders of the Design Review Board. No building permit, full building permit or phased development permit shall be issued for any plan subject to design review except in conformity with the approved plans. The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which design review approval was granted to obtain a full building permit or a phased development permit. The foregoing 18-month time period includes the 20-day time period during which an appeal of the decision of the design review board may be filed, pursuant to the requirements of Section 118-9. If the applicant fails to obtain a full building permit or a phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which design review approval was granted, and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, all staff and board approvals shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the board, at its sole discretion, provided the applicant submits a request in writing to the planning director no later than 90 calendar days after the expiration of the original approval, showing good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments. ~~Notwithstanding the foregoing, in the event the original decision of the design review board is timely appealed, or there is an appeal of an approval from the board of adjustment and/or the planning board that is a requirement of the original decision of the design review board, and such appeal is filed within 20 days of the decision of the board of adjustment and/or the planning board, the applicant shall have 18 months, or such lesser time as may be specified by the design review board, from the date of final resolution of all administrative and/or court proceedings to obtain a full building permit or phased development permit. This tolling provision shall only be applicable to the original approval of the board and shall not apply to any subsequent requests for revisions or requests for extensions of time.~~

Please refer to 118-9 relating to appealed orders, and tolling.

SECTION 10. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-260, "Special review procedure", is hereby amended, as follows:

Sec. 118-260. – Administrative Review Procedures~~Special review procedure~~.

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

The director's decision shall be based upon the criteria listed in this article. The applicant may appeal a decision of the planning director to the design review board, pursuant to the procedural requirements of Section 118-9, ~~pursuant to all application and notice requirements. The applicant shall be responsible for providing and effectuating all noticing requirements, according to planning department procedures, as well as the duplication of all pertinent plans and exhibits for distribution to the board.~~

SECTION 11. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-261, "Rehearings", is hereby amended, as follows:

Sec. 118-261. Reserved. – ~~Rehearings.~~

~~The design review board may hear a petition for rehearing by any person identified in section 118-262. The board may rehear a case, take additional testimony and either reaffirm their previous decision or issue a new decision reversing or modifying their previous decision. The petition for rehearing must demonstrate to the board that (i) there is newly discovered~~

evidence which will probably change the result if a rehearing is granted, or (ii) the board has overlooked or failed to consider something which renders the decision issued erroneous. A petition for rehearing must be filed on or before the fifteenth day after the date of rendition of the board's order. For purposes of this article, the "date of rendition" shall be the date upon which a signed, written order is filed with the board's clerk, and an order shall be deemed "filed" when a fully executed order is returned to, and is in the possession of, the clerk. An order will issue on any petition for rehearing. Notice of the rehearing shall be according to section 118-254 herein and shall be the responsibility of the person requesting the rehearing.

SECTION 12. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-262, "Review of design review decisions", is hereby amended, as follows:

Sec. 118-262. Reserved.—Review of design review decisions.

- (a) ~~The applicant, or the city manager on behalf of the city administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the design review board by the city commission, except that orders granting or denying a request for rehearing shall not be reviewed by the commission. For purposes of this section, "affected person" shall mean either (i) a person owning property within 375 feet of the applicant's project reviewed by the board, or (ii) a person that appeared before the design review board (directly or represented by counsel), and whose appearance is confirmed in the record of the design review board's public hearing(s) for such project. The review shall be based on the record of the hearing before the design review board, shall not be a de novo hearing, and no new, additional testimony shall be taken. The request shall be in writing, include all applicable fees, shall be by or on behalf of a named appellant(s), shall state the factual bases and legal argument in support of the appeal, and shall be submitted to the city clerk on or before the 20th day after the date of rendition of the board's order. However, in the event that a petition for rehearing is filed pursuant to section 118-261, the time for filing a request shall be on or before the 20th day after the date of rendition of the board's order on the petition. Upon receipt of the request, the city clerk shall place the request for review on the city commission agenda. The city commission shall set a date and time for a hearing. Notice of the review shall be according to section 118-254, except that there shall be no requirement for mailed notification regarding the subject review. A full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition, along with a written statement identifying those specific portions of the transcript upon which the party filing it will rely for purposes of the appeal. The verbatim transcript and written statement, or if represented by legal counsel, appropriate legal briefs, shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal.~~
- (b) ~~In order to reverse, or remand for amendment, modification or rehearing, any decision of the design review board, the city commission shall find that the design review board did not do one of the following:~~
- ~~(1) Provide procedural due process;~~
 - ~~(2) Observe essential requirements of law; or~~
 - ~~(3) Base its decision upon substantial competent evidence.~~

In order to reverse, or remand a five-sevenths vote of the city commission is required. The city commission's decision shall be set forth in a written order which shall be promptly mailed to all parties to the review.

~~(c) Appeal from a decision of the city commission shall be to a court of competent jurisdiction by petition for writ of certiorari in accordance with the Florida Rules of Appellate Procedure.~~

SECTION 13. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-263, "Stay during rehearings/reviews/appeals", is hereby amended, as follows:

Sec. 118-263. Reserved – Stay during rehearings/reviews/appeals.

~~(a) The filing of a request for rehearing pursuant to section 118-261 or for review pursuant to section 118-262 and/or the initiation of court proceedings challenging or appealing a design review board decision pertaining to a project shall stay the issuance of any full building permit or phased development permit and the running of the required time period to obtain a full building permit or phased development permit for the project in question until the final resolution of all administrative and/or court proceedings.~~

~~(b) Notwithstanding subsection (a) of this section, nothing herein shall prevent the issuance of building permits or partial building permits necessary to prevent imminent peril to life, health or property, as determined by the building official.~~

SECTION 14. That Chapter 118, "Administration And Review Procedures," Article VII "Procedures for Variances," at Section 118-352, "Procedure", is hereby amended, as follows:

Sec. 118-352. – Reserved. Procedure.

~~(a) Filing period. Every application for a variance, an after the fact variance or an appeal from an administrative decision shall be filed within 30 days from the date of the refusal of a permit by, notice of violation, ruling, decision or determination of, the building official or other administrative official. If the applicant or appellant receives notice of the above by mail, then the applicant or appellant shall have an additional five days in which to apply for an appeal or after the fact variance.~~

* * *

SECTION 15. That Chapter 118, "Administration And Review Procedures," Article VII "Procedures for Variances," at Section 118-358, "Appeal of variance decision", is hereby amended, as follows:

Sec. 118-358. Reserved. – Appeal of variance decision.

~~The decision of the board of adjustment, historic preservation board, or design review board, solely, with respect to variances shall be final. There shall be no further review of the variance except by resort to a court of competent jurisdiction by petition for writ of certiorari.~~

SECTION 16. That Chapter 118, "Administration And Review Procedures," Article IX "Nonconformances," at Section 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses", is hereby amended, as follows:

Sec. 118-395. - Repair and/or rehabilitation of nonconforming buildings and uses.

* * *

(b) Nonconforming buildings.

* * *

(2) Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official, shall be subject to the following conditions:

* * *

e. Development regulations for buildings not located within a designated historic district and not an historic site.

* * *

3. For purposes of this subsection, the planning director, or designee shall make a determination as to whether a building is architecturally significant according to the following criteria:

- i. The subject structure is characteristic of a specific architectural style constructed in the city prior to 1965, including, but not limited to, vernacular, Mediterranean revival, art deco, streamline moderne, post-war modern, or variations thereof;
- ii. The exterior of the structure is recognizable as an example of its style and/or period, and its architectural design integrity has not been modified in an irreversible manner; and
- iii. Exterior architectural characteristics, features, or details of the subject structure remain intact.

A property owner may appeal any determination of the planning director, or designee relative to the architectural significance of a building constructed prior to 1965 to the design review board, in accordance with the requirements and procedures pursuant to the requirements of Section 118-9. ~~article VI herein.~~

* * *

SECTION 17. That Chapter 118, "Administration And Review Procedures," Article IX "Nonconformances," at Section 118-397, "Existence of a nonconforming building or use", is hereby amended, as follows:

Sec. 118-397. - Existence of a nonconforming building or use.

(a) The planning and zoning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation

in addition to the data presented on the city's building card, occupational license or any other official record of the city.

- (b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of Section 118-9. ~~after public notice and hearing and in accordance with the procedures set forth in section 118-134.~~ In making the determination the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

SECTION 18. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," at Section 118-532, "Proceedings before the historic preservation board", is hereby amended, as follows:

Sec. 118-532. - Proceedings before the historic preservation board.

* * *

- (f) Timeframes to obtain a building permit. The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which a certificate of appropriateness was issued to obtain a full building permit or a phased development permit. The foregoing 18-month time period, or such lesser time as may be specified by the board, includes the time period during which an appeal of the decision of the historic preservation board may be filed. If the applicant fails to obtain a full building permit or a phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which a certificate of appropriateness was granted and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the certificate of appropriateness shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the historic preservation board, at its sole discretion, provided the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the original approval, setting forth good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments. ~~Notwithstanding the foregoing, in the event the original decision of the historic preservation board is timely appealed, or there is an appeal of an approval from the board of adjustment and/or the planning board that is a requirement of the original decision of the historic preservation board, and such appeal is filed pursuant to the requirements of Section 118-9. Rehearing and appeal procedures, within 20 days of the decision of the board of adjustment and/or the planning board, the applicant shall have 18 months, or such lesser time as may be specified by the historic preservation board, from the date of final resolution of all administrative and/or court proceedings to obtain a full building permit or phased development permit. This tolling provision shall only be applicable to the original approval of the board and shall not apply to any subsequent requests for revisions or requests for extensions of time.~~

Please refer to 118-9 relating to appealed orders, and tolling.

SECTION 19. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," at Section 118-536, "Variances prohibited", is hereby amended, as follows:

Sec. 118-536. - Variances prohibited.

No variances shall be granted by the zoning board of adjustment from any of the provisions or requirements of this section; provided, however, the foregoing prohibition shall not limit or restrict an applicant's right to a rehearing or to appeal decisions of the historic preservation board pursuant to the requirements of Section 118-9. Rehearing and appeal procedures. as provided in this article.

SECTION 20. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," at Section 118-537, "Rehearings and appeals", is hereby amended, as follows:

Sec. 118-537. Reserved. - Rehearings and appeals.

~~(a) Rehearings.~~

~~(1) The historic preservation board may consider a petition for rehearing by the applicant, the owner(s) of the subject property, the city manager, an affected person, Miami Design Preservation League, or Dade Heritage Trust. For purposes of this section, "affected person" shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project. The petition for rehearing must demonstrate to the board that:~~

- ~~a. There is newly discovered evidence which is likely to be relevant to the decision of the board;~~
- ~~b. The board has overlooked or failed to consider something which renders the decision issued erroneous; or~~
- ~~c. The board's action or order:

 - ~~1. Took place after May 11, 1995 and is actionable under the Bert J. Harris, Jr. Private Property Rights Protection Act, F.S. § 70.001 et seq., (referred to herein as the "Harris Act"); and~~
 - ~~2. Inordinately burdens an existing use of the applicant's real property or a vested right to a specific use of the applicant's real property (referred to herein as a "Harris Act claim").~~~~

~~As used herein, the phrases "inordinate burden" or "inordinately burden," "existing use" and "vested right to a specific use" shall have same meanings ascribed to such phrases within the Harris Act.~~

~~(2) A petition for rehearing shall be in writing, shall be by or on behalf of a named appellant(s), and shall be submitted to the planning director on or before the fifteenth day after the date of rendition of the board's order; however, in cases where a condition imposed by the board is not followed by the applicant or is incapable of being done~~

~~within this 15 day time frame, a petition for rehearing may be filed within 60 days of the date of rendition of the order imposing the condition. For purposes of this article, the "date of rendition" shall be the date upon which a signed, written order is filed with the board's clerk, and an order shall be deemed "filed" when a fully executed order is returned to, and in the possession of, the clerk. In the event the petition is based on a Harris Act claim, the petition shall include the following documentation which shall be submitted no later than 15 days after the submission of the petition for rehearing:~~

- ~~a. A bona fide, valid appraisal supporting the claim of inordinate burden and demonstrating the loss, or expected loss, in fair market value to the real property as a result of the board's action;~~
- ~~b. All factual data described in subsection 118-564(c); provided, however, in the event all or any portion of the factual data was available to the applicant prior to the conclusion of the public hearing before the historic preservation or joint design review board/historic preservation board and the applicant failed to furnish same to the board's staff as specified in subsection 118-564(c), then, the board may, in its discretion, deny the applicant's request to introduce such factual data;~~
- ~~c. A report prepared by a licensed architect or engineer analyzing the financial implications of the requirements, conditions or restrictions imposed by the board on the property or development proposed by the applicant with respect to which the applicant is requesting a rehearing;~~
- ~~d. A report prepared by a licensed architect or engineer analyzing alternative uses for the real property, if any;~~
- ~~e. A report prepared by a licensed architect or engineer determining whether, as a result of the board action, the owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable; and~~
- ~~f. A report prepared by a licensed architect or engineer addressing the feasibility, or lack of feasibility, of effectuating the board's requirements, conditions or restrictions and the impact of same on the existing use of the real property or a vested right to a specific use of the real property.~~

~~(3) In the event that any of the documentation required in subsection (a)(2) of this section is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file an affidavit stating the information which cannot be obtained and describing the reasons why such information cannot be obtained: provided, however, neither failure to retain a professional to prepare the required documentation nor the requirement to pay a fee for the preparation of such required documentation shall be sufficient to excuse an applicant from the requirements listed in subsection (a)(2) of this section. Evidence, testimony and information establishing, and/or disproving, the inordinate burden may be introduced by the applicant, the board's staff and city staff, the public, or any other party, and considered by the board.~~

~~(4) Notice requirements for a rehearing shall be identical to the notice requirements for the original hearing and shall be the responsibility of the party filing the petition. The board may rehear a case, take additional testimony and either reaffirm its previous decision or issue a new decision reversing or modifying the previous decision. If the petition is~~

~~based on a Harris Act claim and the board concludes that the action or order inordinately burdens an existing use of the applicant's real property or a vested right to a specific use of the applicant's real property, then the board shall amend or modify the action or order, in whole or in part, to eliminate the inordinate burden.~~

~~(b) Appeals.~~

~~(1) The applicant, the owner(s) of the subject property, the city manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the board's decision to a special master appointed by the city commission. For purposes of this section, "affected person" shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project. The appeal shall be based on the record of the hearing before the board, shall not be a de novo hearing, and no new, additional testimony shall be taken. The appeal shall be in writing, shall be by or on behalf of a named appellant(s), and shall be submitted to the city clerk on or before the twentieth day after the date of rendition of the board's order. However, in the event that a petition for rehearing is filed pursuant to subsection (a), above, the time for filing an appeal to the special master shall be on or before the twentieth day after the date of rendition of the board's order regarding the petition. Within 30 days of receipt of the appeal, the city clerk shall submit the appeal to the special master who shall set a date and time for hearing the appeal. Notice requirements for the hearing shall be identical to the notice requirements for the original decision upon which the appeal is based, except that there shall be no requirement for mailed notification regarding the subject appeal. A full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition; said verbatim transcripts shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal. The appeal shall require a fee as provided in appendix A.~~

~~(2) In order to reverse, amend, or modify any decision of the board, the special master shall find that the board did not do one of the following:~~

- ~~a. Provide procedural due process;~~
- ~~b. Observe essential requirements of law; or~~
- ~~c. Base its decision upon substantial competent evidence.~~

~~Within ten days of the date of the hearing the special master shall issue a written order setting forth his/her decision, which shall be promptly mailed to all parties to the appeal.~~

~~(3) Special masters appointed to hear appeals pursuant to this subsection (b) shall be attorneys who are members in good standing of the Florida Bar and have expertise in the area of historic preservation. Special masters shall serve terms of three years, provided however, that they may be removed without cause upon a majority vote of the city commission. Compensation for special masters shall be determined by the city commission.~~

~~(4) An applicant, the owner(s) of the subject property, the city manager, Miami Design Preservation League, Dade Heritage Trust or an affected person may appeal the decision to a court of competent jurisdiction by petition for writ of certiorari.~~

SECTION 21. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," Division 3 "Certificate of Appropriateness/Certificate of Dig/Certificate of Appropriateness for Demolition," at Section 118-563, "Review procedure", is hereby amended, as follows:

Sec. 118-563. - Review procedure.

* * *

(e) ~~The applicant, the owner(s) of the subject property, Miami Design Preservation League, Dade Heritage Trust or an aggrieved party may appeal a~~Any decision of the staff regarding subsections 118-563(d)(1) and subsection 118-563(d)(3), may be appealed to the historic preservation board pursuant to the requirements of Section 118-9, by filing a notice of appeal with the planning director within five business days of the date of posting of the staff decision. No permit shall be issued for work prior to expiration of the appeal period or final disposition of any appeal. ~~For purposes of this subsection, any individual or group referred to in subsection 118-503(a) shall be considered an aggrieved party. All appeals shall be considered by the historic preservation board at the next available meeting date, pursuant to all application and notice requirements. The party filing the appeal shall be responsible for providing and effectuating all noticing requirements, subject to planning department procedures, as well as the duplication of all pertinent plans and exhibits.~~

* * *

SECTION 22. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," Division 3 "Certificate of Appropriateness/Certificate of Dig/Certificate of Appropriateness for Demolition," at Section 118-564, "Decisions on certificates of appropriateness", is hereby amended, as follows:

Sec. 118-564. - Decisions on certificates of appropriateness.

* * *

(11) Expiration of order of Board. The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which a certificate of appropriateness for demolition was granted to obtain a full building permit or a phased development permit. The foregoing 18-month time period or such lesser time as may be specified by the board, includes the time period during which an appeal of the decision of the historic preservation board may be filed. If the applicant fails to obtain a full building permit or a phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which a certificate of appropriateness for demolition was granted and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the certificate of appropriateness for demolition shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the historic preservation board, at its sole discretion, provided the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the original approval, setting forth good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full

building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments. ~~Notwithstanding the foregoing, in the event the original decision of the historic preservation board with respect to a certificate of appropriateness for demolition is timely appealed, or there is an appeal of an approval from the board of adjustment and/or the planning board that is a requirement of the original decision of the historic preservation board, and such appeal is filed pursuant to the requirements of Section 118-9. — Rehearing and appeal procedures. — within 20 days of the decision of the board of adjustment and/or the planning board, the applicant shall have 18 months, or such lesser time as may be specified by the board, from the date of final resolution of all administrative and/or court proceedings to obtain a full building permit. This tolling provision shall only be applicable to the original approval of the board and shall not apply to any subsequent requests for revisions or requests for extensions of time.~~

Please refer to 118-9 relating to appealed orders, and tolling.

SECTION 23. That Chapter 118, “Administration And Review Procedures,” Article X “Historic Preservation,” Division 3 “Certificate of Appropriateness/Certificate of Dig/Certificate of Appropriateness for Demolition,” at Section 118-565, “Special review procedure”, is hereby amended, as follows:

* * *

Sec. 118-565. - Special review procedure.

For minor exterior structural repairs, alterations and improvements, associated with single-family homes located within designated historic districts, that are visible from a public way, or work that affects the exterior of the building associated with rehabilitations and additions to existing buildings, the planning director, or designee, shall have the authority to approve, approve with conditions or deny an application on behalf of the board. The director's decision shall be based upon the criteria listed in this article. Any appeal of the decision of the planning director shall be filed pursuant to the requirements of Section 118-9. - Rehearing and appeal procedures. ~~considered by the board at the next available regular meeting date.~~

SECTION 24. That Chapter 118, “Administration And Review Procedures,” Article X “Historic Preservation,” Division 5 “Single Family Ad Valorem Tax Exemption,” at Section 118-609, “Completion of work”, is hereby amended, as follows:

Sec. 118-609. - Completion of work.

* * *

- (e) If the planning director, or designee determines that the work as complete is not in compliance with the plans approved pursuant to city commission approval of the tax exemption, the applicant shall be advised that the final request for review of completed work has been denied. Such denial shall be in writing and provide a written summary of the reasons for the determination, including recommendations to the applicant concerning the changes to the proposed work necessary to bring it into compliance with the approved plans. The applicant may file an appeal of the decision of the planning director, or designee, pursuant to the requirements of Section 118-9. ~~within 15 days of such decision. The appeal~~

~~shall be in writing and shall be to the historic preservation board and shall set forth the factual and legal bases for the appeal.~~

SECTION 25. That Chapter 142 "Zoning Districts and Regulations." Article II "District Regulations, Division 2 "RS-1, RS-2, RS-3, RS-4 Single Family Residential Districts" at Section 142-108, Provisions for the demolition of single-family homes located outside of historic districts," is hereby established, as follows:

* * *

(b) Appeals. ~~The applicant or any property owner within 375 feet of the subject single-family home may appeal~~ The decision of the planning director, or designee, which shall bear the presumption of correctness, pertaining to the architectural significance of a single-family home, may be appealed to the design review board, pursuant to the requirements of Section 118-9. within ten days of the rendering of such decision. No demolition permit may be issued within any appeal period, and if an appeal is filed, while the appeal is pending. ~~The appeal shall be in writing, shall set forth the factual, technical, architectural, historic and legal bases for the appeal, and shall be to the design review board (DRB).~~

* * *

SECTION 26. 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 re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 27. REPEALER.

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

SECTION 28. SEVERABILITY.

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

SECTION 29. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this ____ day of _____, 2015.

MAYOR

ATTEST:

CITY CLERK

**APPROVED AS TO
FORM AND LANGUAGE**

& FOR EXECUTION

City Attorney

Date

First Reading:
Second Reading:

Verified by: _____
Thomas R. Mooney, AICP
Planning Director

Underscore denotes new language

~~Strikethrough~~ denotes removed language

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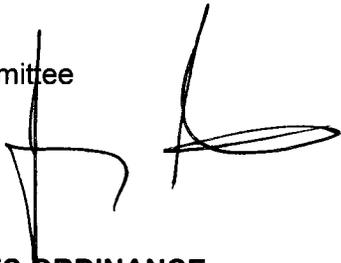
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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager 

DATE: October 7, 2015

SUBJECT: **DISCUSSION: TRAFFIC STUDIES ORDINANCE**

HISTORY

On June 10, 2015, at the request of Commissioner Micky Steinberg, the City Commission referred this item to the Land Use and Development Committee and the Neighborhoods Committee (Item C4H).

On June 17, 2015, the Land Use Committee directed the Administration to draft an Ordinance establishing broader requirements for the submission of traffic studies, and continued the matter to July 29, 2015.

On July 29, 2015 the Land Use Committee discussed the item and continued it to the September 9, 2015 meeting. The Committee also recommended that the City Commission refer the item to the Planning Board.

On September 2, 2015, the subject Ordinance was referred to the Planning Board.

On September 9, 2015, the Land Use Committee discussed the item and continued the matter to October 7, 2015, in order for the Administration to provide threshold traffic study standards for the Ordinance.

BACKGROUND / ANALYSIS

As part of the planning process for approval of private development projects, the City Code requires that, under certain conditions, the applicant prepare a traffic impact study for approval by the City. Below are excerpts from the City Code related to the provision of traffic studies in relation to applications reviewed by the Planning Department:

Sec. 118-6. - Use of, and cost recovery for, consultants for applications for development approval.

- (a) *Purpose and summary.* The City Commission declares that new procedures are required to provide for preparation and review of traffic and other technical

studies and/or reports to restore and instill confidence in the development approval process. Further, such new procedures are necessary to confirm that adverse effects of development are adequately evaluated for property owners, citizens, residents and taxpayers in the City of Miami Beach. The new procedures will provide for the creation and maintenance of an approved list of qualified consultants to provide impartial expertise for preparation and/or review of studies and reports required for assessment of impacts of applications for development approval, upon which applicants for development approval, affected citizens, and the city can rely.

(d) *Requirements for selection of a city consultant and procedures for payment.* Prior to the applicant submitting an application for development approval, the applicant shall meet with city staff to determine the types of studies and/or reports required for the proposed project, as well as the methodology to be followed as part of the production of the study.

- (1) When an applicant is required to submit, as part of an application for development approval, a traffic or any other technical study and/or report, the applicant may elect either:
 - A. To authorize the city to commission the study/report, to be prepared by a city-approved consultant selected by city staff from the approved list maintained by the procurement division; or
 - B. To prepare a required study/report using its own consultant.

The process described as part of the City Code has been recently modified to expedite the peer review process. Under the current process for Planning Board applications, the applicant retains a traffic engineering consultant who attends the pre-application meeting with City staff in order to discuss the methodology of the traffic study, prior to submittal. The City has a peer reviewer under contract to provide review of all traffic studies related to Planning Board Conditional Use applications.

At the pre-application meeting, the traffic study methodology is discussed and developed. Subsequent to the pre-application meeting, the applicant's traffic engineering consultant will submit to the City the written study methodology for approval prior to initiating the production of the study. At this meeting, the applicant is also informed of the cost of the peer review. A check in the amount indicated must be submitted to the City prior to initiating the peer review process.

Once a traffic study is submitted to the City as part of the Planning Board application, a copy is sent to the peer reviewer for review and comments. Within seven days after receiving the traffic studies, city transportation staff submits comments to the applicant. These comments are also coordinated with the peer reviewer.

The goal is to address all traffic/transportation issues related to a development project at least 20 days prior to the Planning Board meeting. After all the traffic related issues have been addressed, the Transportation Department submits a memorandum with

recommendations to the Planning Department. The Planning Department takes the transportation considerations into account in making a recommendation to the Planning Board, including adding specific conditions of approval if needed.

In many instances development projects are required to obtain both Conditional Use approval (from the Planning Board), as well as either Design Review Board or Historic Preservation Board approval. In these instances traffic impacts are addresses as part of the Planning Board application review.

Unlike Planning Board applications, Historic Preservation Board (HPB) and Design Review Board (DRB) applications follow a different review process. In general, the traffic impact resulting from a private development project is not a consideration in HPB and DRB applications. Thus, projects approved by the HPB and DRB are currently not required to conduct a traffic impact study as part of the initial Board review. As part of the Building Permit review process, the City can require that a traffic impact study be submitted. However at this point the permit plans have been fully developed and modifications to the plans can come at great expense to the applicant.

UPDATE

Planning and Transportation Departments have put together draft thresholds under which applications to the DRB and HPB would be required to submit a traffic impact study. While the level of review would not be as intense as the current process required as part of a Planning Board application, it would provide a sufficient level of assessment by the Transportation and Planning Departments in order to identify any major concerns or issues with an application, which could be addressed early in the development review process.

In the attached draft ordinance, the sections of the Land Development Regulations that would be best suited for DRB and HPB required traffic studies have been identified, as well as the specific thresholds for mandating the submission of a traffic study for these particular boards. Specifically, the following new language is proposed for both the DRB and HPB submission requirements:

- (1) Transportation Study and Mitigation Plan, which shall include strategies to mitigate traffic generated by the development, and shall encourage the use of alternative modes of transportation, in accordance with the following:
 - a. A traffic circulation analysis and plan, prepared by a Professional Traffic Engineer registered in the State of Florida, which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated, shall be required in the following instances:
 1. Within the City's Transportation Concurrency Management Areas (TCMA's), as amended from time to time, all new development projects exceeding 15,000 gross square feet.

2. Development projects that propose new floor area or an increase in floor area, and are located within a ½ mile radius from any roadway segment with a level of service E or F.
- b. Developments excluded from performing a Transportation Study and Mitigation Plan are limited to:
1. Single family homes.
 2. Multi-family projects (exclusive of mixed-use projects) with less than 15,000 gross square feet.

The proposal has been referred to the Planning Board, and is expected to be considered at the October 27, 2015 Planning Board meeting.

CONCLUSION

The Administration recommends that the Land Use and Development Committee discuss the proposal and provide appropriate policy direction. If there is consensus on the draft ordinance, it is further recommended that the Committee transmit a favorable recommendation to the Planning Board.


JLM/SMT/TRM/MB

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VERBAL REPORT



MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

To: Jimmy Morales, City Manager

From: Jonah Wolfson, Commissioner

Date: June 10, 2015

Re: **Commission Agenda Item - Consent Agenda - Legal Opinion Concerning Whether a Vacancy on the Historic Preservation Board Renders the Board Improperly Constituted and Without Power to Act, and Referral to the Land Use and Development Committee to Discuss an Amendment to Sec. 2-22(21) to Require the Mayor and City Commission to Fill Board Vacancies Within 90 Days.**

Please place on the June 10, 2015 City Commission Consent Agenda referring the following to the Land Use and Development Committee:

Issue: Whether a vacancy on the Historic Preservation Board renders the board improperly constituted and without power to act.

Summary Opinion: A vacancy on the Historic Preservation Board renders the board improperly constituted and without power to act.

Background: On March 16, 2015, the Historic Preservation Board ("HPB") issued an Order approving an application for a Certificate of Appropriateness for the construction of a four story building on a surface parking lot located at 426 Euclid Avenue, Miami Beach, Florida 33139 ("HPB File No. 7471"). However, on the date of the hearing, contrary to Sec. 118-103 requiring the board to be composed of seven members, the HPB was composed of only six members as the term of the required representative from the Miami Design Preservation League, Jo Manning, had expired on December 31, 2014. In response to a challenge concerning the improper composition of the HPB, the board determined that it had the authority to act so long as a quorum was present. The approval of HPB File No. 7471 has been challenged and is currently pending before the Special Master (Case No. HPSM 15-002).

Analysis: Sec. 118-103 provides "The historic preservation board **shall** be composed of seven members." (emphasis added.) The City Code mandates the HPB to be composed of

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Date 6-10-15

seven members, and a vacancy on the board means the board is not properly constituted and without power to act. In *A.C. Kibler, Beatrix Meyer-Burghagen, and Freedom of Choice Realty, Inc., v. Department of Professional Regulation*, 418 So.2d 1081 (Fla. 4th DCA 1982), the Fourth District Court of Appeal held, in part, that the probable cause panel of the Florida Board of Real Estate was not properly constituted and reversed the Order of the board. The Fourth District Court of Appeal found the following:

If this cause did not require reversal based on the Board's failure to accord the findings of the hearing examiner the proper presumption of validity, it would still require reversal based on the **improper constitution** and action of the probable cause panel. The Department contends that the statute and regulations are silent on the number of members required to form a probable cause panel. But Rule 21V-20.09 of the Florida Administrative Code, containing the operating rules of the Board, declares: "The probable cause panel shall be composed of not less than two members of the Board, one of which shall be a lay member of the Board." And Section 455.225(3), Florida Statutes (1981), describing discipline of professions and occupations, provides, "The [probable cause] panel... shall be composed of board members, but not more than one of the panel members shall be a lay member." Despite these clear requirements that there be at least two members, one broker and one lay person, the Board accepted the recommendation of a panel that consisted of only one Board member, Mrs. Bishop, who is a broker. The requirements quoted above were clearly violated by the Board.

Id. at 1083. (emphasis added). This case is on all fours. As in *A.C. Kibler*, the violation of the requirement that the HPB be composed of the requisite members rendered the board improperly constituted.

The confusion concerning this issue stems from a legal opinion issued by former City Attorney Jose Smith on February 15, 2013. The former City Attorney's opinion mischaracterizes the Florida Supreme Court holding in *Clark v North Bay Village*, 54 So.2d 240 (Fla. 1951), as well as Florida Attorney General Opinion AGO 2012-23. The opinion concludes that boards can continue to conduct business when a vacancy exists as long as the minimum quorum requirement is met.

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Clark v North Bay Village, 54 So.2d 240 (Fla. 1951)

The former City Attorney's opinion cites *Clark* for the purported proposition that it established the "general rule" concerning board vacancies, and that the "Supreme Court held that two vacancies on the five-member City Council did not prevent the Council from conducting business with its three remaining members constituting a quorum." Contrary to the holding in *Clark*, the former City Attorney's opinion states that the *Clark* opinion established the "general rule" concerning board vacancies, and that the vacancies did not prevent the Council from conducting business.

Initially, it is vital to note that the issue in *Clark* was not whether the Council could continue to conduct business with two vacancies. The sole question in *Clark* was "whether only two councilmen could constitute a quorum." *Id.* at 241. The holding in *Clark* was that "where the village charter provided that the village should be governed by a council of five, a majority of the council being necessary for a quorum, the vacancies... could not be deducted in ascertaining a quorum." *Id.* at 240. The Florida Supreme Court observed that "[s]hould we hold that a quorum is a majority of the remaining qualified councilmen, it would be possible for the two of their number to continue to govern the Village by their own design, or their failure or neglect to fill existing vacancies." *Id.* at 242.

The Florida Supreme Court also observed that:

The able Circuit Judge thought he should declare a quorum to be a majority of the remaining qualified councilmen, rather than a majority of the number of councilmen who by statutory declaration compose '*the Council*', because a contrary ruling would create a hiatus in the City Government.

It is our view that such hiatus can be remedied, or could have been avoided, by the remaining councilmen electing successors to McCracken and Ridings. There is no excuse for the existence of such hiatus. However, a **temporary hiatus is preferable** to creating a condition whereby two of the remaining councilmen, upon their caprice, whim or fancy, can govern the City until there may be another city election, in the face of the fact that the Charter provides that the Council shall be composed of five members and that a majority of '*the Council*' shall constitute a quorum.

Id. (emphasis added). The reasoning articulated in *Clark* supports the conclusion that a vacancy on a board that is statutorily required to be composed of a certain number of members is improperly constituted and without power to act. If the City Commission fails to fill vacancies, it is preferable for the board not to conduct business rather than to conduct business with a composition that contradicts and undermines the balance of interests contemplated by the composition mandates in the City Code which requires board members to be of specific professions and occupations, and possess certain knowledge and experience.

Florida Attorney General Opinion AGO 2012-23

The former City Attorney's opinion also cites Florida Attorney General Opinion AGO 2012-23. Like the *Clark* opinion, the Florida Attorney General's opinion is mischaracterized and does not support the former City Attorney's conclusion.

In AGO 2012-23, the Florida Attorney General was asked whether a nine-member governing body of a mobile home park recreation district could continue to operate and conduct business in the event of a vacancy. The former City Attorney's opinion states that "[t]he Attorney General opined that 'the [enabling] statute does not require the suspension of business upon the occurrence of a vacancy, but would appear to allow the board to continue to function and conduct district business while seeking a person to fill the vacancy on the board so long as a quorum is present.'" However, the following critical language from the Florida Attorney General's opinion was omitted, "[t]he district cannot contravene the statutory requirement of a nine-member board of trustees by conducting business in an on-going fashion with an eight-member board." In fact, the Florida Attorney General specifically avoided the issue by stating that "[t]his office cannot advise the board that it may continue to do business indefinitely with less than the statutorily prescribed number of board members."

Nevertheless, predicated upon the former City Attorney's flawed opinion – based on his misreading of the *Clark* opinion and Florida Attorney General Opinion AGO 2012-23 – the HPB interpreted the City Code to mean that it can indefinitely conduct business with a vacancy so long as a quorum is present. The HPB's interpretation has put the current City Attorney in the untenable position of defending the board's erroneous actions before the Special Master in HPSM 15-002. The HPB's interpretation, taken at face value, would mean that it could conduct business in perpetuity with one or more vacancies. This interpretation would effectively nullify and void the language in Sec. 118-103, that is, that "[t]he historic preservation board **shall** be composed of seven members." (emphasis added). This is an absurd conclusion.

Sec. 118-106 of the Code of the City of Miami Beach, Florida

The HPB interprets Sec. 118-103 and Sec. 118-106 in *pari materia* to mean that it can conduct business in perpetuity with one or more vacancies so long as a quorum is present. The quorum requirement for the HPB is the presence of four members of the board. *Id.* This interpretation turns the requirement of a seven member HPB composition on its head. The seven member composition is mandatory; not aspirational. The City Code may be read in *pari materia*, but it cannot be read in such a way as to render the plain and unambiguous language in Sec. 118-103 meaningless and of no effect. A principle tenet of statutory interpretation requires that "statutes that relate to the same subject must be read in *pari materia* and construed in such a manner as to give meaning and effect to each part." *Fla. Dep't of Education v. Cooper*, 858 So. 2d 394, 396 (Fla. 1st DCA 2003); citing *Palm Beach County Canvassing Bd. V. Harris*, 772 So. 2d 1273 (Fla. 2000). "Courts should not construe a statute so as to render any term meaningless." *Id.*

Despite the HPB's asserted authority to interpret Sec. 118-103 in a manner other than what is consistent with said section's plain language, it is well-established that the plain statutory language controls. *Karell v. Miami Airport Hilton*, 668 So. 2d 227, 229 (Fla. 1st DCA 1996) ([it is the duty of the court] "to interpret and apply the statutes as written, so far it is possible to do so, and not as one party or the other would like to have them written."); see also *Anderson Columbia v. Brewer*, 994 So. 2d 419, 421 (Fla. 1st DCA 2008) ("we are bound to give effect to legislative intent as expressed through the plain statutory language ... only when that language is ambiguous or of doubtful meaning should other considerations entire into the analysis"). Further, although an agency's interpretation of the statute that it is charged with enforcing is entitled to great deference, if the agency's interpretation conflicts with the plain and ordinary meaning of the statute, deference is not required. Moreover, when the language of the statute under interpretation is unambiguous and has a plain and ordinary meaning, the plain meaning should be given effect. *Osorio v. Board of Professional Surveyors and Mappers*, 898 S.O.2d 188, 190 (2005).

"Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity." *State v. Egan*, 287 So. 2d 1, 4 (Fla. 1973). This is simply not the case here. The language in Sec. 118-103, that is, that "[th]e historic preservation board **shall** be composed of seven members" is clear, unambiguous, and unmistakable. An inherently unreasonable and improper interpretation is not entitled to any deference. *Mayo Clinic of Jacksonville v. Dep't of Prof. Reg., Bd. of Medicine*, 625 So. 2d 918, 919 (Fla. 1st DCA 2003).

Conclusion: It is my opinion, as an attorney member of the City Commission, that a plain reading of Sec. 118-103 requires that a vacancy on the HPB renders it improperly constituted and without power to act, particularly where the vacancy is the result of an expired term rather than a vacancy resulting from a sudden death, resignation or the like. However, I am mindful of the practical difficulties and consequences of a rigid or mechanical application of Sec. 118-103. Accordingly, I am proposing the following Ordinance which requires board vacancies to be filled within 90 days. It is my firm belief that the Ordinance strikes an equitable balance between preserving the public interest in faithfully observing the City Code, and a board's ability to continue doing business during a temporary vacancy.

Please feel free to contact my Aide, Brett Cummins at x6437, if you have any questions.

JW

CHAPTER 2 – ADMINISTRATION

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2, ENTITLED "ADMINISTRATION," OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ARTICLE III, ENTITLED "AGENCIES, BOARDS AND COMMITTEES," DIVISION 1, ENTITLED "GENERALLY," SECTION 2-22 THEREOF, ENTITLED "GENERAL REQUIREMENTS," BY CREATING A REQUIREMENT THAT VACANCIES ON THE BOARD OF ADJUSTMENT, DESIGN REVIEW BOARD, HISTORIC PRESERVATION BOARD, PLANNING BOARD BE FILLED WITHIN 90 DAYS OF VACANCY AND PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the City Code provides that the Board of Adjustment ("BoA") shall consist of seven voting members, and specifies the required composition of the board; and,

WHEREAS, the City Code provides that the Design Review Board ("DRB") shall be composed of seven regular members, and specifies the required composition of the board; and,

WHEREAS, the City Code provides that the Historic Preservation Board ("HPB") shall be composed of seven members, and specifies the required composition of the board; and,

WHEREAS, the City Code provides that the Planning Board ("PB") shall be composed of seven regular voting members, and specifies the required composition of the board; and,

WHEREAS, notwithstanding the plain and unambiguous language of the City Code mandating that each of the above referenced boards be composed of seven members, the BoA, DRB, HPB, and PB collectively, the "Boards" have interpreted their respective quorum requirements to mean that vacancies exist indefinitely and that they can continue to conduct business so long as a quorum is present, and,

WHEREAS, the Boards' interpretation is contrary to the plain and unambiguous language of the City Code which specifically provide that the Board's "shall" be composed of seven members; and,

WHEREAS, the Boards' interpretation undermines the balance of interests contemplated by the Boards' composition requirements in the City Code, and is unfair and prejudicial to applicants appearing before the Boards who are entitled to and expect hearings before boards composed of members who possess the discipline of professions and occupations required by the City Code; and,

WHEREAS, it is the duty of the Mayor and City Commission to appoint members to the Boards upon the occurrence of a vacancy or expiration of a term;

WHEREAS, the Mayor and City Commission recognize that it may be impractical to fill a board vacancy upon occurrence or expiration of a term and believe that a requirement that a vacancy be filled within 90 days is a fair and reasonable amount of time for appointments to be made, and an equitable balance between preserving the public interest in faithfully observing the City Code, and the Board's ability to continue doing business during a temporary vacancy.

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

Section 1. That Chapter 2, "Administration," Article III, "Agencies, Boards and Committees," Division 1, "Generally," of the Code of the City of Miami Beach, Florida, is hereby amended as follows:

**CHAPTER 2
ADMINISTRATION**

* * *

**ARTICLE III
AGENCIES, BOARDS AND COMMITTEES**

* * *

**DIVISION 1
GENERAL**

* * *

Sec. 2.22(21). Filling special vacancies on certain boards.

a. Whenever a vacancy occurs on the Board of Adjustment, Planning Board, Design Review Board, or Historic Preservation Board prior to the end of a member's term of office due to resignation, termination, removal or death, a special vacancy exists and said member shall cease to hold office immediately upon such resignation, termination, removal or death. After the City Clerk has been notified in writing by the board's liaison that a special vacancy exists, a notice of special vacancy shall be posted at City Hall, on the City's website, and in any other place(s) that may be designated by the City Commission by resolution. The notice of special vacancy shall also be published once in a newspaper of general circulation in the City. An appointment to any of the above-referenced boards to fill a special vacancy shall not be made for at least ten (10) business days after the newspaper publication of the notice of special vacancy.

b. Notwithstanding subsection (21)a., the City Commission may, if it finds that an emergency exists, authorize the temporary filling of a special vacancy by resolution. A person appointed to fill the special vacancy shall serve only on an acting basis, but with all of the powers and duties of board membership, until a final appointment is made.

c. Notwithstanding anything seemingly to the contrary in the City Code, whenever a vacancy exists on the Board of Adjustment, Design Review Board, Historic Preservation Board, or Planning Board for a period of 90 days for any reason whatsoever, including the 60 day period after the expiration of a term of office pursuant to Sec. 2-24, such

board shall be deemed to be improperly constituted and shall not have the power to act until such time as the vacancy is filled.

SECTION 2. CODIFICATION.

It is the intention of the City Commission, 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 as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 3. REPEALER.

All ordinances or parts of ordinances and all section and part of sections 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 _____, 2015.

ATTEST:

RAFAEL GRANADO, CITY CLERK

PHILIP LEVINE, MAYOR

(Sponsored by Vice Mayor Jonathan Wolfson)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

Underscore denotes new language

**ITEM
SEVEN**

VERBAL REPORT

Services events and submit the applications to secure them to perform. Fort Lauderdale stopped the Air And Sea Show before the current one started and they were in discussion with them; they also went up to Daytona Beach. The Air Show promoters will only do it if they are subsidized by the local jurisdiction or municipality, or if the municipality helps secure the sponsors. The cost on the City's side is approximately half a million to a million dollars.

Discussion held.

Commissioner Steinberg stated that it is a great idea, but the Out Games are coming in 2017, and she thinks it will be a wonderful event for the City. She suggested doing something in 2016 leading up to the upcoming event in 2017.

Discussion continued.

Commissioner Weithorn suggested reaching out to Fort Lauderdale to get some feedback about this event.

Discussion held.

4:27:45 p.m.

* R9L Discussion Regarding Amending The City Charter And City Code To Provide That, Instead Of The Board Of Adjustment, The Chief Special Master Shall Hear And Decide Appeals From, And Review, Any Order, Requirements, Decision Or Determination Made By An Administrative Official Charged With The Enforcement Of The Zoning Ordinance Of The City Of Miami Beach.

(Sponsored by Vice Mayor Jonah Wolfson)

(On April 15, 2015 item was requested to come back in June 2015 - R9P)

ACTION: Discussion held. Vice-Mayor Wolfson moved the item for referral to the LUDC; seconded by Commissioner Malakoff; Voice-vote: 7-0. **Thomas Mooney to place on the committee agenda and to handle.**

REFERRAL:

Land Use and Development Committee

Vice-Mayor Wolfson explained that this item was to have Special Master John C. **Dellagloria** handle appeals for the Board of Adjustment, and he explained that the City is doing appeals from HPB, so he thought this good be a good place to deal with the BOA appeals.

Commissioner Malakoff believes that the Board of Adjustment is well versed in these various areas of enforcement of the Zoning Ordinance of the City. The Chief is not necessarily trained or able in Land Use issues. She does not want to see the Special Master docket clogged with hearings and she would not be in favor of taking this away from the BOA.

Vice-Mayor Wolfson explained that it is the same analysis to give the job to the Special Master for HPB; that individual is an attorney that can apply the law presented to him/her. He suggested, since they will talk about Charter changes at Land Use, referring this item to LUDC.

Raul J. Aguila, City Attorney, explained that Vice-Mayor Wolfson's intent is going towards the idea that this Commission seems to be going in the direction of applying uniform procedures for Land Use Boards; oftentimes, what they found in the Land Development Regulations, is that with regard to notice issues, appeal issues, board membership qualifications and residential issues, it differs from board to board. Vice-Mayor Wolfson is proposing to have the same proposal and the

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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: Jimmy L. Morales, City Manager

DATE: October 07, 2015

SUBJECT: **DISCUSSION ON PROPOSED AMENDMENTS TO THE CITY CODE PERTAINING TO ALCOHOLIC BEVERAGE ESTABLISHMENTS IN THE ALTON ROAD OVERLAY AND ALONG 17TH STREET FACING THE PALM VIEW NEIGHBORHOOD;**

HISTORY

On July 29, 2015, as part of a discussion pertaining to proposed amendments to the City Code regarding alcoholic beverage establishments, the Land Use and Development Committee (LUDC) directed the administration to study ways to buffer the West Avenue residential neighborhoods from alcoholic beverage establishments on Alton Road. It was further requested that the matter be brought back to the LUDC on September 9, 2015 as a separate discussion.

On September 9, 2015, the LUDC discussed a proposed Alton Road alcoholic beverage overlay district and directed administration to prepare a draft ordinance and bring it back to LUDC on October 7, 2015 for further discussion.

BACKGROUND

Alton Road Overlay

Staff has seen a shift in the type of development on Alton Road from a traditionally service oriented corridor to a mixture of services, retail, restaurants and bars. While most of Alton Road between Sixth (6th) Street and Dade Boulevard is commercially zoned (CD-1 and CD-2), the barrier between residential zoning (RM-1 and RM-2) is often only an alley.

Certain measures have been gradually worked into the zoning code for the other parts of the City (e.g. North beach, South of Fifth, and Sunset Harbor) that have a mixture of residential development and destination eating and drinking establishments. However, new establishments on along Alton Road do not currently have the same type of measures.

Immediately to the west of Alton Court (the alley west of Alton Road), is the West Avenue neighborhood characterized by residential mid-rise and low-rise apartment buildings. Similarly, on the east side of Alton Road, the Flamingo Park Historic District is located directly across the alley (Lenox Court.) The development pattern east of Lenox Court is mainly low-rise residential uses (RM-1), with single family homes between 12th and 15th Streets.

17th Street

On the south side of 17th Street, which is commercially zoned (CD-3), between Meridian Avenue and Alton Road there is the potential for more intense commercial development. This area is directly across the street from residential uses (RM-1 and RS-4) in the Palm View Historic District. Currently, there are not special restrictions for commercial eating and drinking establishments in this area of 17th Street.

Operational hours and other regulations have been proposed citywide for outdoor bar counters in the alcohol ordinance that is pending City Commission consideration for a possible referral to the Planning Board. However, these proposed regulations are more general and do not create specific standards for residential uses in close proximity to eating, drinking and entertainment establishments that do not meet the thresholds of a Neighborhood Impact Establishment.

ANALYSIS

Currently, alcoholic beverage and entertainment establishments not exceeding specified occupational load thresholds do not require Conditional Use review by the Planning Board in most commercial zoning districts. These thresholds are less than 300 persons for eating and drinking establishments without entertainment (or less than 6,000 SF, if the new thresholds are adopted) or less than 200 persons for establishments with entertainment (or less than 3,500 SF, if the new thresholds are adopted).

The CD-1 and CD-2 zoning districts between West Avenue and Lenox Court from sixth (6th) Street to Dade Boulevard, and the CD-3 district between Lincoln Lane North and 17th Street from Meridian Avenue to Lenox Court, both border low intensity, non-transient residential districts. As such, residents from these areas have been expressing a strong desire for operational restrictions on eating and drinking establishments, particularly with regard to the hours of operation.

The administration recommends that more restrictive hours of operation be explored, but reaching a consensus on the imposition of additional limits on hours of operation is complex and will likely require additional study and outreach. In this regard, a number of existing establishments along Alton Road are already (and in some cases have been for many years) permitted to operate until 2:00 am or 5:00 am. Creating a much stricter standard across the board for new establishments will likely require more research and outreach.

Therefore, it is recommended, pursuant to the attached draft ordinance, that, as a first step, an extra level of oversight by the Planning Board for medium-large restaurants, stand-alone alcoholic beverage establishments, and entertainment establishments be required within the these areas. Specifically, using the Sunset Harbor area as a model, the threshold for Conditional Use review could be lowered for restaurant uses so that only those eating establishments that are neighborhood oriented in size could be permitted as of right. Additionally, any stand-alone drinking establishment would require Conditional Use approval.

There is already precedent for such a level of review, as the CD-2 areas of North Beach require Conditional Use approval for stand-alone bars and Sunset Harbor prohibits outdoor

entertainment establishments, neighborhood impact establishments and open air entertainment establishment. Additionally, in the CD-2 areas of Sunset Harbor, a lower occupational load threshold has been established for Conditional Use review of restaurants and alcoholic beverage establishments.

CONCLUSION

The Administration recommends that the Land Use and Development Committee discuss the item further and provide appropriate policy direction. If there is consensus on the matter, it is further recommended that the Land Use Committee recommend to the full City Commission that the attached draft ordinance be referred to the Planning Board.

SMT
JLM/SMT/TRM/TUI

Attachment

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2015\October 7, 2015\West Ave and 17th Street Overlay - MEMO Oct 2015 LUDC.docx

**WEST AVENUE AND 17TH STREET CONDITIONAL USE OVERLAY
IN CD-1, CD-2 AND CD-3 ZONING DISTRICTS**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS," DIVISION 4, "CD-1 COMMERCIAL MEDIUM INTENSITY DISTRICT," BY AMENDING SECTION 142-273, "CONDITIONAL USES," BY MODIFYING AND CLARIFYING CONDITIONAL USES IN CD-1 DISTRICTS AND DIVISION 5, "CD-2 COMMERCIAL MEDIUM INTENSITY DISTRICT," BY AMENDING SECTION 142-303, "CONDITIONAL USES," BY MODIFYING AND CLARIFYING CONDITIONAL USES IN CD-2 DISTRICTS AND DIVISION 6, "CD-3 COMMERCIAL MEDIUM INTENSITY DISTRICT," BY AMENDING SECTION 142-333, "CONDITIONAL USES," BY MODIFYING AND CLARIFYING CONDITIONAL USES IN CD-3 DISTRICTS ADDING RESTAURANTS WITH MORE THAN 100 SEATS OR 3,500 SQUARE FEET, STAND ALONE ALCOHOL BEVERAGE ESTABLISHMENTS, DANCE HALLS AND ENTERTAINMENT ESTABLISHMENTS AS A CONDITIONAL USES IN THE ALTON ROAD COMMERCIAL CORRIDOR AND THE 17TH STREET CORRIDOR AS DEFINED IN THE PROPOSED ORDINANCE PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; APPLICABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the West Avenue neighborhood is comprised mainly of residential uses and is only divided by an alley from the commercial zoning districts, CD-1 and CD-2, on Alton Road; and

WHEREAS, the Palm View neighborhood is comprised of mainly residential uses and is divided by 17th Street from a commercial high intensity district, CD-3; and

WHEREAS, the City Code lists uses that could be incompatible with residential uses unless regulated through a conditional use permit within the CD-1, CD-2 and CD-3 in the Land Development Regulations; and

WHEREAS, large restaurants, stand alone bars, entertainment establishment, and dance halls can sometimes be incompatible with the low scale character of the neighborhood if not regulated; and

WHEREAS, is it is desirable to encourage uses that are compatible with the low scale character of the neighborhood; 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. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 4, "CD-1, Commercial, Low Intensity District," is hereby amended as follows:

* * *

Sec. 142-273. - Conditional uses.

(a) The conditional uses in the CD-1 commercial, low intensity district are adult congregate living facilities; nursing homes; religious institutions with an occupancy greater than 199 persons; public and private institutions; schools; day care facility; pawnshops; video game arcades; warehouses; any use selling gasoline; new construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards; neighborhood impact establishment; and storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located. See section 142-1103.

(b) Alton Road Commercial Corridor. In addition to the conditional uses specified in section 142-273(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-1 commercial, medium intensity districts in the Alton Road Commercial Corridor, which includes properties located between West Avenue and Lenox Court (or the rear lot line of properties on Alton Road where an alley does not exist) from 6th Street to the Collins Canal, shall also include the following:

- (1) Restaurants with alcoholic beverage licenses with more than 100 seats and a floor area in excess of 3,500 square feet;
- (2) Alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals);

SECTION 2. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 5, "CD-2, Commercial, Medium Intensity District," is hereby amended as follows:

Sec. 142-303. - Conditional uses.

(a) The conditional uses in the CD-2 commercial, medium intensity district include the following:

- (1) Adult congregate living facilities;
- (2) Funeral home;
- (3) Nursing homes;
- (4) Religious institution;
- (5) Pawnshops;
- (6) Video game arcades;
- (7) Public and private institutions;
- (8) Schools;
- (9) Any use selling gasoline;
- (10) New construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process

before the review by any of the other land development boards;

- (11) Outdoor entertainment establishment;
- (12) Neighborhood impact establishment;
- (13) Open air entertainment establishment;
- (14) Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located. See Section 142-1103.

(b) *Sunset Harbour Neighborhood*. In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial, medium intensity district in the Sunset Harbour neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard shall also include the following:

- (1) Main use parking garages;
- (2) Entertainment uses, Restaurants, with and alcoholic beverage licenses (alcoholic beverage establishments) with more than 100 seats or an occupancy content (as determined by the Fire Marshall) in excess of 125 persons and a floor area in excess of 3,500 square feet.

(c) *North Beach Neighborhood*. In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial, medium intensity district in the North Beach neighborhood (located north of 65th Street), shall also include the following:

- (1) Alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals);
- (2) Dance halls;
- (3) Entertainment establishments.

(d) *South Alton Road Corridor*. In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial, medium intensity district in the South Alton Road Corridor, which includes properties located along Alton Road between 6th and 11th Street, shall also include the following:

- (1) Self storage warehouse, provided the minimum distance separation between self storage warehouses shall be 300 feet and self storage warehouses shall follow the development regulations for "self storage warehouse" in section 142-305 and setback requirements in section 142-307.

(e) *Alton Road Commercial Corridor*. In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial, medium intensity districts in the Alton Road Commercial Corridor, which includes properties located between West Avenue and Lenox Court (or the rear lot line of properties on Alton Road where an alley does not exist) from 6th Street to the Collins Canal, shall also include the following:

- (1) Restaurants with alcoholic beverage licenses with more than 100 seats and a floor area in excess of 3,500 square feet;
- (2) Alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals);

- (3) Dance halls;
- (4) Entertainment establishments.

* * *

SECTION 3. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 6, "CD-3, Commercial, High Intensity District," is hereby amended as follows:

* * *

Sec. 142-333. - Conditional uses.

(a) The conditional uses in the CD-3 commercial, high intensity district are adult living congregate facilities; new construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards; outdoor entertainment establishment, neighborhood impact establishment, open air entertainment establishment, nursing homes; religious institutions with an occupancy greater than 199 persons; video game arcades; public and private institutions; schools and major cultural dormitory facilities as specified in section 142-1332; and storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located, except such storage and/or parking of commercial vehicles shall not be permitted on lots with frontage on Lincoln Road, Collins Avenue, 41st Street and 71st Street. See subsection 142-1103(c). When located on that portion of Lincoln Road that is closed to traffic, these uses shall comply with section 142-335.

(b) 17th Street Corridor. In addition to the conditional uses specified in section 142-333(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-3 commercial, high intensity district in the 17th Street Corridor, which includes properties located between Lincoln Lane North and 17th Street from Meridian Avenue to Lenox Court, shall also include the following:

- (1) Restaurants with alcoholic beverage licenses with more than 100 seats or a floor area in excess of 3,500 square feet;
- (2) Alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals);
- (3) Dance halls;
- (4) Entertainment establishments.

* * *

SECTION 4. Repealer

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

SECTION 5. Codification

It is the intention of the City Commission, 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, as amended; that the sections of this Ordinance may be re-

MIAMI BEACH

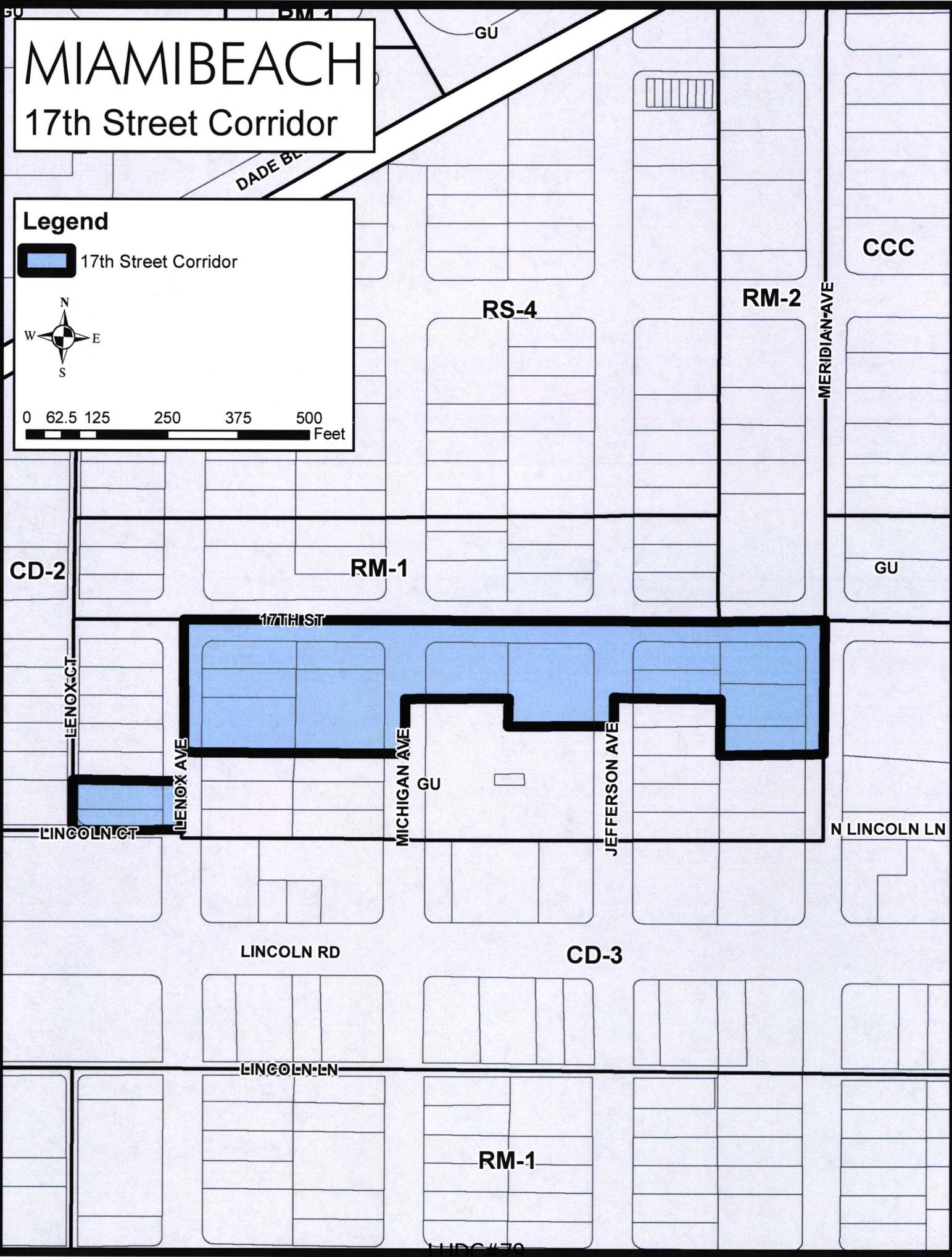
17th Street Corridor

Legend

 17th Street Corridor

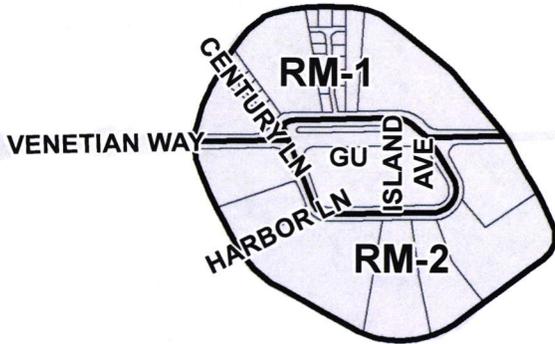


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MIAMI BEACH

Alton Road Commercial Corridor

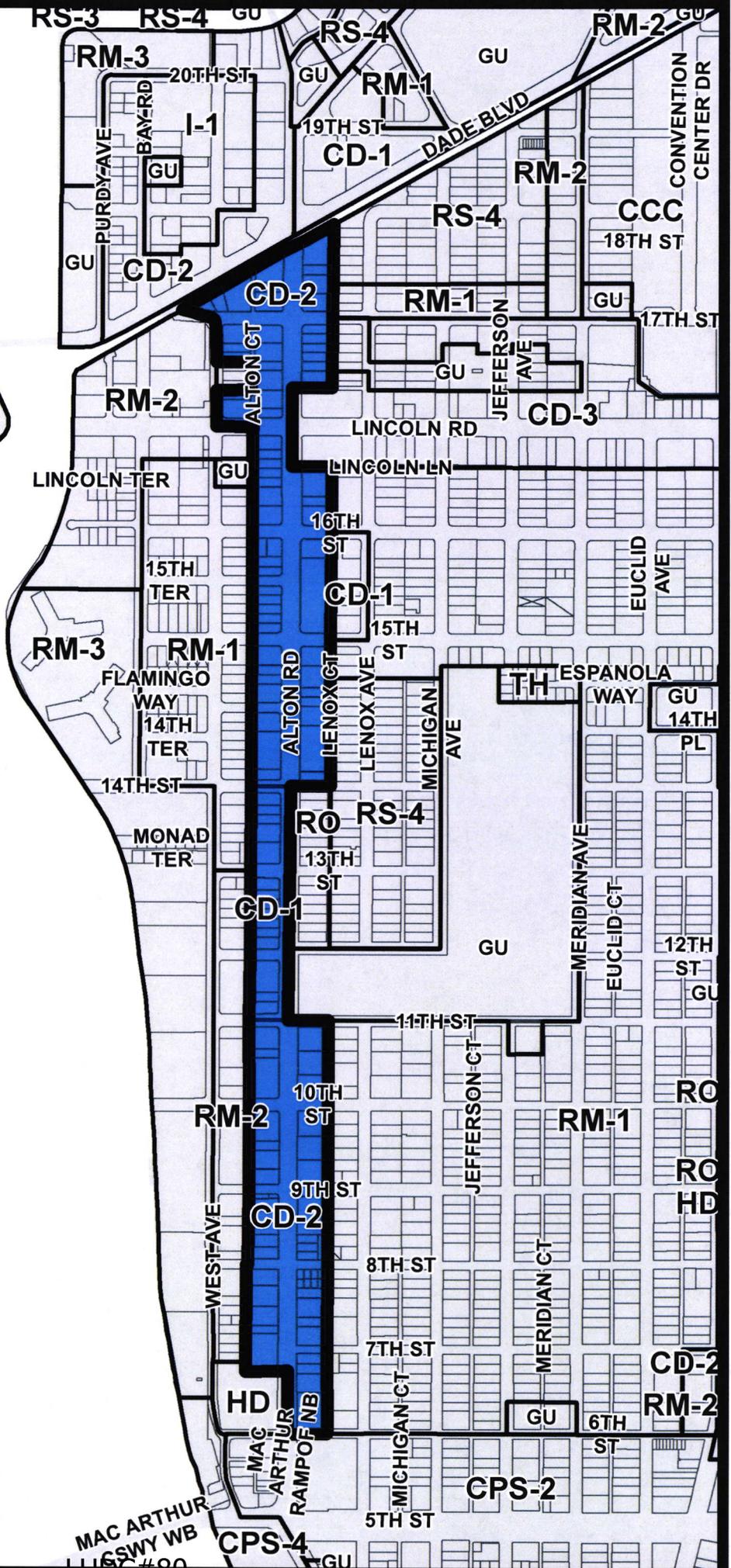
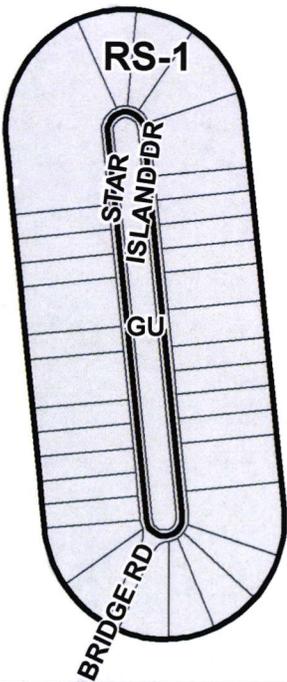


Legend

 Alton Road Commercial Corridor



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VERBAL REPORT



OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jimmy L. Morales, City Manager
FROM: Joy V. W. Malakoff, Commissioner
DATE: August 28, 2015
SUBJECT: A REFERRAL TO THE LUDC REGARDING THE VACATION OF A PORTION OF THE ALLEY BETWEEN ALTON ROAD AND WEST AVENUE, JUST SOUTH OF 17TH STREET - AS PART OF A PROPOSED MIXED USE PROJECT THAT WILL INCLUDE RESIDENTIAL, RETAIL AND STRUCTURED PARKING, INCLUDING PUBLIC PARKING.

Please place the above item for discussion on the September 2, 2015 Commission Agenda.

If you have any questions, please contact me at extension 6622.

JVWM

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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: Jimmy L. Morales, City Manager

DATE: October 7, 2015

SUBJECT: **ORDINANCE: HISTORIC HOTEL UNIT SIZES**

HISTORY

On September 2, 2015, at the request of Commissioner Grieco, the City Commission referred the item to the Land Use and Development Committee (Item C4J). On September 9, 2015, the Land Use Committee continued the item to October 7, 2015.

BACKGROUND/ANALYSIS

In 2013 and 2014, the City Commission amended the RM-1, RM-2, RM-3, CD-2 and CD-3 sections of the City Code to allow for the renovation of contributing hotels in historic districts without the need for room size variances, as long as a minimum unit size of 200 square feet is met. This code change, however, did not include buildings designated as 'individual historic sites'.

When an existing building within an historic site (not located in an historic district) is significantly renovated as a hotel, the Code requires that the minimum hotel unit size be met (315/335 sq ft). However, the existing room configuration in these historic buildings is often under this minimum required room size. Variances have been 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. Additionally, the existing pattern of windows in historic buildings typically matches the room configuration, and the exterior of the historic building cannot be altered by removing or rearranging window placement.

The attached draft Ordinance extends the allowable provision for smaller hotel unit sizes to contributing buildings, located within an individually designated historic site.

CONCLUSION

The Administration recommends that the Land Use and Development Committee discuss the matter further and provide appropriate policy direction. If there is consensus on the proposal, it is further recommended that the Committee recommend that the City Commission refer the item to the Planning Board.


JLM/ST/TRM

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2015\October 7, 2015\Historic Hotel Unit Sizes - MEMO Oct 2015 LUDC.docx

Minimum Unit Sizes for Historic Hotels

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," 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 142-246 TO MODIFY THE REQUIREMENTS FOR MINIMUM HOTEL ROOM SIZE FOR HISTORIC HOTELS WITHIN THE RM-3 DISTRICT; BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS", SECTION 142-306, "DEVELOPMENT REGULATIONS" TO MODIFY THE REQUIREMENTS FOR MINIMUM HOTEL ROOM SIZE FOR HISTORIC HOTELS WITHIN THE CD-2 DISTRICT; AND BY AMENDING SECTION 142-337, "DEVELOPMENT REGULATIONS AND AREA REQUIREMENTS" TO MODIFY THE REQUIREMENTS FOR MINIMUM HOTEL ROOM SIZE FOR HISTORIC HOTELS WITHIN THE CD-3 DISTRICT; PROVIDING FOR CODIFICATION; 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 sites; and

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

WHEREAS, the City of Miami Beach desires to amend existing minimum unit size requirements for existing contributing hotels within historic sites; 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 II, "District Regulations," Division 3, "Residential Multifamily Districts," Subdivision II, "RM-1 Residential Multifamily Low Intensity," 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 Lot Area (Square Feet) | Minimum Lot Width (Feet) | Minimum Unit Size (Square Feet) |
|--------------------------------|--------------------------|--|
| 5,600 | 50 | <p>New construction—550 Non-elderly and elderly low and moderate income housing: See section 142-1183 Rehabilitated buildings—400 Hotel unit: 15%: 300—335 85%: 335+</p> <p>For contributing hotel structures, located within <u>an individual historic site</u>, a local historic district or a national register district, which are 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 and sizes of at least 200 square feet shall be permitted. Additionally, existing room configurations for the above described hotel structures may be modified to address applicable life-safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained.</p> |

SECTION 2. City Code Chapter 142, Article II, "District Regulations", Division 3, "Residential Multifamily Districts", Subdivision IV, "RM-2 Residential Multifamily Medium Intensity", 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 Lot Area (Square Feet) | Minimum Lot Width (Feet) | Minimum Unit Size (Square Feet) |
|--------------------------------|--------------------------|--|
| 7,000 | 50 | New construction—550 Non-elderly and elderly low and moderate income housing: See section 142-1183 Rehabilitated buildings—400 Hotel unit: 15%: 300—335 85%: 335+ For contributing hotel structures, located within <u>an individual historic site</u> , a local historic district or a national register district, which are 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 and sizes of at least 200 square feet shall be permitted. Additionally, the existing room configurations for the above described hotel structures may be modified to address applicable life-safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained. |

SECTION 3. City Code Chapter 142, Article II, "District Regulations", Division 3, "Residential Multifamily Districts", Subdivision v, "RM-3 Residential Multifamily High Intensity", is hereby amended as follows:

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

* * *

(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 Lot Area (Square Feet) | Minimum Lot Width (Feet) | Minimum Unit Size (Square Feet) |
|--------------------------------|--------------------------|--|
| 7,000 | 50 | New construction—550 Non-elderly and elderly low and moderate income housing: See section 142-1183 Rehabilitated buildings—400 Hotel unit: 15%: 300—335 85%: 335+ For contributing hotel structures, located within <u>an individual historic site</u> , a local historic district or a national register district, which are 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 and sizes of at least 200 square feet shall be permitted. Additionally, the existing room configurations for the above described hotel structures may be modified to address applicable life-safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained. |

SECTION 4. 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. 142-306. Development regulations.
 The development regulations in the CD-2 commercial, medium intensity district are as follows:

| Minimum Apartment Unit Size (Square Feet) | Average Apartment Unit Size (Square Feet) |
|---|--|
| <p>Commercial—N/A New construction—550 Rehabilitated buildings—400 Non-elderly and elderly low and moderate income housing: See section 142-1183 Hotel unit: 15%: 300—335 85%: 335+</p> <p>For contributing hotel structures, located within <u>an individual historic site</u>, 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. Additionally, existing room configurations for the above described hotel structures may be modified to address applicable life-safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained.</p> | <p>Commercial—N/A New construction—800 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing: See section 142-1183 Hotel units—N/A</p> |

SECTION 5. 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. 142-337. Development regulations and area requirements.

* * *

(c) The lot area, lot width, unit size and building height requirements for the CD-3 commercial, high intensity district are as follows:

| Minimum Unit Size (Square Feet) | Average Unit Size (Square Feet) |
|---|--|
| <p>Commercial—N/A New construction—550 Rehabilitated buildings—400 Non-elderly and elderly low and moderate income housing: See section 142-1183 Hotel unit: 15%: 300—335 85%: 335+</p> <p>For contributing hotel structures, located within <u>an individual historic site</u>, 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. Additionally, existing room configurations for the above described hotel structures may be modified to address applicable life-safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained.</p> | <p>Commercial—N/A New construction—800 Rehabilitated buildings—550 Non-elderly and elderly low and moderate income housing: See section 142-1183 Hotel units—N/A</p> |

SECTION 6. 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 7. REPEALER.

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

SECTION 8. SEVERABILITY.

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

SECTION 9. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2016.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

First Reading: _____, 2016

Second Reading: _____, 2016

Verified by: _____
Thomas R. Mooney, AICP
Acting Planning Director

Underscore denotes new language

~~Strike Thru~~ denotes new language

09/18/2015

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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: Jimmy L. Morales, City Manager



DATE: October 7, 2015

SUBJECT: **DISCUSSION: WASHINGTON AVENUE ZONING INCENTIVES ORDINANCE**

HISTORY

On July 23, 2014, the City Commission directed the Administration to retain a professional architect from the rotating list of professionals to provide architectural services and massing studies for Washington Avenue. Zyscovich Architects was retained and began work on the initial massing studies for Washington Avenue. On August 20, 2014, the Land Use and Development Committee received an update on the progress of the massing studies for Washington Avenue, and recommended that the Administration begin negotiations with Zyscovich for a 2nd phase for Washington Avenue, involving a more detailed block and vision analysis and master plan. This expanded proposal was approved by the City Commission on September 30, 2014.

The Mayor's Blue Ribbon Panel for Washington Avenue was appointed in August, 2014, and the first meeting of the panel took place on September 8, 2014. The Mayor's Blue Ribbon Panel for Washington Avenue, in conjunction with Zyscovich Architects held subsequent workshops with panels of experts to discuss various topics related to the Washington Avenue corridor. On January 26, 2015, Zyscovich Architects made a presentation to the Mayor's Blue Ribbon Panel on Washington Avenue with initial recommendations and ideas for consideration in the Washington Avenue Master Plan.

The Panel held a number of meetings in February and March, and on April 1, 2015, the Chairperson of the Blue Ribbon Panel and Bernard Zyscovich presented the Panel's findings and recommendations to the Land Use and Development Committee. On April 29, 2015, the Panel's findings and recommendations were presented to the City Commission. At the request of Commissioner Malakoff, the City Commission referred the subject Ordinance (Item R9A) to the Land Use and Development Committee and the Planning Board. On May 27, 2015, the Land Use and Development Committee discussed the item and recommended that the Planning Board transmit the proposed Ordinance, with modifications, to the City Commission with a favorable recommendation.

On June 23, 2015, the Planning Board (by a 6-0 vote) transmitted the proposed Ordinance to the City Commission with a favorable recommendation.

On September 2, 2015, the City Commission approved the subject Ordinance at First Reading, and scheduled a Second Reading Public Hearing for October 14, 2015. The City Commission also referred the item to the Land Use and Development Committee,

for further discussion prior to 2nd Reading.

ANALYSIS

The subject Ordinance amendment creates new development regulations for the "CD-2 Commercial, Medium Intensity District" specific to Washington Avenue, from 6th to 16th Streets. The proposed Ordinance is based on the recommendations in the Washington Avenue Blue Ribbon Panel Zoning Incentives Package that were referred by the City Commission. These include the following:

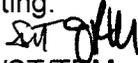
1. Allowing for smaller hotel room unit sizes in new hotel construction or conversions, provided larger public spaces are provided and with Design Guidelines.
2. A Height increase to seven (7) stories / 75' for larger lot aggregations, with the exception of main use parking structures, which would be limited to 55' in height.
3. Limits on entertainment uses at the first floor frontage.
4. Revised pedestal and tower setbacks.
5. Parking requirement changes for hotel uses, office uses and sidewalk cafes; these changes would sunset in five (5) years.

UPDATE/SUMMARY

The City Commission approved the subject Ordinance (attached) at First Reading on September 2, 2015 and referred the item to the Land Use and Development Committee for further discussion prior to 2nd Reading. In this regard, two (2) separate amendments, proposed by Washington Avenue property owners, were discussed during First Reading of the Ordinance on September 2, 2015. Specifically, modifications to the overall height for properties at least 100 feet in width, as well as revisions to the minimum building separation requirements are being sought.

CONCLUSION

The Administration recommends that the Land Use and Development Committee discuss the matter further and provide a recommendation to the City Commission regarding the changes proposed for the Ordinance. A summary of the Committee recommendation will be presented on the floor at the October 14, 2015 Commission meeting.


JLM/ST/TRM

WASHINGTON AVENUE ZONING INCENTIVES

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS (LDR's) OF THE CITY CODE, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," TO ESTABLISH SECTION 13-309, "WASHINGTON AVENUE DEVELOPMENT REGULATIONS AND AREA REQUIREMENTS," TO MODIFY THE DEVELOPMENT REGULATIONS FOR PROPERTIES FRONTING WASHINGTON AVENUE BETWEEN 6TH STREET AND LINCOLN ROAD; BY AMENDING CHAPTER 130, "OFF-STREET PARKING," ARTICLE II, "DISTRICTS; REQUIREMENTS," TO ESTABLISH PARKING DISTRICT 7 TO MODIFY THE PARKING REQUIREMENTS FOR THE PROPERTIES FRONTING WASHINGTON AVENUE BETWEEN 6TH STREET AND LINCOLN; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, the City has studied Washington Avenue for over a year, and has created a Mayor's Washington Avenue Blue Ribbon Task Force; and

WHEREAS, the City has reviewed the conditions of Washington Avenue and the concerns raised by residents, property owners, and businesses as it relates to the condition of Washington Avenue; and

WHEREAS, there appears to be some deterioration of the area and the businesses and property owners are concerned with the quality of life and quality of the streets within the Historic District; and

WHEREAS, the City has studied various mechanisms for improving the quality of life and quality of business improvements within the area; and

WHEREAS, the City of Miami Beach Land Development Regulations ("LDRs") provides for the regulation of land within the City; and

WHEREAS, the Planning Board, at its meeting dated June 23, 2015, by a vote of 6-0, recommended in favor of the Ordinance; and

WHEREAS, the amendments set forth below are necessary to accomplish 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, "Zoning Districts and Regulations," Article II, "District Regulations," Division 5, "CD-2 Commercial, Medium Intensity District," of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

* * *

Sec. 142-309 – Washington Avenue development regulations and area requirements:

The following regulations shall apply to properties that front Washington Avenue between 6th Street and 16th Street; where there is conflict within this division, the criteria below shall apply:

- (1) The maximum building height shall be 55 feet, except for lots that have a frontage equal to or greater than 200 feet, in which case the maximum building height shall be 75 feet; provided, however, main use parking garages shall not exceed 55 feet, regardless of the amount of lot frontage.
- (2) The maximum number of stories shall be five (5) stories, except for lots that have a frontage equal to or greater than 200 feet, in which case the maximum number of stories shall not exceed seven (7) stories.
- (3) For lots that have a frontage that is equal to or less than 100 feet, the setbacks shall be pursuant to section 142-307. For lots that have a frontage that is greater than 100 feet, the setbacks shall be as follows:

a. Front:

- i. Subterranean: zero (0) feet
- ii. Ground level: zero (0) feet
- iii. Above the ground level up to 35 feet in height:
 1. Minimum five (5) feet for parking garages with liners; or
 2. Minimum 10 feet for parking garages without liners; or
 3. Minimum 15 feet for all other uses.
- iv. Above 35 feet in height:
 1. Minimum five (5) feet for parking garages with liners; or
 2. Minimum 10 feet for parking garages without liners; or
 3. Minimum 30 feet for all other uses.

b. Rear:

- i. Subterranean: zero (0) feet
- ii. Ground level: zero (0) feet
- iii. Above the ground level:
 1. Minimum 10 percent of lot depth; or

2. Minimum zero (0) feet for parking garage floors above the minimum truck clearance.
- c. Side, facing a street:
- i. Subterranean: zero (0) feet
 - ii. Non-residential uses: zero (0) feet
 - iii. Residential uses: Sum of the side setbacks shall equal 16% percent of lot width or a minimum of 7.5 feet and up to 20 feet.
- d. Side, interior:
- i. Subterranean: zero (0) feet
 - ii. Non-residential uses: zero (0) feet
 - iii. Residential uses: Sum of the side setbacks shall equal 16% percent of lot width or a minimum of seven and a half feet (7.5') or eight (8) percent of lot width, whichever is greater.
- (4) The maximum frontage for nightclubs and dance halls, located at the ground level shall not exceed 25 feet in width unless such a space has a certificate of use for nightclub or dance hall, or unless a valid license was issued after January 1, 2011 and before the date of adoption of this ordinance for the use of such space as a nightclub or dance hall.
- (5) For new hotel construction or conversion to hotel use, the minimum hotel room unit size may be 175 square feet, provided that:
- a. A minimum of 20 percent of the gross floor area of the hotel consists of hotel amenity space that is physically connected to and directly accessed from the hotel. Hotel amenity space includes the following types of uses, whether indoor or outdoor, including roof decks: restaurants; bars; cafes; hotel business center; hotel retail; screening rooms; fitness center; spas; gyms; pools; pool decks; and other similar uses customarily associated with a hotel. Bars and restaurants shall count no more than 50 percent of the total hotel amenity space requirements.
 - b. Windows shall be required in all hotel rooms and shall be of dimensions that allow adequate natural lighting, as determined by the historic preservation board.
- (6) For lots that have a frontage that is greater than 100 feet, the following shall apply, unless otherwise approved by the historic preservation board:
- a. Maximum Building Length. No plane of a building, above the ground floor facade facing Washington Avenue, shall continue for greater than 100 feet without incorporating an offset of a minimum five feet (5') in depth from the setback line. The total offset widths shall total no less than 20 percent of the entire building frontage.
 - b. Physical Separation between Building: A physical separation must be provided between buildings greater than 200 feet in length and at/or above 35 feet in height from the ground floor.

SECTION 2. That Chapter 130, "Off-Street Parking," Article II, "Districts; Requirements," of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

* * *

Sec. 130-31. - Parking districts established.

* * *

(7) Parking district no. 7. Parking district no. 7 includes those properties with a lot line on Washington Avenue from 6th Street to Lincoln Road.

* * *

Sec. 130-33. - Off-street parking requirements for parking districts nos. 2, 3, 4, 5, and 6, and 7.

* * *

(d) Except as otherwise provided in these land development regulations, when any building or structure is erected or altered in parking district no. 7, off-street automobile parking spaces shall be provided for the building, structure or additional floor area as follows. For uses not listed below, the off-street parking requirement shall be the same as for parking district no. 1 or parking district no. 2, as applicable.

- (1) Hotel: No parking requirement. For accessory uses to a hotel, the minimum parking is as set-forth in parking district no. 1.
- (2) Office: One (1) space per 500 square feet of floor area.
- (3) Retail: Retail existing as of the date of adoption of parking district no. 7 shall have no parking requirement. For new retail construction, one (1) space per 300 square feet of floor area.
- (4) Café, outdoor: No parking requirement.
- (5) Approved parklets shall have no parking requirement.
- (6) Any building or structure erected in parking district no. 7 may provide required parking on site as specified in parking district no. 1. Such required parking, if provided, shall be exempt from FAR, in accordance with the regulations specified in chapter 114 of these land development regulations.

The parking requirements in this subsection 130-33(d)(1)(2)(3)(4) and (5) shall only apply to projects that have obtained a full building permit or business tax receipt by September 1, 2020.

**LAND USE AND DEVELOPMENT COMMITTEE PENDING ITEMS
FOR INFORMATIONAL PURPOSES ONLY**

| | Referral Date | Title | Referred By | Date Last On LUDC Agenda | Automatic Withdrawl Date Per Reso No. 2013-28147 | Comments |
|----|----------------------|--|---------------------------|---------------------------------|---|------------------------------|
| 1. | 09-10-14 Item R9G | Discussion On The Collins Canal Project. | City Commission | 07-29-15 | | To be heard in November 2015 |
| 2. | 09-17-14 Item R7E | Annual Evaluation Of Parking Impact Fee Structure. | City Commission | 07-29-15 | | To be heard in November 2015 |
| 3. | 06-10-15 Item C4I | Proposed Revisions To Chapter 126 Of The Land Development Regulations Of The City Code, Pertaining To Landscaping And Minimum Standards For The Landscaping Of Private Properties And Adding A Requirement For A Tree Survey Prior To The Issuance Of A Demolition Permit. | Commissioner Joy Malakoff | 09-09-15 | | To be heard in November 2015 |
| 4. | 07-08-15 Item C4D | Discussion Pertaining To Main Use Parking Structure Height Limits On Terminal Island. | City Commission | | | To be heard in November 2015 |