

CITY OF MIAMI BEACH, FLORIDA
BOARD OF ADJUSTMENT

NOVEMBER 1, 2019 AGENDA

IN RE:

APPEAL OF THE PLANNING
DIRECTOR'S JULY 10, 2019
ADMINISTRATIVE
DETERMINATION REGARDING
"FLOOR AREA"

_____ /

AFFIDAVIT OF THOMAS R. MOONEY

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

BEFORE ME, an officer authorized to take oaths this day personally appeared
THOMAS R. MOONEY, who, being first duly sworn, deposes and states:

PERSONAL AND PROFESSIONAL BACKGROUND

1. My name is Thomas R. Mooney and I am over the age of 18. This
affidavit is made on personal knowledge and I am competent to testify to the matters
set forth herein.

2. I possess certification as a member of the American Institute of
Certified Planners ("AICP").

3. I am the Planning Director for the City of Miami Beach ("City").

4. I have worked in the City's Planning Department for over twenty-five (25) years and have served as the Planning Director for five years and 10 months.

**PROFESSIONAL RESPONSIBILITIES
AS PLANNING DIRECTOR**

5. As Planning Director, I possess primary responsibility for and oversight of the City's land use boards, i.e., the Historic Preservation Board ("HPB"), the Design Review Board ("DRB"), the Planning Board, and the Board of Adjustment ("BOA").

6. My duties include the drafting, review, interpretation, administration, and enforcement of land development regulations, amendments to land development regulations, and ordinances relating to land use matters. My office coordinates all master planning and land use studies. Additionally, my staff and I review all applications for development orders rendered by the HPB, DRB, Planning Board, and BOA. Furthermore, my job responsibilities include the review and historical analysis of the City's records relating to land use action as memorialized by the City's ordinances, resolutions, administrative determinations, development orders, permit applications and drawings, surveys, and related public records.

7. I routinely review, analyze, and rely upon a variety of sources when formulating my interpretation and application of the City's Land Development Regulations (the "LDRs"). These sources include my professional staff's review

and analysis, expert opinions, administrative determinations made by previous planning directors, and previous BOA orders.

8. In the performance of my duties as Planning Director, I prepare professional opinions regarding the interpretation of the LDRs, Comprehensive Plan, and other regulatory issues. These opinions are referred to as “administrative determinations.”

9. When formulating a determination related to zoning, I conduct a multi-dimensional analysis and examine such things as the City Code, LDRs, the Comprehensive Plan and available infrastructure capacity (i.e., water, sewer, roadway capacity, parks, and schools).

10. I attached as **Exhibits A** through **K** of this Affidavit true and correct copies of numerous public records created or maintained by the City of the variety that I routinely use and rely upon in the discharge of my duties as Planning Director.

RELEVANT BACKGROUND FACTS REGARDING APPELLANTS’ PROJECT

11. South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC, and KGM Equities, LLC (collectively, “Appellants”), submitted a development application to the City. The development application proposed the development of the property located at 500 Alton Road in Miami Beach, Florida (the “Project”).

12. The City approved the Project. As part of that approval, the Appellants entered into a development agreement with the City that included a concept plan that clearly set forth limitations on the tower foot print and included a specific massing form. The limitations in the size of the footprint in the development agreement resulted in the oblong design.

13. The Appellants have received all required land use board approvals and can be processed for permit as of the date of this affidavit.

THE DETERMINATION

14. On June 6, 2019 Appellants submitted a request for a zoning determination regarding floor area (“Determination Request”).¹ The Determination Request sought a determination as to whether the following constituted floor area:

- a) The portion of mezzanine levels where no floor exists;
- b) Voids in floors to accommodate elevator shafts;
- c) Voids in floors to accommodate mechanical/ventilation/trash shafts; and
- d) Voids in floors to accommodate stairwells, including voids to accommodate stairwell within accessory garages.

(Collectively, (b)-(d) are referred to as the “Elements”.)

¹ A true and correct copy of the Determination Request is attached hereto as **Exhibit A**.

15. In direct response to the Determination Request, my staff and I analyzed the LDRs, City Code, City Charter, previous interpretations of floor area, administrative determinations regarding floor area made by previous City planning directors, previous BOA orders regarding floor area, and the legislative history of the LDRs.

16. Based on that analysis and pursuant to the authority vested in me by the City Code, I issued my administrative determination, dated July 10, 2019, in response to the Determination Request (the “Determination”).² My Determination was the following:

The portion of a mezzanine level where no floor exists does not count as floor area. However, voids in floors which accommodate elevator shafts, mechanical/ventilation/trash shafts, and stairwells, including stairwells within accessory garages, do count as floor area.

(See Determination at 2 (emphasis in original).)

17. The Appellants appealed the Determination to the BOA.

18. I have reviewed the Position Memorandum Regarding the Floor Area Calculation for the Real Property to be Developed at 500 Alton Road (“Position Memorandum”) filed on July 19, 2019 by the Appellants. The arguments set forth therein do not provide a basis to reverse my administrative determination at issue in this matter. Moreover, the Position Memorandum mischaracterizes my

² A true and correct copy of the Determination is attached hereto as **Exhibit B**.

Determination and seeks to create ambiguity in the LDRs where none exists. Furthermore, the thrust of the Appellants' argument requires a legislative change to the LDRs by the City Commission and approval of such change by the voters in a referendum.

THE LDR DEFINITION OF FLOOR AREA AND THE CITY CHARTER

19. Floor Area is defined in the LDRs as follows:

[T]he sum of the **gross** horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings.

§ 114-1 (Floor Area), LDRs (emphasis added) (the "Definition").³

20. The LDRs expressly provide ten (10) exceptions to the definition of Floor Area for the following building areas and elements:

- 1) Accessory water tanks or cooling towers.
- 2) Uncovered steps.
- 3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- 4) Terraces, breezeways, or open porches.
- 5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two

³ A true and correct copy of the definition of Floor Area contained in Section 114-1 of the LDRs is attached hereto as **Exhibit C**.

spaces per residential unit may be provided without being included in the calculation of the floor area ratio.

- 6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.
- 7) Mechanical equipment rooms located above main roof deck.
- 8) Exterior unenclosed private balconies.
- 9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is below grade shall be included in the floor area ratio calculation. Despite the foregoing, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation.
- 10) Enclosed garbage rooms, enclosed within the building on the ground floor level.

§ 114-1 (Floor Area), LDRs.

21. The LDRs do not use “Floor” as a basis for calculating or determining Floor Area Ratio (“FAR”) – they use “Floor Area” which is defined in the LDRs.

22. The Planning Department does not use the term “Floor” to determine and calculate FAR.

23. The use of the word “gross” instead of “net” in the Definition is meant to include all horizontal areas within the walls of a building at each floor – not just the portion of the area containing an interior floor. This concept is also evident in how Floor Area is calculated for “volumetric buildings” – the LDRs make it abundantly clear that the absence of a “floor” does not negate the presence of Floor Area. (§ 114-1 (Floor Area), LDRs (“[W]here there is no interior floors, the floor area shall be calculated as if there was a floor for every eight feet of height.”); Ex. C.)

24. It is up to the City Commission – in the exercise of its legislative authority – to decide what “should be” defined as Floor Area.

25. Through a series of special elections in 1997, 2001, and 2004, the electors enshrined into the City Charter a series of protections to guard against the increase of Floor Area *by any means*.⁴ At present, the City Charter provides in pertinent part as follows:

The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment . . . unless any such increase in

⁴ A true and correct copy of Resolution 97-22413, Resolution 2001-24539, and Resolution 2003-25441 are attached as **Composite Exhibit D**.

zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach. . . .

§ 1.03(c), City Charter.⁵

THE HISTORICAL DEFINITION OF “FLOOR AREA”

26. The City Commission has consistently determined – in the exercise of its legislative authority – that the Elements *should not* be excluded from the definition of Floor Area.

27. I assembled the definitional history of “Floor Area” from 1971 to present as part of my review in drafting the Determination.⁶

28. In 1971 the City Commission enacted Zoning Ordinance 1891. (Ex. F at 1.) The definition of Floor Area codified in Zoning Ordinance 1891 is identical to today’s Definition. (*Id.*)

29. Zoning Ordinance 1891 included a list of areas defined as Floor Area. (*Id.*) Relevant here, it explicitly listed the Elements as areas to be defined as Floor Area. (*Id.* (“Elevator shafts or stairwells at each floor [and] [m]echanical equipment.”)) It also provided a list of exceptions. (*Id.*) As is obvious, the Elements were not included in the exceptions. (*Id.*)

⁵ A true and correct copy of Section 1.03 of the City Charter is attached hereto as **Exhibit E**.

⁶ A true and correct copy of this history is attached hereto as **Exhibit F**.

30. In 1985 the City Commission amended Zoning Ordinance 1891 to provide an additional area to be included as Floor Area and an additional area to be excluded as Floor Area. (Ex. F at 3.) Notwithstanding that amendment, the Commission continued to treat the Elements as Floor Area. (*Id.*)

31. In 1989 the City's Zoning Ordinance Review Committee ("ZORC") reviewed the definition of Floor Area as part of its comprehensive redraft of the LDRs ("Ordinance 89-2665"). (Ex. H at 3.) For purposes of simplicity and consistency, the ZORC recommended that the City remove the list of areas to be *included* in the definition of Floor Area and to state only those areas to be *excluded* from the definition of Floor Area. (*Id.*) The list of exclusions remained the same but for the addition of one (1) new exception to the definition of Floor Area for areas located below grade. (Ex. F at 4.)

32. In 1990, with the enactment of Ordinance 90-2722, the City Commission added an additional exception to the definition of Floor Area for enclosed garbage rooms at ground level. (Ex. F at 5.)

33. In 1998 the City Commission amended the exceptions to the definition of Floor Area relating to off-street parking and parking garages. (Ex. F at 6.)

34. In 2014 and 2016 the City Commission amended the exception to the definition of Floor Area pertaining to below grade areas. (Ex. F at 7-8.)

THE PRIOR DETERMINATIONS AND BOA ORDERS

35. The Planning Department has construed the Definition of Floor Area on two prior occasions.

36. In 1994, the Planning Director determined that the Definition of Floor Area included: (1) exterior corridors/hallways; (2) open stairwells within a tower; and (3) stairwells and elevator shafts on each floor with parking (the “First Determination”).

37. The First Determination was appealed to the BOA.

38. The BOA affirmed the First Determination; concurred with the Planning Director’s reasoning; and adopted the First Determination as its own (the “First BOA Order”).⁷

39. The same applicant sought a second determination from the Planning Director regarding Floor Area. In response to that request, the Planning Director determined that the following elements are *included* within the Definition of Floor Area: (1) the elevator shaft at every level; (2) the stairwell at every level; (3) the plumbing and mechanical chases at every level; (4) the open common corridors/hallways at the apartment levels; and (5) the portion of balconies which

⁷ True and correct copies of the First Determination, the Staff Recommendation thereto, and the First BOA Order are attached hereto as **Exhibits G, H, and I** respectively.

are not projecting from the main face of the building and which are not open on two sides (the “Second Determination”).

40. The Second Determination was appealed to the BOA.

41. The BOA affirmed the Second Determination; and, the BOA expressly determined that *all* of the five (5) elements enumerated in paragraph __ above “should be included in the calculation of Floor Area Ratio” (the “Second BOA Order”).⁸

THE CITY-WIDE IMPLICATIONS OF THE APPELLANTS’ POSITION

42. The modifications to the Definition of Floor Area requested by the Appellants would have – if adopted – broad implications beyond the scope of the specific project at issue in this appeal. By excluding the Elements from the Floor Area of the Project, or any new building in the City, would effectively grant a significant Floor Area bonus above that which the LDRs and the Comprehensive Plan currently allow.

43. The Comprehensive Plan includes future land use designations for each of the City’s zoning districts. Future land use designations define the maximum level of intensity that corresponds to the FAR limitations in each zoning district.

⁸ True and correct copies of the Second Determination and the Second BOA Order are attached hereto as **Exhibits J** and **K** respectively.

Florida law requires that each comprehensive plan organize a municipality into categories of permissible land uses together with limitations on permitted density and intensity of such use. *See* § 163.3177, Fla. Stat.

44. The adopted levels of service mandated by the Comprehensive Plan are based upon these maximum intensities. Any increase in intensity – like the increase requested by the Appellants – would have a corresponding impact on the adopted levels of service City-wide for the following elements of the City’s Comprehensive Plan: storm water management; potable drinking water and water pressure; and public open space and recreation.

45. Appellants’ position produces a City-wide increase in permitted intensity. It does so while side-stepping the required process and review one must follow to amend a comprehensive plan. *See* § 163.3184, Fla. Stat. Such a result would have serious and far reaching consequences with respect to the elements of the Comprehensive Plan identified in paragraph 44 above. It is my professional opinion that such a result would strain the City’s ability to provide, maintain and enhance existing, critical infrastructure.

MEZZANINES AND FLOOR AREA

46. “Mezzanine” is a defined term in Chapter 114 of the LDRs. Specifically, mezzanine is defined as:

[A]n intermediate floor in any story or room. When the total floor area of any such mezzanine floor exceeds one-third the total floor area in

that room or story in which the mezzanine occurs, it shall be considered as constituting an additional story. The clear height above or below the mezzanine floor construction shall be not less than seven feet.

§ 114-1 (Mezzanine), LDRs.

47. Unlike the term mezzanine, the Elements – stairwells, elevator cores and mechanical shafts – are not separately defined terms in the LDRs.

48. Furthermore, mezzanine was included as a separate defined element because mezzanines – in a previous version of the LDRs – were considered an allowable exception to the number of stories permitted in a particular zoning district.

49. Because mezzanines were an exception to the number of permitted stories in the LDRs, the City Commission determined that the void in the mezzanine level did not count as Floor Area; the void would exist even if the mezzanine did not.

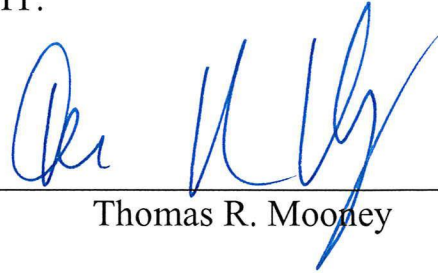
THE APPELLANTS' PRIOR DEVELOPMENT APPLICATIONS

50. Entities related to the Appellants have submitted fourteen (14) prior development applications to the City's Planning Department (the "Prior Development Applications").

51. All of the Prior Development Applications include the Elements as Floor Area.

52. The Appellants never objected to the inclusion of the Elements as Floor Area for the Prior Development Applications.

FURTHER AFFIANT SAYETH NAUGHT.



Thomas R. Mooney

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE) SS:

Sworn to and subscribed before me this 15th day of October 2019, by Thomas R. Mooney, who is personally known to me, or who has produced the following identification: over four years.

Notary Seal



Notary Public, State of Florida

Print Name: Jessica Gonzalez

Date: Oct. 15, 2019

My Commission Expires: Feb. 9, 2020



Exhibits

Exhibit A Determination Request dated June 6, 2019

Exhibit B Determination dated July 10, 2019

Exhibit C § 114-1 (Floor Area), LDRs

Composite Exhibit D Charter Amendments Related to Floor Area

- Resolution No. 97-22413 dated June 4, 1997
- Resolution No. 2001-24539 dated July 18, 2001
- Resolution No. 2003-25441 dated Dec. 10, 2003

Exhibit E § 1.03, City Charter

Composite Exhibit F Definitional History of Floor Area

- Zoning Ordinance 1891 (1971)
- Zoning Ordinance 1891 (Amended 1985)
- Zoning Ordinance 89-2665 (Oct. 1, 1989)
- Ordinance 90-2722 (Nov. 21, 1990)
- Ordinance 98-3108 (Jan. 21, 1998)
- Ordinance 2014-3876 (June 11, 2014)
- Ordinance 2016-4029 (Sept. 14, 2016)

Exhibit G The First Determination dated Mar. 16, 1994

Exhibit H Staff Report to the First Determination dated May 6, 1994

Exhibit I The First BOA Order dated Aug. 5, 1994

Exhibit J The Second Determination dated Nov. 29, 1999

Exhibit K The Second BOA Order dated Oct. 1, 1999

Exhibit A



DIRECT LINE: (305) 377-6229
E-Mail: gpenn@BRZoningLaw.com

VIA ELECTRONIC SUBMISSION

June 6, 2019

Thomas Mooney, Director
Planning Department
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

Re: Request for Formal Zoning Verification Request.

Dear Mr. Mooney:

As you know, this firm represents South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC and KGM Equities, LLC (collectively, the "Applicant"), the owners of the properties located at 500, 630 and 650 Alton Road, 1220 6th Street, and 659, 701, 703, 711, 721, 723, 727 and 737 West Avenue (collectively, the "Property"). The Applicant is proposing to redevelop the Property with a mixed-use development and a public park.

Proposed Development. The Applicant proposes to link the Property together as a unified development site, while still providing for public access on 6th Street, which will be vacated. The proposed development of the southern portion of the Property, located south of 6th Street, will consist of a private residential tower (including a small lounge use open to the public) with accessory facilities. The proposed development of the Property north of 6th Street will consist of (i) an approximately three-acre public park; (ii) approximately 12,900 square feet of commercial space; and (iii) a surface parking lot serving the Floridian condominium.

The architectural design of the development is one of the most innovative seen in the City. Both the residential tower (and accessory structures) and commercial building will largely be made up of non-traditional

elliptical shapes. We believe that the project, when developed, will be a world-class addition to the City.

Floor Area. During the design process for the project, we have had multiple discussions with your staff regarding the methodology for calculating floor area. Those discussions have resulted in this letter.

As you know, “floor area” is defined, in relevant part, in Section 114-1 of the City’s Land Development regulations as the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. . . .” “Floor” is not defined in the Land Development Regulations.

Excluded from floor area under the terms of Section 114-1 are:

- (1) Accessory water tanks or cooling towers.
- (2) Uncovered steps.
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- (4) Terraces, breezeways, or open porches.
- (4) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.
- (6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.
- (7) Mechanical equipment rooms located above main roof deck.
- (8) Exterior unenclosed private balconies.
- (9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is

below grade shall be included in the floor area ratio calculation. Despite the foregoing, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation.

- (10) Enclosed garbage rooms enclosed within the building on the ground floor level.

Un-Addressed Issues in Regulations. As noted above, floor area is defined as the “sum of the gross horizontal areas of the floors of a building.” The Regulations do not expressly address, however, portions of a building where no physical floor exists. We are hereby requesting a determination as to whether the following is floor area:

- (1) The portion of mezzanine levels where no floor exists.
- (2) Voids in floors to accommodate elevator shafts.
- (3) Voids in floors to accommodate mechanical / ventilation / trash shafts.
- (4) Voids in floors to accommodate stairwells, including voids to accommodate stairwells within accessory garages.

Conclusion. We look forward to your determination. If you have any questions or comments, please call me at 305-377-6229.

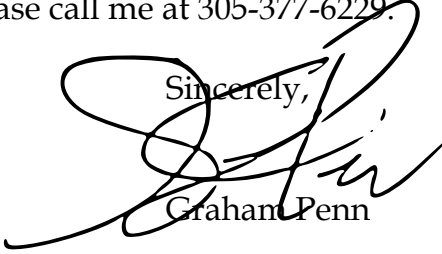
Sincerely,

Graham Penn

Exhibit B

MIAMI BEACH

PLANNING DEPARTMENT

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139

Tel: (305) 673-7550, Fax: (305) 673-7559

July 10, 2019

Graham Penn
Bercow Radell Fernandez & Larkin
200 South Biscayne Blvd., Suite 850
Miami, FL 33131

Subject: Request for Zoning Interpretation - Floor Area Ratio (FAR)
500 Alton Road
Miami Beach, Florida

Dear Mr. Penn:

This correspondence is in response to your June 6, 2019 request (attached) for a zoning determination letter regarding floor area. Specifically, you requested a determination as to whether the following constitutes floor area:

1. The portion of mezzanine levels where no floor exists.
2. Voids in floors to accommodate elevator shafts,
3. Voids in floors to accommodate mechanical/ventilation/trash shafts.
4. Voids in floors to accommodate stairwells, including voids to accommodate stairwell within accessory garages.

In accordance with Section 114-1 of the City's Land Development Regulations, floor area is defined as follows:

The sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. However, the floor area of a building shall not include the following unless otherwise provided for in these land development regulations:

- (1) Accessory water tanks or cooling towers.*
- (2) Uncovered steps.*
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.*
- (4) Terraces, breezeways, or open porches.*
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.*
- (6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.*

- (7) Mechanical equipment rooms located above main roof deck.
- (8) Exterior unenclosed private balconies.
- (9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is below grade shall be included in the floor area ratio calculation. Despite the foregoing, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation.
- (10) Enclosed garbage rooms, enclosed within the building on the ground floor level.

The portion of a mezzanine level where no floor exists does not count as floor area. However, voids in floors which accommodate elevator shafts, mechanical/ventilation/trash shafts, and stairwells, including stairwells within accessory garages, do count as floor area. This is consistent with prior administrative determinations, as well as administrative determinations that were upheld by the Miami Beach Board of Adjustment in 1994 (BOA File No. 2377) and in 1999 (BOA File No. 2404).

If we may be of further assistance, please do not hesitate to contact this department again.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Mooney', is written over the printed name.

Thomas R. Mooney, AICP
Planning Director

Exhibit C

Floor area means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. However, the floor area of a building shall not include the following unless otherwise provided for in these land development regulations.

- (1) Accessory water tanks or cooling towers.
- (2) Uncovered steps.
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- (4) Terraces, breezeways, or open porches.
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.
- (6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.
- (7) Mechanical equipment rooms located above main roof deck.
- (8) Exterior unenclosed private balconies.
- (9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is below grade shall be included in the floor area ratio calculation. Despite the foregoing, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation.
- (10) Enclosed garbage rooms, enclosed within the building on the ground floor level.

Volumetric buildings, used for storage, where there are no interior floors, the floor area shall be calculated as if there was a floor for every eight feet of height.

When transfer of development rights are involved, see [chapter 118](#), article V for additional regulations that address floor area.

Composite Exhibit D

RESOLUTION NO. 97-22413

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING THE CERTIFICATES OF THE RESULTS OF THE JUNE 3, 1997 SPECIAL ELECTION FOR THE CITY OF MIAMI BEACH, ADJOURNING THE CITY OF MIAMI BEACH CANVASSING BOARD FOR THE JUNE 3, 1997 SPECIAL ELECTION AND DECLARING RESULTS THEREOF.

WHEREAS, by City of Miami Beach Resolution No. 97-22346, adopted on April 2, 1997, Dade County Election Officials were authorized to conduct a Special Election of the City of Miami Beach to be held on June 3, 1997; and

WHEREAS, on April 2, 1997, Mayor Seymour Gelber, Vice-Mayor Susan Gottlieb and City Manager designee, Assistant City Manager Mayra Diaz-Buttacavoli were designated by the Miami Beach City Commission to act as its Canvassing Board representatives regarding the conduct of the June 3, 1997 Special Election for the City of Miami Beach; and

WHEREAS, Mayor Seymour Gelber, Vice-Mayor Susan Gottlieb and City Manager designee, Assistant City Manager Mayra Diaz-Buttacavoli acted as the Commission representatives/Canvassing Board for the June 3, 1997 Special Election; and

WHEREAS, the Certifications of the results of the City of Miami Beach Special Election has been received and is attached hereto as Composite Exhibit "A" and is incorporated herein; and

WHEREAS, said Certifications reflect that the ballot question as set forth below was approved by the electorate of the City of Miami Beach.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that having canvassed the returns of the June 3, 1997 Special Election of the City of Miami Beach, it hereby adopts the certificates as to the results of said Special Election and it is hereby ordered that the Certificates of Election and this Resolution be recorded in the minutes of the meeting as a permanent record of the results of said election; be it further resolved that by adoption of this Resolution the City Commission appointed Committee acting as Canvassing Board for the City of Miami Beach composed of Mayor Seymour Gelber, Vice-Mayor Susan Gottlieb and City Manager designee, Mayra Diaz-Buttacavoli has discharged its duties for the June 3, 1997 City of Miami Beach Special Election and said Committee is hereby adjourned; and be it further resolved that as a result of the City of Miami Beach June 3, 1997 Special Election, the vote upon the question presented reflects the following results:

CHARTER AMENDMENT REQUIRING VOTER APPROVAL PRIOR TO FLOOR AREA RATIO INCREASE OF WATERFRONT-ADJACENT PROPERTY.

SHALL THE CITY OF MIAMI BEACH CHARTER BE AMENDED TO INCLUDE A REQUIREMENT FOR PUBLIC VOTE PRIOR TO ANY INCREASE IN FLOOR AREA RATIO OF PROPERTY ADJACENT TO THE WATERFRONT, WHICH REQUIREMENT SHALL BE IN EFFECT FROM JANUARY 31, 1997?

YES 6,145 - 57.39%

NO 4,562 - 42.61%

BE IT FURTHER RESOLVED AND DETERMINED that the ballot Question
referenced herein was approved .

PASSED and ADOPTED this 4th day of June, 1997.

ATTEST:

Robert Pacher
CITY CLERK

[Signature]
MAYOR

..KO scf:6.0jean"E"97reslt.res

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

[Signature] 5/22/97
City Attorney **Date**

STATE OF FLORIDA:

COUNTY OF DADE:

We, Mayor Seymour Gelber, Vice-Mayor Susan Gottlieb and City Manager's designee, Assistant City Manager Mayra Diaz-Buttacavoli, acting as designees of the Miami Beach City Commission and serving as the City of Miami Beach Canvassing Board, do hereby certify that we have made an examination of the returns of the Special Election held in Miami Beach, Florida, on June 3, 1997, as conducted by the Clerks and Inspectors who were duly appointed by the Metropolitan Dade County Supervisor of Elections; and as reflected by certification received from the Supervisor of Elections of Dade County, Florida; such examination having been made solely, exclusively and entirely from such returns and certification; and DO HEREBY CERTIFY that as a result of said examination we have found and DO HEREBY DECLARE the results of said election upon the question:

CHARTER AMENDMENT REQUIRING VOTER APPROVAL PRIOR
TO FLOOR AREA RATIO INCREASE OF WATERFRONT-ADJACENT
PROPERTY.

SHALL THE CITY OF MIAMI BEACH CHARTER BE AMENDED TO
INCLUDE A REQUIREMENT FOR PUBLIC VOTE PRIOR TO ANY
INCREASE IN FLOOR AREA RATIO OF PROPERTY ADJACENT TO
THE WATERFRONT, WHICH REQUIREMENT SHALL BE IN EFFECT
FROM JANUARY 31, 1997?

YES 6,145 - 57.39%

NO 4,562 - 42.61%

WITNESS our hands and seal this 4th day of June, 1997.


MAYOR SEYMOUR GELBER


VICE-MAYOR SUSAN GOTTLIEB


MAYRA DIAZ-BUTTACAVOLI
ASSISTANT CITY MANAGER
(City Manager's Designee)



OFFICE OF THE SUPERVISOR OF ELECTIONS

SUITE 1310
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1962
(305) 371-5153

Mailing Address:

P. O. Box 012241
Miami, Florida 33101-2241

CERTIFICATION

STATE OF FLORIDA

COUNTY OF DADE

I, David C. Leahy, Supervisor of Elections of Metropolitan Dade County, Florida, do hereby certify that the hereto attached is a true copy of the precinct and absentee ballot counts of the votes cast for the municipal question referred to below at the June 3, 1997, City of Miami Beach Special Election.

CHARTER AMENDMENT REQUIRING VOTER APPROVAL
PRIOR TO FLOOR AREA RATIO INCREASE OF
WATERFRONT-ADJACENT PROPERTY

WITNESS MY HAND

AND OFFICIAL SEAL,

AT MIAMI, DADE COUNTY,

FLORIDA, ON THIS

3rd DAY OF JUNE, 1997

A handwritten signature of David C. Leahy in black ink.

David C. Leahy
Supervisor of Elections
Metropolitan Dade County, Florida

CITY OF MIAMI BEACH
SPECIAL ELECTION
JUNE 3, 1997

CITY OF MIAMI BEACH			
	Precincts Counted	32	100.00%
	Absentee Precincts Counted	1	100.00%
(003)	Registered Voters	39,330	100.00%
(004)	Ballots Cast	10,931	27.79%
CHARTER AMENDMENT QUESTION			
(005)	Yes	6,145	57.39%
(006)	No	4,562	42.61%

Precinct	(003)	(004)	%trn.	(005)	(006)
0011	1,677	426	25.40	230	189
0013	1,762	381	21.62	148	228
0014	1,758	410	23.32	193	207
0015	718	176	24.51	98	76
0018	1,742	294	16.88	143	144
0019	644	190	29.50	133	56
0021	1,500	329	21.93	131	195
0022	591	139	23.52	102	35
0023	1,896	516	27.22	347	149
0024	1,358	404	29.75	282	119
0025	1,319	293	22.21	184	102
0026	58	21	36.21	15	6
0027	1,023	172	16.81	73	95
0028	1,360	392	28.82	271	111
0029	1,229	382	31.08	259	117
0030	2,279	834	36.59	632	198
0031	1,073	288	26.84	193	92
0032	1,628	424	26.04	188	230
0033	1,358	330	24.30	150	178
0034	613	130	21.21	48	78
0035	860	178	20.70	106	69
0036	1,372	351	25.58	181	163
0037	913	185	20.26	123	60
0038	484	163	33.68	111	51
0039	1,344	327	24.33	216	110
0040	1,297	353	27.22	194	145
0041	1,719	519	30.19	264	245
0042	1,601	384	23.99	219	159
0043	713	181	25.39	85	95
0044	546	177	32.42	75	96
0046	1,908	502	26.31	236	248
0048	987	326	33.03	167	156
N001	0	754	---.--	348	360

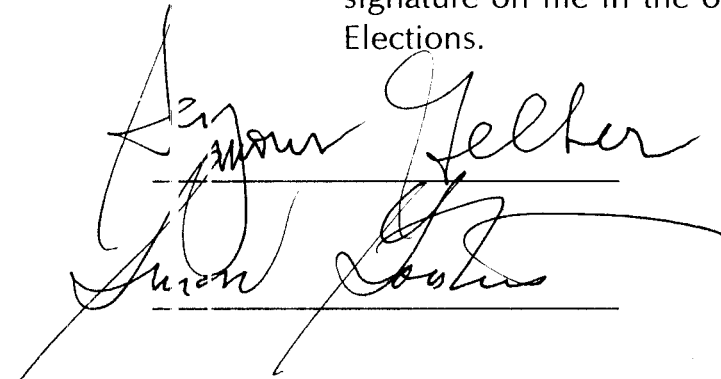
**CERTIFICATE OF
MIAMI BEACH CANVASSERS
FOR JUNE 3, 1997 CITY OF MIAMI BEACH SPECIAL ELECTION**

We, the undersigned, Mayor Seymour Gelber, Vice-Mayor Susan Gottlieb, and Assistant City Manager Mayra Diaz-Buttacavoli, constituting the **Miami Beach Canvassing Board** for the June 3, 1997 Special Election, do hereby certify that we met at the Office of the Mayor of the City of Miami Beach on the 30th day of May, 1997, and proceeded to publicly establish the criteria for determining acceptance of absentee ballot certificate envelopes received for the Special Election to be held in said City of the 3rd day of June, 1997. We determined that absentee ballots would be accepted as legal when the certificate envelopes contain the following:

1. Voter's signature.
2. One attesting witness's signature with *identifiable* address.
(Notary's signature with notary stamp may qualify as sole attesting witness).
3. "X" signature sufficient for witness so long as accompanied by identifiable address.

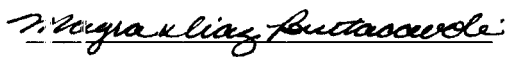
We further determined that each absentee ballot in a certificate envelope containing the following deficiency will be reviewed and determined to be either valid or invalid by the Miami Beach Canvassing Board at 6:00 p.m. on Tuesday, June 3, 1997, in the office of the Dade County Supervisor of Elections, 111 N.W. 1st Street, 19th Floor.

1. Voter's signature on the certificate envelope differs with the signature on file in the office of the Dade County Supervisor of Elections.



Mayor SEYMOUR GELBER
Member

Vice-Mayor SUSAN GOTTLIEB
Member



Assistant City Manager MAYRA DIAZ-BUTTACAVOLI
Member

* "Identifiable" is defined as the ability of the Dade County Elections Department to locate witness (i.e. street address is sufficient even if lacking City designation).



METRO-DADE CENTER

OFFICE OF THE SUPERVISOR OF ELECTIONS
SUITE 1910
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1962
(305) 375-4553

Mailing Address:
P. O. Box 012241
Miami, Florida 33101-2241

ELECTION: CITY OF MIAMI BEACH SPECIAL ELECTION

DATE OF ELECTION: June 3, 1997

CERTIFICATION OF LOGIC AND ACCURACY

I, the undersigned, Myra Diaz Buttacavoli, Assistant City Manager of Miami Beach/Miami Beach Canvassing Board Member, do, by my signature hereto, certify that to the best of my knowledge:

1. On June 2, 1997, commencing at approximately 9 am, the Dade County Supervisor of Elections representative had the tabulating equipment tested to ascertain that the equipment will correctly count the precinct votes cast for the candidates and/or issues, to be voted in the City of Miami Beach Special Election, to be held on June 3, 1997.

2. The undersigned compared the test results with the predetermined totals for each measure and pursuant to the requirements established in Section 101.5612, Florida Statutes, observed the performance and results of all required tests and verified the correctness of the program, precinct header(s), and test ballots, as well as any replacement of said materials required by said tests, subject to said tests.

3. At the completion of the above test, there were delivered to me, in a sealed container with Seal No. 0078469 the verified Logic and Accuracy report [☒,], precinct header(s) [☒,], program diskette [☒,], test ballots [☒,], and steps have been taken to insure the security of said materials prior to, during and subsequent to the election, except when said materials are properly in the possession of the Elections Department staff appointed to conduct the election.

Myra Diaz Buttacavoli 6-2-97
Signature of Canvassing Board Member Date



OFFICE OF THE SUPERVISOR OF ELECTIONS
SUITE 1910
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1962
(305) 375-5553

Mailing Address:
P. O. Box 012241
Miami, Florida 33101-2241

ELECTION: CITY OF MIAMI BEACH SPECIAL ELECTION

DATE OF ELECTION: June 3, 1997

CERTIFICATION OF ELECTION TABULATION

I, the undersigned, Myra Diaz Buttacavoli, Assistant City Manager of Miami Beach/Miami Beach Canvassing Board Member, do, by my signature hereto, certify that to the best of my knowledge:

1. On June 3, 1997, commencing at approximately 6:20 p.m. the Dade County Supervisor of Elections representative had the tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for the candidates and/or issues, which have been voted on in the City of Miami Beach Special Election, held on June 3, 1997.

2. The testing materials of the Public Test, delivered still under Seal No. 0078469, opened in my presence, were used and the procedures of Paragraph Two, Certification of Logic and Accuracy were followed.

3. At the completion of the above test, all ballots cast in the above election were counted. Steps have been taken to insure the security of said materials prior to, during and subsequent to the election, except when said materials were properly in the possession of the Elections Department staff appointed to conduct the election.

4. Except as otherwise specifically set forth and declared in this certification, in my presence and sight no ballot card was removed from or added to any ballot card container, ballot tray or other segregation of ballots, and no ballot card was in any manner altered or tampered with by any person, and no person touched any ballot card container, ballot card tray or ballot card, except a person authorized to do so pursuant to Section 101.5612, Florida Statutes.

5. At the completion of the ballot count, the automatic tabulating equipment was again tested to ascertain that the equipment correctly counted the votes cast for the candidates and/or issues.

6. Stored in a container(s), sealed, dated and signed by me, were placed the voted ballots [☒,], voided ballots [☐,], Logic and Accuracy reports [☒,], precinct header(s) [☒,], diskette [☒,] and test ballots [☒,]. The sealed container(s) was/were delivered to the undersigned and placed in my custody.

Myra Diaz Buttacavoli
Signature of Canvassing Board Member

6.3.97
Date

OFFICE OF THE CITY ATTORNEY

City of Miami Beach

F L O R I D A



MURRAY H. DUBBIN
City Attorney

Telephone: (305) 673-7470
Telecopy: (305) 673-7002

COMMISSION MEMORANDUM NO. 380-97

DATE: JUNE 4, 1997

TO: MAYOR SEYMOUR GELBER,
MEMBERS OF THE CITY COMMISSION AND
CITY MANAGER JOSE GARCIA-PEDROSA

FROM: MURRAY H. DUBBIN
CITY ATTORNEY

SUBJECT: JUNE 3, 1997 CITY OF MIAMI BEACH SPECIAL ELECTION - FORMAL
ACCEPTANCE AND DECLARATION OF ELECTION RESULTS

The attached Resolution has been drafted for the purpose of formally accepting the results of the June 3, 1997 City of Miami Beach Special Election, adjourning the City of Miami Beach Canvassing Board for this Special Election, and formally declaring the election results.

JK10:sc:jean"4"\97result.cm

Agenda Item R7C
Date 6-4-97

685

5896


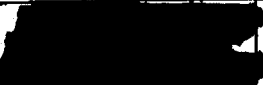


Petition to Amend Miami Beach City Charter

Public Vote Requirement for any Increase in Waterfront Floor Area Ratio

WE THE UNDERSIGNED ELECTORS OF THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA, DO HEREBY PETITION THE MIAMI BEACH CITY COMMISSION TO SUBMIT THE FOLLOWING AMENDMENT TO THE MIAMI BEACH CHARTER TO THE ELECTORS OF MIAMI BEACH IN ACCORDANCE WITH SECTION 5.03 OF THE DADE COUNTY HOME RULE CHARTER:

The floor area ratio of any platted property or street end within the City of Miami Beach adjacent to the Atlantic Ocean, Government Cut, Indian Creek or Biscayne Bay shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment, including any limitations on floor area ratio which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.


This Charter Amendment shall become effective on the day after its approval by the voters of the City of Miami Beach. No rights in derogation of the provisions of this Amendment under any ordinance or any other action of the Miami Beach City Commission between the time this petition is certified by the Dade County Supervisor of Elections and the adoption of this amendment shall be enforced against the City of Miami Beach.

	Please Sign Legibly and Print Name Under Signature Line	Residence or Precinct (Include City)	Date Signed	Telephone	Date of Birth or Voter Registration Card Number
1					
2	X Print Name:				
3	X Print Name:				
4	X Print Name:				
5	X Print Name:				
6	X Print Name:				
7	X Print Name:				
8	X Print Name:				
9	X Print Name:				
10	X Print Name:				

STATE OF FLORIDA }
COUNTY OF DADE }

BEFORE ME, personally appeared DAVID D. [Signature] who is personally known to me,
certified the above petition containing 1 signatures and that each signature was made and placed on the petition in the presence of the official.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 28 DAY OF DECEMBER, 1997


OFFICIAL NOTARY SEAL
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC324741
MY COMMISSION EXPI. JAN. 13, 2000


Notary Public in the State of Florida

TO: Bob Packer
M.B.

Fax 673-7254

SUPERVISOR OF ELECTIONS - METRO DADE COUNTY
 Statistics for election 970603: 06-03-1997 MIAMI BEACH

Reported by Precincts

PRECINCT	PARTY	WHITE	BLACK	HISPA	OTHER	TOTAL	VOTED POLLS.	VOTED ABS	TOTAL VOTED	TOTAL REGSTR	%
11 0	D	146	4	69	1	220					
	R	52	2	108	1	163					
	OTHER	18	0	32	2	52	420	419	15	435	1,686 25.80
13 0	D	93	5	67	2	167					
	R	36	0	180	1	217					
	OTHER	18	1	29	3	51	376	376	59	435	1,769 24.59
14 0	D	149	1	75	3	228					
	R	37	2	95	5	139					
	OTHER	26	0	41	3	70	401	400	36	437	1,773 24.65
15 0	D	86	1	20	1	108					
	R	22	0	28	0	50					
	OTHER	9	0	6	1	16	171	170	3	174	729 23.87
18 0	D	100	1	57	0	158					
	R	25	0	77	1	103					
	OTHER	13	0	33	2	48	291	287	18	309	1,773 17.43
19 0	D	65	1	19	2	87					
	R	32	0	43	1	76					
	OTHER	13	0	9	0	22	180	181	5	185	649 28.51
21 0	D	83	3	62	4	152					
	R	21	2	128	0	151					
	OTHER	17	1	21	3	42	328	316	17	345	1,518 22.73
22 0	D	48	0	21	1	70					
	R	22	0	46	1	69					
	OTHER	5	0	8	0	13	139	137	13	152	597 25.46
23 0	D	267	0	42	2	311					
	R	76	0	106	1	183					
	OTHER	39	0	23	3	65	516	496	43	559	1,894 29.51
24 0	D	249	1	23	1	274					
	R	74	0	47	1	122					
	OTHER	29	0	7	0	36	404	401	28	432	1,372 31.49
25 0	D	154	1	19	1	175					
	R	45	0	58	2	105					
	OTHER	30	0	12	1	43	293	286	30	323	1,326 24.36

RECEIVED
 97 JUN 23 PM 5:42
 CITY CLERK'S OFFICE

SUPERVISOR OF ELECTIONS - METRO DADE COUNTY
Statistics for election 970603. 06-03-1997 MIAMI BEACH

reported by Precincts

PRECINCT	PARTY	WHITE	BLACK	HISPA	OTHER	TOTAL	VOTED POLLS	VOTED ABS	TOTAL VOTED	TOTAL REGSTR	%
<hr/>											
26 0	D	9	0	2	0	11					
	R	0	0	10	0	10					
	OTHER	2	0	0	0	2	19	4	23	55	41.82
<hr/>											
27 0	D	83	1	15	1	100					
	R	16	0	51	0	67					
	OTHER	8	1	5	1	15	171	11	182	1,017	17.90
<hr/>											
28 0	D	242	0	13	1	256					
	R	45	0	44	2	91					
	OTHER	40	0	9	0	49	381	15	396	1,368	28.95
<hr/>											
29 0	D	231	1	24	2	258					
	R	49	1	54	1	105					
	OTHER	24	0	15	0	39	383	19	402	1,240	32.42
<hr/>											
30 0	D	521	1	41	6	569					
	R	123	0	85	3	211					
	OTHER	81	0	18	1	100	825	55	880	2,296	38.33
<hr/>											
31 0	D	150	1	23	1	175					
	R	25	0	42	1	68					
	OTHER	31	1	9	2	43	274	12	286	1,083	26.41
<hr/>											
32 0	D	85	2	62	3	152					
	R	32	0	193	2	227					
	OTHER	20	0	42	2	64	417	26	443	1,622	27.31
<hr/>											
33 0	D	102	4	52	0	158					
	R	18	1	120	2	141					
	OTHER	18	0	19	1	38	323	14	337	1,359	24.80
<hr/>											
34 0	D	28	2	27	0	57					
	R	4	0	49	2	55					
	OTHER	6	0	14	0	20	127	5	132	627	21.05
<hr/>											
35 0	D	66	3	24	2	95					
	R	15	0	60	2	77					
	OTHER	13	0	21	1	35	184	23	207	876	23.63
<hr/>											
36 0	D	97	4	59	4	164					
	R	21	1	138	0	160					
	OTHER	30	1	29	5	65	347	42	389	1,397	27.85

SUPERVISOR OF ELECTIONS - METRO DADE COUNTY
Statistics for election 970603: 06-03-1997 MIAMI BEACH

Reported by Precincts

PRECINCT	PARTY	WHITE	BLACK	HISPA	OTHER	TOTAL	VOTED POLLS	VOTED ABS	TOTAL VOTED	TOTAL REGSTR	%
37 0	D	80	1	17	3	101					
	R	10	0	38	0	48					
	OTHER	26	0	9	1	36	175	10	185	924	20.02
38 0	D	79	0	8	2	89					
	R	31	0	22	0	53					
	OTHER	14	0	12	0	26	164	4	168	491	34.22
39 0	D	101	8	57	3	169					
	R	29	0	90	1	120					
	OTHER	29	2	23	0	54	322	21	343	1,358	25.26
40 0	D	130	10	38	0	178					
	R	31	0	104	4	139					
	OTHER	26	1	26	2	55	355	17	372	1,340	27.76
41 0	D	156	5	71	8	240					
	R	36	1	183	3	223					
	OTHER	40	1	29	4	74	515	22	537	1,734	30.97
42 0	D	114	10	56	5	185					
	R	23	0	111	2	136					
	OTHER	44	0	32	4	80	382	19	401	1,621	24.74
43 0	D	43	2	33	6	84					
	R	17	1	54	1	73					
	OTHER	11	0	11	5	27	178	6	184	660	27.88
44 0	D	43	2	19	3	67					
	R	5	2	73	2	82					
	OTHER	14	1	20	1	36	179	6	185	542	34.13
46 0	D	158	2	81	2	243					
	R	49	3	255	1	308					
	OTHER	27	1	43	4	75	499	127	626	1,935	32.35
48 0	D	80	4	46	1	131					
	R	22	0	202	5	229					
	OTHER	25	0	15	3	43	327	76	403	1,003	40.18
Tot/Tot		4,038	81	1,242	71	5,432	10,066	801	10,867		

RESOLUTION NO. 2001-24539

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CALLING FOR A SPECIAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2001, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH A QUESTION ASKING WHETHER CITY CHARTER SECTION 1.03(c) SHOULD BE CLARIFIED BY DELETING THE WORD "PLATTED," TO CONFIRM THAT THE ZONED FLOOR AREA RATIO OF ALL SPECIFIED WATERFRONT PROPERTY, EVEN IF UNPLATTED, MAY NOT BE INCREASED WITHOUT VOTER APPROVAL; AND AMENDED TO STATE THAT COMMENCING JULY 18, 2001, THE APPLICABLE ZONED FLOOR AREA RATIO WHICH MAY NOT BE INCREASED WITHOUT VOTER APPROVAL IS CHANGED FROM FLOOR AREA RATIO EXISTING ON JUNE 4, 1997 TO FLOOR AREA RATIO EXISTING ON NOVEMBER 7, 2001.

WHEREAS, on June 3, 1997, a majority of the City's electorate approved an amendment to the Charter of the City of Miami Beach, which amendment required (in relevant part) public approval prior to any increase in the Floor Area Ratio of any waterfront "platted" property -- this provision has since been codified as City Charter Section 1.03(c); and

WHEREAS, the Miami Beach City Commission placed this Charter amendment on the June 3, 1997, Special Election ballot as a result of citizen's initiative on this matter; and

WHEREAS, in presenting this issue to its voters in June 1997, the Miami Beach City Commission presented initiative language which was intended to and did require voter approval prior to any increase in Floor Area Ratio of any waterfront property in the City (whether "platted" or not); and

WHEREAS, the Charter Section's language referring to "platted" waterfront property was not intended to and did not except non-platted property from the Charter's mandate; and

WHEREAS, at the time of the June 3, 1997 Election, the City Commission was unaware that there was unplatted waterfront property in the City of Miami Beach and believed that the Floor Area Ratio of property could not be increased without platting; and

WHEREAS, certain owners of unplatted waterfront property have incorrectly concluded that their property is excepted from the uniform referendum requirement of the City Charter; and

WHEREAS, the following Resolution calling for a Special Election is thus necessary to clarify the intent of the original Charter amendment, by deleting its reference to "platted" property, effectively clarifying the Charter section's applicability to all waterfront property, without exception; and

WHEREAS, remaining proposed amendments to Charter Section 1.03(c) contained within the ballot question are set forth specifically hereinbelow; and

WHEREAS, it is the intention of the Miami Beach City Commission that if any portion of this ballot measure is held unconstitutional or otherwise invalid, then said holding shall in no way affect the validity of the remaining portions of this ballot measure.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH:

SECTION 1.

In accordance with provisions of the Charter of the City of Miami Beach, Florida and the general laws of the State of Florida, a Special Election is hereby called and directed to be held in the City of Miami Beach, Florida, from 7:00 a.m. to 7:00 p.m. on Tuesday, November 6, 2001, for the purpose of submitting to the electorate the question as set forth hereinafter.

SECTION 2.

That the appropriate and proper Dade County election officials shall conduct the said Special Election hereby called, with Dade County's certification of the results of said Special Election being accepted by the City Commission. The official returns for each precinct shall be furnished to the City Clerk of the City of Miami Beach as soon as the ballots from all precincts have been tabulated and results duly accepted by said appropriate Dade County Officials.

SECTION 3.

Said voting precincts in the City of said Special Election shall be as established by the proper and appropriate Dade County Election Officials. All electors shall vote at the polling places and the voting precincts in which the official registration books show that the said electors reside. A list of the voting precincts and the polling places therein (subject to change by the Supervisor of Elections of Dade County, in accordance with the laws of Florida) is attached hereto as Exhibit A.

SECTION 4.

Registration of persons desiring to vote in the Special Election shall be in accordance with the general law of the State of Florida governing voter registration. Qualified persons may obtain registration forms to vote at the Office of the City Clerk, City Hall, 1700 Convention Center Drive, First Floor, Miami Beach, Florida 33139, each and every day until October 9, 2001 during normal business hours, and at such other voter registration centers and during such times as may be provided by the Supervisor of Elections of Miami-Dade County. Each person desiring to become a registered voter shall be responsible for properly filling out the registration form and returning it to the Miami-Dade County Elections Office. All registration forms must be received by the Miami-Dade County Elections Office and clocked in no later than October 9, 2001, at 5:00 p.m. in order for a person to vote in this Special Election. All questions concerning voter registration should be directed to the Dade County Elections Office, 111 Northwest 1st Street, Floor 19, Miami, Florida 33130; Mailing Address: P.O. Box 012241, Miami, Florida 33101; Telephone: (305) 375-5553.

SECTION 5.

Copies of the ballot question and proposed Charter text shall be made available to the electors at the office of the City Clerk from 8:30 a.m. to 5:00 p.m. each day, Saturdays, Sundays, and holidays excepted, not later than thirty days prior to the November 6, 2001 special election.

SECTION 6.

Not less than thirty days' notice of said Special Election shall be given by publication in a newspaper of general circulation in Miami Beach, Dade County, Florida. Such publication shall be made at least once each week for four consecutive weeks next preceding said Special Election.

SECTION 7.

The notice of election shall be substantially in the following form:

THE CITY OF MIAMI BEACH, FLORIDA

NOTICE OF SPECIAL ELECTION

NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION HAS BEEN CALLED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AND WILL BE HELD IN SAID CITY FROM 7:00 A.M. UNTIL 7:00 P.M. ON THE 6TH DAY OF NOVEMBER, 2001, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY REGISTERED AND QUALIFIED VOTERS OF THE CITY OF MIAMI BEACH THE FOLLOWING QUESTION:

CLARIFYING/AMENDING CHARTER SECTION 1.03(c) REGARDING VOTER APPROVAL BEFORE INCREASING WATERFRONT PROPERTY'S FLOOR AREA RATIO

SHALL CHARTER SECTION 1.03(c) BE:

--CLARIFIED BY DELETING THE WORD "PLATTED", TO CONFIRM ZONED FLOOR AREA RATIO OF ALL SPECIFIED WATERFRONT PROPERTY, EVEN IF UNPLATTED, MAY NOT BE INCREASED WITHOUT VOTER APPROVAL; AND

--AMENDED TO STATE THAT COMMENCING JULY 18, 2001, THE APPLICABLE ZONED FLOOR AREA RATIO WHICH MAY NOT BE INCREASED WITHOUT VOTER APPROVAL IS CHANGED FROM FLOOR AREA RATIO EXISTING ON JUNE 4, 1997 TO FLOOR AREA RATIO EXISTING ON NOVEMBER 7, 2001?

_____ YES

_____ NO

SECTION 8.

The official ballot to be used in the Special Election to be held on November 6, 2001, hereby called, shall be in substantially the following form, to-wit:

OFFICIAL BALLOT

THE CITY OF MIAMI BEACH, FLORIDA

NOTICE OF SPECIAL ELECTION, NOVEMBER 6, 2001.

NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION HAS BEEN CALLED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AND WILL BE HELD IN SAID CITY FROM 7:00 A.M. UNTIL 7:00 P.M. ON THE 6TH DAY OF NOVEMBER, 2001, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY REGISTERED AND QUALIFIED VOTERS OF THE CITY OF MIAMI BEACH THE FOLLOWING QUESTION:

CLARIFYING/AMENDING CHARTER SECTION 1.03(c) REGARDING VOTER APPROVAL BEFORE INCREASING WATERFRONT PROPERTY'S FLOOR AREA RATIO

SHALL CHARTER SECTION 1.03(c) BE:

--CLARIFIED BY DELETING THE WORD "PLATTED", TO CONFIRM ZONED FLOOR AREA RATIO OF ALL SPECIFIED WATERFRONT PROPERTY, EVEN IF UNPLATTED, MAY NOT BE INCREASED WITHOUT VOTER APPROVAL; AND

--AMENDED TO STATE THAT COMMENCING JULY 18, 2001, THE APPLICABLE ZONED FLOOR AREA RATIO WHICH MAY NOT BE INCREASED WITHOUT VOTER APPROVAL IS CHANGED FROM FLOOR AREA RATIO EXISTING ON JUNE 4, 1997 TO FLOOR AREA RATIO EXISTING ON NOVEMBER 7, 2001?

_____ YES

_____ NO

SECTION 9.

Absentee voters participating in said Special Election shall be entitled to cast their ballots in accordance with the provisions of the laws of the State of Florida with respect to absentee voting.

SECTION 10.

That the City of Miami Beach shall pay all expenses for conducting this Special Election and will pay to Dade County or directly to all persons or firms, upon receipt of invoice or statement approved by the Supervisor of Elections of Dade County, Florida.

SECTION 11.

If any section, sentence, clause or phrase of the proposed ballot measure is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of said ballot measure.

SECTION 12.

This resolution shall be effective immediately upon its passage.

PASSED and ADOPTED this 18th day of July, 2001.

ATTEST:

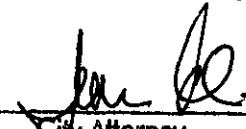

CITY CLERK


MAYOR

Requested by Commissioner David Dermer

JKO/kw
F:\ATTO\OLIN\ELECTION\RESO\SEC103C.N01

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**


City Attorney

7-13-01
Date

Proposed Amendment to City Charter Section 1.03(c) for November 6, 2001 Special Election:

A. Proposed Ballot Question

CLARIFYING/AMENDING CHARTER SECTION 1.03(c) REGARDING VOTER APPROVAL BEFORE INCREASING WATERFRONT PROPERTY'S FLOOR AREA RATIO

SHALL CHARTER SECTION 1.03(c) BE:

--CLARIFIED BY DELETING THE WORD "PLATTED", TO CONFIRM ZONED FLOOR AREA RATIO OF ALL SPECIFIED WATERFRONT PROPERTY, EVEN IF UNPLATTED, MAY NOT BE INCREASED WITHOUT VOTER APPROVAL; AND

--AMENDED TO STATE THAT COMMENCING JULY 18, 2001, THE APPLICABLE ZONED FLOOR AREA RATIO WHICH MAY NOT BE INCREASED WITHOUT VOTER APPROVAL IS CHANGED FROM FLOOR AREA RATIO EXISTING ON JUNE 4, 1997 TO FLOOR AREA RATIO EXISTING ON NOVEMBER 7, 2001?

_____ YES

_____ NO

B. Proposed Text

Section 1.03 Powers of City

*

*

*

- (c) The floor area ratio of any ~~platted property~~ or street end within the City of Miami Beach adjacent to the Atlantic Ocean, Government Cut, Indian Creek or Biscayne Bay shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment [~~June 4, 1997~~] [November 7, 2001], including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach. This Charter Amendment shall become effective on the day after its approval by the voters of the City of Miami Beach. No rights in derogation of the provisions of this Amendment under any ordinance ~~of or~~ any other action of the Miami Beach City Commission between the time ~~this petition is certified by the Miami-Dade County Supervisor of Elections~~ this measure is approved by the Miami Beach City Commission for placement on the November 6, 2001 ballot and the adoption of this Amendment shall be enforced against the City of Miami Beach.

OFFICE OF THE CITY ATTORNEY

City of Miami Beach

F L O R I D A



MURRAY H. DUBBIN
City Attorney

Telephone: (305) 673-7470
Telecopy: (305) 673-7002

COMMISSION MEMORANDUM NO. 494-01

DATE: JULY 18, 2001

TO: MAYOR NEISEN KASDIN
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JORGE M. GONZALEZ

FROM: MURRAY DUBBIN *MD/jd*
CITY ATTORNEY

SUBJECT: PROPOSED AMENDMENT TO CITY CHARTER §1.03(c)

Pursuant to the request of Commissioner David Dermer, the attached resolution has been drafted for the purposes of presenting the following ballot question to the City's voters on the November 6, 2001 ballot:

**CLARIFYING/AMENDING CHARTER SECTION 1.03(c) REGARDING
VOTER APPROVAL BEFORE INCREASING WATERFRONT
PROPERTY'S FLOOR AREA RATIO**

SHALL CHARTER SECTION 1.03(c) BE:

**--CLARIFIED BY DELETING THE WORD "PLATTED", TO CONFIRM
ZONED FLOOR AREA RATIO OF ALL SPECIFIED WATERFRONT
PROPERTY, EVEN IF UNPLATTED, MAY NOT BE INCREASED
WITHOUT VOTER APPROVAL; AND**

**--AMENDED TO STATE THAT COMMENCING JULY 18, 2001, THE
APPLICABLE ZONED FLOOR AREA RATIO WHICH MAY NOT BE
INCREASED WITHOUT VOTER APPROVAL IS CHANGED FROM
FLOOR AREA RATIO EXISTING ON JUNE 4, 1997 TO FLOOR AREA
RATIO EXISTING ON NOVEMBER 7, 2001?**

JKO/kw
F:\ATTO\OLINELECTION\RESO\CMEMO\SEC103C.N01
Attachment

Agenda Item A7Q
Date 7-18-01

1700 Convention Center Drive -- Fourth Floor -- Miami Bea

RESOLUTION NO. 2003-25441

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CALLING FOR A SPECIAL ELECTION TO BE HELD ON TUESDAY, MARCH 9, 2004, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH A QUESTION ASKING WHETHER CITY CHARTER SECTION 1.03(c) REQUIRING VOTER APPROVAL BEFORE FLOOR AREA RATIO MAY BE INCREASED ON PROPERTIES ADJACENT TO THE ATLANTIC OCEAN, GOVERNMENT CUT, INDIAN CREEK, OR BISCAYNE BAY, BE EXPANDED TO APPLY TO ALL PROPERTY WITHIN CITY LIMITS; EXEMPTING THE DIVISION OF LOTS OR THE AGGREGATION OF DEVELOPMENT RIGHTS ON UNIFIED ABUTTING PARCELS (OTHERWISE PERMITTED BY ORDINANCE), AND SETTLEMENT OF CLAIMS THE CITY HAS NOTICE OF AS OF DECEMBER 10, 2003.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH:

SECTION 1.

In accordance with provisions of the Charter of the City of Miami Beach, Florida and the general laws of the State of Florida, a Special Election is hereby called and directed to be held in the City of Miami Beach, Florida, from 7:00 a.m. to 7:00 p.m. on Tuesday, March 9, 2004, for the purpose of submitting to the electorate the question as set forth hereinafter.

SECTION 2.

That the appropriate and proper Miami-Dade County election officials shall conduct the said Special Election hereby called, with Miami-Dade County's certification of the results of said Special Election being accepted by the City Commission. The official returns for each precinct shall be furnished to the City Clerk of the City of Miami Beach as soon as the ballots from all precincts have been tabulated and results duly accepted by said appropriate Miami-Dade County Officials.

SECTION 3.

Said voting precincts in the City of said Special Election shall be as established by the proper and appropriate Miami-Dade County Election Officials. All electors shall vote at the polling places and the voting precincts in which the official registration books show that the said electors reside. A list of the voting precincts and the polling places therein (subject to change by the Supervisor of Elections of

Miami-Dade County, in accordance with the laws of Florida) is attached hereto as Exhibit A.

SECTION 4.

Registration of persons desiring to vote in the Special Election shall be in accordance with the general law of the State of Florida governing voter registration. Qualified persons may obtain registration forms to vote at the Office of the City Clerk, City Hall, 1700 Convention Center Drive, First Floor, Miami Beach, Florida 33139, during normal business hours, and at such other voter registration centers and during such times as may be provided by the Supervisor of Elections of Miami-Dade County. Each person desiring to become a registered voter shall be responsible for properly filling out the registration form and returning it to the Miami-Dade County Elections Office. All questions concerning voter registration should be directed to the Miami-Dade County Elections Office, 111 Northwest 1st Street, Floor 19, Miami, Florida 33130; Mailing Address: P.O. Box 012241, Miami, Florida 33101; Telephone: (305) 375-5553.

SECTION 5.

Not less than thirty days' notice of said Special Election shall be given by publication in a newspaper of general circulation in Miami Beach, Miami-Dade County, Florida. Such publication shall be made at least once each week for four consecutive weeks next preceding said Special Election.

SECTION 6.

The notice of election shall be substantially in the following form:

THE CITY OF MIAMI BEACH, FLORIDA

NOTICE OF SPECIAL ELECTION

NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION HAS BEEN CALLED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AND WILL BE HELD IN SAID CITY FROM 7:00 A.M. UNTIL 7:00 P.M. ON THE 9TH DAY OF MARCH, 2004, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY REGISTERED AND QUALIFIED VOTERS OF THE CITY OF MIAMI BEACH THE FOLLOWING QUESTION:

AMENDING CHARTER SECTION 1.03(c) RE: VOTER APPROVAL PRIOR TO FLOOR AREA INCREASE

SHALL CHARTER SECTION 1.03(c) REQUIRING VOTER APPROVAL BEFORE FLOOR AREA RATIO MAY BE INCREASED ON PROPERTIES ADJACENT TO THE ATLANTIC OCEAN, GOVERNMENT CUT, INDIAN CREEK, OR BISCAYNE BAY, BE EXPANDED TO APPLY TO ALL PROPERTY WITHIN CITY LIMITS; EXEMPTING THE DIVISION OF LOTS OR THE AGGREGATION OF DEVELOPMENT RIGHTS ON UNIFIED ABUTTING PARCELS (OTHERWISE PERMITTED BY ORDINANCE), AND SETTLEMENT OF CLAIMS THE CITY HAS NOTICE OF AS OF DECEMBER 10, 2003?

_____ YES

_____ NO

SECTION 7.

The official ballot to be used in the Special Election to be held on March 9, 2004, hereby called, shall be in substantially the following form, to-wit:

OFFICIAL BALLOT

THE CITY OF MIAMI BEACH, FLORIDA

NOTICE OF SPECIAL ELECTION, MARCH 9, 2004.

NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION HAS BEEN CALLED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AND WILL BE HELD IN SAID CITY FROM 7:00 A.M. UNTIL 7:00 P.M. ON THE 9TH DAY OF MARCH, 2004, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY REGISTERED AND QUALIFIED VOTERS OF THE CITY OF MIAMI BEACH THE FOLLOWING QUESTION:

AMENDING CHARTER SECTION 1.03(c) RE: VOTER APPROVAL PRIOR TO FLOOR AREA INCREASE

SHALL CHARTER SECTION 1.03(c) REQUIRING VOTER APPROVAL BEFORE FLOOR AREA RATIO MAY BE INCREASED ON PROPERTIES ADJACENT TO THE ATLANTIC OCEAN, GOVERNMENT CUT, INDIAN CREEK, OR BISCAYNE BAY, BE EXPANDED TO APPLY TO ALL PROPERTY WITHIN CITY LIMITS; EXEMPTING THE DIVISION OF LOTS OR THE AGGREGATION OF DEVELOPMENT RIGHTS ON UNIFIED ABUTTING PARCELS (OTHERWISE PERMITTED BY

**ORDINANCE), AND SETTLEMENT OF CLAIMS THE CITY HAS NOTICE
OF AS OF DECEMBER 10, 2003?**

_____ YES

_____ NO

SECTION 8.

Absentee voters participating in said Special Election shall be entitled to cast their ballots in accordance with the provisions of the laws of the State of Florida with respect to absentee voting.

SECTION 9.

That the City of Miami Beach shall pay all expenses for conducting this Special Election and will pay to Miami-Dade County or directly to all persons or firms, upon receipt of invoice or statement approved by the Supervisor of Elections of Miami-Dade County, Florida.

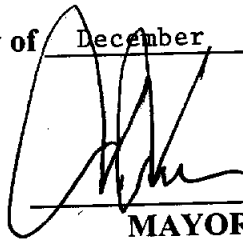
SECTION 10.

If any section, sentence, clause or phrase of the proposed ballot measure is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of said ballot measure.

SECTION 11.

This resolution shall be effective immediately upon its passage.

PASSED and ADOPTED this 10th day of December, 2003.



MAYOR

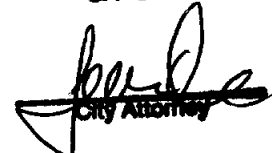
ATTEST:



CITY CLERK

F:\atto\OLI\ELECTION\RESO\Floor Area Ratio Referendum (3) Rev. 12-9-03.doc

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 12/9/03

City Attorney Date

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: December 10, 2003

From: Chairman Steve Zack
Vice-Chair Jonathan Beloff
Member of the Board Ricky Arriola
Member of the Board Victor Díaz
Member of the Board Honorable Seymour Gelber
Member of the Board Larry Herrup
Member of the Board Abraham Laeser

Appointed by Mayor Dermer
Appointed by Commissioner García
Appointed by Commissioner Cruz
Appointed by Commissioner Bower
Appointed by Commissioner Gross
Appointed by Commissioner Steinberg
Appointed by Commissioner Smith

Subject: CHARTER REVIEW BOARD PROPOSED AMENDMENTS TO CITY CHARTER—
RESOLUTIONS PROPOSING MARCH 9, 2004 CITY OF MIAMI BEACH SPECIAL
ELECTION

BACKGROUND:

The City of Miami Beach Charter Review Board, pursuant to authority of City Resolution No. 2003-25124, is continuing its review of the City's Charter and Related Special Acts – as a result of this review, the Board held a televised public meeting on November 6, 2003, resulting in the following recommended changes to the City Charter:

- * Zoning Reform – amending City Charter Section 1.03 (c) to expand the current requirement of voter approval prior to any increase in floor area ratio on certain waterfront property within the City of Miami Beach to all property within the City; and
- * Long Term Economic Impact – amending Charter V¹ regarding “Budget and Finance” to require that the City Commission consider the long term economic impact (at least 5 years) of legislative acts involving the allocation of funds.

At the July 30, 2003 City Commission Meeting, the following issues were presented to the City Commission by the Charter Review Board for consideration. The City Commission did not place these issues on the November 4 ballot and indicated that these issues might be considered for a future ballot after the November 4, 2003 Special Election. The issues are:

- 1) Amending Charter Bill of Rights, re: “Natural Resources & Scenic Beauty”;
- 2) Amending Charter §4.02 (i), by deleting requirement for City Attorney approval of City Manager's contract negotiations; and
- 3) Amending Related Special Acts to delete Article II “Public Library” and Article III “Municipal Projects”, as obsolete and redundant.

In order to ensure placement of a measure on the March 9, 2004 ballot, the City Commission must pass a resolution calling for said special election by no later than January 9, 2004 – accordingly, inasmuch as there is only one regularly-scheduled City Commission meeting prior to January 9, 2004 (December 10), the attached resolutions are presented herein for City Commission Review.

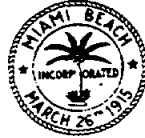
¹ This proposal was previously presented to the City Commission for its review at its July 30, 2003 Commission Meeting; the City Commission opted to reserve this issue for later consideration.

Agenda Item R9C
Date 12-10-03

OFFICE OF THE CITY ATTORNEY

City of Miami Beach

F L O R I D A



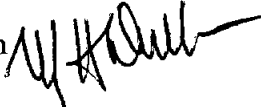
MURRAY H. DUBBIN
City Attorney

Telephone: (305) 673-7470
Telecopy: (305) 673-7002

COMMISSION MEMORANDUM

TO: Mayor David Dermer and
Members of the City Commission

DATE: December 10, 2003

FROM: Murray H. Dubbin 
City Attorney

**SUBJECT: REGARDING CHARTER REVIEW BOARD'S PROPOSED
AMENDMENT TO THE CITY TO THE CITY CHARTER AND
RESOLUTIONS PROPOSING MARCH 9, 2004 CITY OF MIAMI
BEACH SPECIAL ELECTION.**

The Legal Department has drafted and submitted the proposed charter amendment in accordance with the action of the Charter Review Board. However, we have some concerns which are hereafter set forth. The proposed amendment to Section 1.03(c) of the City Charter will expand the current requirement for voter approval prior to any increase in Floor Area Ratio on all applicable properties within the City. This would affect settlements, including, but not limited to, those entered into pursuant to the Bert J. Harris, Jr. Private Property Rights Protection Act ("Harris Act")* and those in other cases which involve the effectuation of their terms through a development agreement. The proposed Charter Amendment would also affect the settlement of other litigation matters concerning civil rights claims against the City, takings or condemnation claims, and the transfer of development rights under current City Code provisions and those anticipated to be proposed by the Planning Department relative to historic districts.

To address the foregoing concerns, the City Attorney's Office has added the attached shaded language to the original proposal of the Charter Review Board, which language is thus submitted for your consideration.

*Assuming the Harris Act is ultimately upheld by the courts

MHD/DJT/bfg

f:\atto\turn\commmemo\charter amdt. and 3-9-94 special election-2.doc

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: December 10, 2003

From: Chairman Steve Zack
Vice-Chair Jonathan Beloff
Member of the Board Ricky Arriola
Member of the Board Victor Diaz
Member of the Board Honorable Seymour Gelber
Member of the Board Larry Herrup
Member of the Board Abraham Laeser

Subject: CHARTER REVIEW BOARD – MONDAY, DECEMBER 8, 2003 MEETING – REPLACEMENT RESOLUTIONS

The Charter Review Board met on Monday, December 8, 2003, and discussed, in part, amendments to City Charter Sections 1.03(b) (requiring voter approval prior to disposal of City-owned park, recreation, or waterfront property) and 1.03(c) (requiring voter approval prior to increase in floor area ratio of certain waterfront properties).

In order to reflect the Board's actions of December 8, 2003, the attached resolution shall substitute as the recommendation of the Charter Review Board regarding Agenda Item R9C and Charter section 1.03(c).

The Board's proposed amendments to City Charter Section 1.03(b) are in the process of being prepared and will be distributed at the December 10, 2003 City Commission meeting.

A. Proposed Ballot Question

AMENDING CHARTER SECTION 1.03(c) RE: VOTER APPROVAL PRIOR TO FLOOR AREA INCREASE

SHALL CHARTER SECTION 1.03(c) REQUIRING VOTER APPROVAL BEFORE FLOOR AREA RATIO MAY BE INCREASED ON PROPERTIES ADJACENT TO THE ATLANTIC OCEAN, GOVERNMENT CUT, INDIAN CREEK, OR BISCAYNE BAY, BE EXPANDED TO APPLY TO ALL PROPERTY WITHIN CITY LIMITS; **EXEMPTING** THE DIVISION OF LOTS OR THE AGGREGATION OF DEVELOPMENT RIGHTS ON UNIFIED ABUTTING PARCELS (OTHERWISE PERMITTED BY ORDINANCE), AND SETTLEMENT OF CLAIMS THE CITY HAS NOTICE OF AS OF DECEMBER 10, 2003?

_____ YES

_____ NO

B. Proposed Text

City Charter Section 1.03(c).

(c) The floor area ratio of any property or street end within the City of Miami Beach ~~adjacent to the Atlantic Ocean, Government Cut, Indian Creek or Biscayne Bay~~ shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment [November 7, 2001], including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach. This provision shall not preclude or otherwise affect the division of lots, or the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance. In addition, this provision shall not apply to settlements of any claims the City has notice of as of December 10, 2003. This Charter Amendment shall become effective on the day after its approval by the voters of the City of Miami Beach. No rights in derogation of the provisions of this Amendment under any ordinance or any other action of the Miami Beach City Commission between the time this measure is approved by the Miami Beach City Commission for placement on ~~the November 6, 2001~~ a ballot and the adoption of this Amendment shall be enforced against the City of Miami Beach.

* * *

Exhibit E

Sec. 1.03. - Powers of City.

- (a) *General.* The City shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as expressly prohibited by law or this Charter.
- (b) *Disposition of City Property.*
1. The sale, exchange, conveyance, or lease of ten (10) years or longer (including option periods) of City-owned park, recreation, or waterfront property shall require approval by a majority vote of the voters in a City-wide referendum. This provision shall be liberally construed in favor of the preservation of all park, recreation and waterfront lands.
 2. The sale, exchange, conveyance or lease of ten years or longer of the following properties shall also require approval by a majority vote of the voters in a City-wide referendum: (1) *Lots West of the North Shore Open Space Park:* All City-owned property bounded by 87th Street on the North, Collins Avenue on the East, 79th Street on the South, and Collins Court on the West; (2) *Cultural Campus:* All City-owned property bounded by 22nd Street on the North, Park Avenue on the West, 21st Street on the South, and Miami Beach Drive on the East; (3) *72nd Street Parking Lot:* The City-owned surface parking lot bounded by 73rd Street on the North, Collins Avenue on the East, 72nd Street on the South, and Harding Avenue on the West; and (4) *Lincoln Road Parking Lots:* All City-owned surface parking lots in the vicinity of Lincoln Road located within the area bounded by 17th Street on the North, Euclid Avenue on the East, 16th Street on the South, and West Avenue on the West.
 3. The sale, exchange, conveyance or lease of ten years or longer of the following properties shall require approval by vote of at least sixty (60) percent of the City's voters voting thereon in a City-wide referendum: (1) *Convention Center Parking Lots:* All City-owned surface parking lots located in the Civic and Convention Center District, generally bounded by Lincoln Lane on the South, Washington Avenue on the East, Meridian Avenue on the West and Dade Boulevard on the North; (2) *Convention Center Campus:* All City-owned property, except for the Convention Center and Carl Fisher Club House, located within the Civic and Convention Center District (includes City Hall, 1701 Meridian Street, 555 17th Street, 21st Street Community Center, The Fillmore Miami Beach/Jackie Gleason Theater, and the 17th Street Parking Garage). All local laws, charter provisions and ordinances of the City in conflict with this provision are hereby repealed. This provision shall become effective immediately upon acceptance of the certification of election results by the City Commission.
 4. The sale, exchange, conveyance or lease of ten years or longer of all remaining City-

owned property (other than public beach rights-of-way — see (d) herein below, and other than those properties addressed more specifically in this Charter section 1.03) shall, as provided by Ordinance, require approval by a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission. The sale, exchange, conveyance or lease of ten years or longer of property owned by the Miami Beach Redevelopment Agency (Agency) shall require approval by a majority 4/7 vote of all members of the Planning Board and 7/8 vote of the Agency.

5. The terms of this Charter section shall not apply to any valid written contractual commitments or bids or bonded indebtedness, which commitments, bids or indebtedness existed prior to January 14, 2004; nor shall this Charter section apply to any City property which is the subject of a settlements of a claim which the City had notice of as of January 14, 2004.
- (c) The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment [November 7, 2001], including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach. The provision shall not preclude or otherwise affect the division of lots, or the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance. In addition, this provision shall not apply to settlements of any claims the City has notice of as of December 10, 2003. This Charter Amendment shall become effective on the day after its approval by the voters of the City of Miami Beach. No rights in derogation of the provisions of this Amendment under any ordinance or any other action of the Miami Beach City Commission between the time this measure is approved by the Miami Beach City Commission for placement on a ballot and the adoption of this Amendment shall be enforced against the City of Miami Beach.
- (d) *Public Beach Rights-of-Way.* The sale, exchange, conveyance, lease, or any other transfer of any City interest in a public beach right-of-way (extending eastward from Collins Avenue/Ocean Drive to the erosion control line) shall require approval by a majority vote of the voters in a Citywide referendum, excluding permits of no greater than one year, and excluding the sale, exchange, conveyance, lease or any other transfer not exceeding 10% in width of such public beach right-of-way.
- (e) *Public Street-Ends Bordering GU, GC, or Waterfront Land.* The sale, exchange, conveyance, lease, or any other transfer of any City interest in any public street-end bordering on land designated "Government Use", "Golf Course" or Waterfront land, shall require either the unanimous approval of those members of the City Commission with power to vote or approval by a majority vote of the voters in a Citywide referendum, excluding a sale,

exchange, conveyance, lease, or any other transfer not exceeding 10% in width of such street-end which advances a significant public purpose, and excluding underground utility easements.

- (f) *Management and Concession Agreements with Private Operators.* The City shall not enter into a management agreement or concession agreement with a private party or operator, having a term of ten (10) years or longer (including option periods), for the management, operation, and/or use of City-owned property, or of a City-owned facility, without obtaining the approval of a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission. For purposes of this subsection, the term "City property" shall include the City's public beach areas in the City of Miami Beach, from Government Cut to 87th Terrace. The term "private party or operator" shall exclude any political subdivision and/or governmental agencies, departments, and/or divisions of the United States, the State of Florida, or Miami-Dade County.

(Res. No. 97-22413, 6-4-97; Res. No. 98-22763, 6-3-98; Res. No. 2001-24539, 7-18-01; Res. No. 2003-25441, 12-10-03; Res. No. 2004-25464, 1-14-04; Res. No. 2006-26236, 7-12-06; Res. No. 2009-27134, 7-15-09; Res. No. 2009-27153, 7-22-09; Res. No. 2013-28297, 7-19-13; Res. No. 2014-28709, § 3(Exh. A), 7-30-14; Res. No. 2015-29197, 11-9-15)

Composite Exhibit F

Zoning Ordinance 1891 (1971):

FILLING STATION: Any building, structure, or land used for the retail sale of motor vehicle fuels, oils, and accessories, and the servicing or repairing of minor parts and accessories, but not including major repair work, such as motor replacement, body and fender repair, or spray painting and excluding public garages.

FLOOR AREA: The sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the centerline of walls separating two attached buildings. Floor area includes space used for:

- (a) Elevator shafts or stairwells at each floor.
- (b) Mechanical equipment.
- (c) Penthouses.
- (d) Attic floor space (whether or not a floor has been laid) providing structural headroom of seven feet, six inches or more.

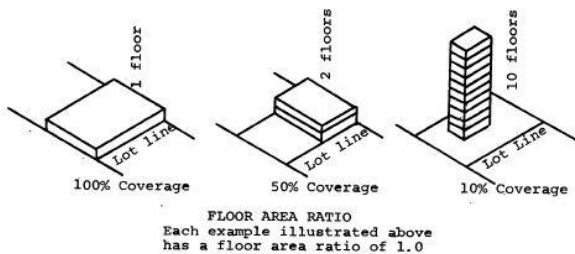
3.4

- (e) Interior halls, balconies or interior mezzanines.
- (f) Enclosed porches.
- (g) Accessory buildings.
- (h) Measured floor area less 180 square feet for a one-car capacity or 360 square feet for a two-car capacity private garage, attached or detached, accessory to a single-family or two-family dwelling.
- (i) Any floor space used for residential use, no matter where located within the building.

However, the floor area of a building shall not include:

- (a) Accessory water tanks or cooling towers.
- (b) Uncovered steps and exterior balconies.
- (c) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet, six inches.
- (d) Terraces, breezeways, or open porches.
- (e) Floor space used for required accessory off-street parking spaces.
- (f) Mechanical equipment rooms located above main roof deck.

FLOOR AREA RATIO: The floor area of the building or buildings on any lot divided by the area of the lot.



3.5

GARAGE, COMMUNITY: A building or part thereof, used for indoor parking of private passenger vehicles for use of residents in the vicinity.

Density limitations (units per acre) applied to both apartments and hotels
[Ex. RM-60, FAR also included]

6-4 RM-60 Multiple Family Medium Density District.

- A. DISTRICT PURPOSE. This is primarily a residential apartment District, which is not intended to provide tourist lodging accommodations.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following uses:
1. Apartment building
 2. Group houses
 3. One- or two-family dwelling

6.4

4. Rooming house.
5. Church, synagogue and temple.
6. Community garage.
7. School, elementary or high, having a curriculum substantially equivalent to public schools of comparable grades and having approval of the State Department of Education.
8. The following uses may be permitted as a Conditional Use:
 - a. Beach, commercial.
 - b. Camp, day or boarding.
 - c. College, junior college, or institution of higher learning.
 - d. Day nursery.
 - e. Automobile Parking Lot, Open or Enclosed, Non-commercial.
 - f. Institution, educational or philanthropic, including museum and art gallery.
 - g. Marine Dockage.
 - h. Private club.
 - i. Public and governmental buildings and uses.
 - j. Publicly owned and operated recreation facility, playground, playfield, park and beach.
 - k. Public utilities or public service uses, structures and appurtenances.
 - l. Temporary use for a period not to exceed 15 days.
9. Accessory uses for above uses.

C. MINIMUM LOT AREA. 5000 square feet.

D. MINIMUM LOT WIDTH. 50 feet.

E. MINIMUM YARDS. As provided in Section 8.

F. MAXIMUM BUILDING HEIGHT. None.

G. MINIMUM FLOOR AREA PER UNIT. 400 square feet per unit.

6.5

H. MAXIMUM FLOOR AREA RATIO. 1.52.

I. MAXIMUM DENSITY. 60 units per acre. Hotels and motels shall be permitted to increase their density by 40%.

Zoning Ordinance 1891 (Amended 1985):

47. **FLOOR AREA:** The sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of a projection, the area of which is included in the floor area calculation or from the centerline of walls separating two attached buildings. Floor area includes space used for:

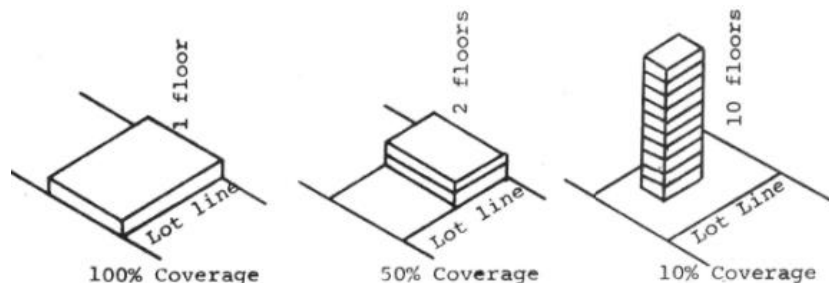
3.5

- a. Elevator shafts or stairwells at each floor.
- b. Mechanical equipment.
- c. Penthouses.
- d. Attic floor space, whether or not a floor has been laid, providing structural headroom of seven feet, six inches or more.
- e. Exterior corridors from which access is gained to dwelling and/or sleeping units.
- f. Interior halls, enclosed balconies or interior mezzanines.
- g. Enclosed porches.
- h. Accessory buildings.
- i. Measured floor area less 180 square feet for a one-car capacity or 360 square feet for a two-car capacity private garage, attached or detached, accessory to a single-family or two-family dwelling.
- j. Any floor space used for residential use, no matter where located within the building.

However, the floor area of a building shall not include:

- a. Accessory water tanks or cooling towers.
- b. Uncovered steps.
- c. Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet, six inches.
- d. Terraces, breezeways, or open porches.
- e. Floor space used for required accessory off-street parking spaces.
- f. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private balconies.

48. **FLOOR AREA RATIO:** The floor area of the building or buildings on any lot divided by the area of the lot.



FLOOR AREA RATIO

Each example illustrated above
has a floor area ratio of 1.0

Zoning Ordinance 89-2665 (Oct. 1, 1989):

71. **FIXTURE:** An article in the nature of personal property which has been permanently attached or affixed to a Building, Structure or land by means of cement, plaster, nails, bolts or screws.
72. **FLOOR AREA:** The sum of the gross horizontal areas of the floors of a Building or Buildings, measured from the Exterior faces of Exterior walls or from the Exterior face of an architectural projection, from the centerline of walls separating two attached Buildings.

However, the Floor Area of a Building shall not include the following unless otherwise provided for in this Ordinance.

- a. Accessory water tanks or cooling towers.
- b. Uncovered steps.
- c. Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet, six inches.
- d. Terraces, breezeways, or open porches.
- e. Floor space used for required accessory Off-Street Parking Spaces. However if the parking garage is the main permitted Use, then the Floor Area of the parking levels shall be included in the calculation of the Floor Area Ratio.
- f. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private Balconies.

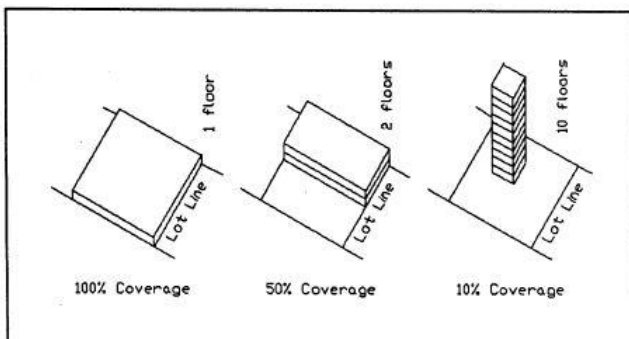
3.7

- h. Floor Area located below Grade; however, if the ceiling is above Grade, 1/2 of the Floor Area that is below Grade shall be included in the FAR Floor Area Ratio calculation.

Volumetric Buildings, used for storage, where there are no interior floors, the Floor Area shall be calculated as if there was a floor for every eight (8) feet of height.

When Transfer of Development Rights are involved, see Section 6-29.C for additional regulations that address Floor Area.

73. **FLOOR AREA RATIO:** The Floor Area of the Building or Buildings on any Lot divided by the area of the Lot.



Each example illustrated above has a floor area ratio of 1.0

74. **GARAGE, ACCESSORY:** An Accessory Building designed or used for parking for the main permitted Structure.

Ord. No. 90-2722 (Nov. 21, 1990):

3-2 TERMS DEFINED

A. For purposes of this Ordinance, certain terms and words are hereby defined.

* * *

47. **DAY CARE FACILITY:** Any establishment providing care during the day, but not at night, of children under the age of six (6) who are not attending a school in grade Kindergarten or higher, and who are not related to the resident Family.

* * *

72. **FLOOR AREA:** The sum of the gross horizontal areas of the floors of a Building or Buildings, measured from the Exterior faces of Exterior walls or from the Exterior face of an architectural projection, from the centerline of walls separating two attached Buildings.

However, the Floor Area of a Building shall not include the following unless otherwise provided for in this Ordinance.

* * *

- i. Enclosed garbage rooms, enclosed within the Building on the Ground Floor level.

* * *

*

Ord. No. 98-3108, § 1 (Jan. 21, 1998):

80. FLOOR AREA: The sum of the gross horizontal areas of the floors of a Building or Buildings, measured from the Exterior faces of Exterior walls or from the Exterior face of an architectural projection, from the centerline of walls separating two attached Buildings.

However, the Floor Area of a Building shall not include the following unless otherwise provided for in this Ordinance.

- a. Accessory water tanks or cooling towers.
- b. Uncovered steps.
- c. Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet, six inches.
- d. Terraces, breezeways, or open porches.
- e. Floor space used for required accessory Off-Street Parking Spaces; however, up to a maximum of 2 spaces per residential unit may be provided without being included in the calculation of the Floor Area Ratio. However if the parking garage is the main permitted Use, then the Floor Area of the parking levels shall be included in the calculation of the Floor Area Ratio.
- f. Commercial Parking Garages and non-Commercial Parking Garages when such Structures are the main Use on a Site.
- g. Mechanical equipment rooms located above main roof deck.
- h. Exterior unenclosed private Balconies.
- i. Floor Area located below Grade; however, if the ceiling is above Grade, 1/2 of the Floor Area that is below Grade shall be included in the FAR Floor Area Ratio calculation.
- j. Enclosed garbage rooms, enclosed within the Building on the Ground Floor level.

Volumetric Buildings, used for storage, where there are no interior floors, the Floor Area shall be calculated as if there was a floor for every eight (8) feet of height.

When Transfer of Development Rights are involved, see Section 6-29.C for additional regulations that address Floor Area.

Ord. No. 2014-3876, § 1 (June 11, 2014):

Floor area means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. However, the floor area of a building shall not include the following unless otherwise provided for in these land development regulations.

- (1) Accessory water tanks or cooling towers.
- (2) Uncovered steps.
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- (4) Terraces, breezeways, or open porches.
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.
- (6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.
- (7) Mechanical equipment rooms located above main roof deck.
- (8) Exterior unenclosed private balconies.
- (9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. ~~however.~~ However, if any portion of the top of the slab of the ceiling is above grade, one-half of the floor area that is below grade shall be included in the floor area ratio calculation.

-
- (10) Enclosed garbage rooms, enclosed within the building on the ground floor level.

Volumetric buildings, used for storage, where there are no interior floors, the floor area shall be calculated as if there was a floor for every eight feet of height.

When transfer of development rights are involved, see chapter 118, article V for additional regulations that address floor area.

Ord. No. 2016-4029, § 1 (Sept. 14, 2016):

Floor area means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. However, the floor area of a building shall not include the following unless otherwise provided for in these land development regulations.

2 of 4

* * *

- (1) Accessory water tanks or cooling towers.
- (2) Uncovered steps.
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- (4) Terraces, breezeways, or open porches.
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.
- (6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.
- (7) Mechanical equipment rooms located above main roof deck.
- (8) Exterior unenclosed private balconies.
- (9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is below grade shall be included in the floor area ratio calculation. Despite the foregoing, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation.
- (10) Enclosed garbage rooms, enclosed within the building on the ground floor level.

Volumetric buildings, used for storage, where there are no interior floors, the floor area shall be calculated as if there was a floor for every eight feet of height.

When transfer of development rights are involved, see chapter 118, article V for additional regulations that address floor area.

Exhibit G

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH FLORIDA 33139



PLANNING, DESIGN & HISTORIC PRESERVATION DIVISION

• 673-7880

March 16, 1994

Mr. Micky Biss
USA Express, Inc.
407 Lincoln Road
Suite 10-C
Miami Beach, FL 33139

Re: Floor Area Calculations:
940 17th St., Miami Beach

Dear Mr. Biss:

Please be advised that I have reviewed the plans as prepared by Arquitectonica (dated: February 23, 1994, revised March 14, 1994), as supplemented by the Area Tabulation Clarification memo (dated March 16, 1994) from Arquitectonica for the proposed structure at 940 17th, Miami Beach. The purpose of this review has been solely to ascertain whether or not the proposed structure meets the Floor Area Ratio (F.A.R.) requirements of the CD-3 District in which it is to be located. It should be noted that setback variances would be required.

I have concluded that the project, as now designed, exceeds the permitted F.A.R. for the site. This conclusion is different than that which was calculated by your architect in that I believe three areas within the project are supposed to be included in the F.A.R. calculation. It is my administrative decision that the following three areas are to be included in the total floor area of a building when calculating F.A.R.:

1. Exterior corridors/hallways
2. Open stairwells within the tower
3. Stairwells and elevator shafts on each floor with parking

There is also some concern relative to the design of the balconies. Further refinement of the decorative elements may be necessary to insure that the area of the balcony is not included in the FAR calculation and meets the definition of balcony as stated in our Ordinance.

If you desire to appeal this decision, you have that right, as provided for by Sub-Section 16-7A of Zoning Ordinance 89-2665. The

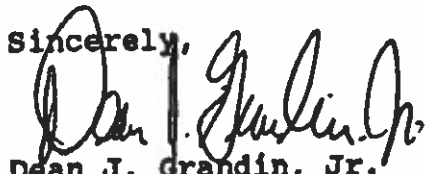
EXHIBIT "A"

deadline for submission of a complete appeal application for the May 6, 1994 meeting of the Board of Adjustment is March 22, 1994. The following should be included in an application for an appeal from an Administration Decision:

- a. Application form
- b. Application Fee - \$600.00
- c. Registered Survey of the Property (10 copies; at least one set signed, sealed and dated).
- d. Supporting Architectural Plans (10 copies, at least one set signed, sealed and dated).
- e. Appeal Letter (10 copies, including one original - attach this denial letter to each).
- f. Labels (2 sets of all labels and related documents for notification of property owners within 375 of the site in question).

I have enclosed, herewith, the Board of Adjustment application package. If you have any questions regarding this letter or on how to proceed on this matter, please call me at your earliest convenience.

Sincerely,



Dean J. Grandin, Jr.

Deputy Director

Development, Design & Historic Preservation Services

DJG/ljs

cc: H. Mavrogenes
J. Dellagloria

Enc.

c:\wp\dean\mbiss-2.dg

Exhibit H

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH FLORIDA 33139



PLANNING, DESIGN & HISTORIC PRESERVATION DIVISION

673-7550

TO: CHAIRMAN & MEMBERS
ZONING BOARD OF ADJUSTMENT

May 6, 1994

FROM: DEAN J. GRANDIN, JR.
PLANNING & ZONING DIRECTOR

SUBJECT: STAFF RECOMMENDATIONS:
MAY 6, 1994 MEETING

FILE No. 2377 U.S.A. EXPRESS INC.
940 17TH STREET

The applicant, U.S.A. Express, Inc., is appealing an administrative decision rendered by the Planning and Zoning Director on March 16, 1994, relative to preliminary plans submitted for a site at 940 17th Street, Miami Beach. Specifically, it was the Director's administrative decision that the following three areas are to be included in the total floor area of the building in question when calculating its Floor Area Ratio (F.A.R.):

1. Exterior corridors/hallways
2. Open stairwells within the tower
3. Stairwells and elevator shafts on each floor with parking.

It is important to understand that this interpretation of the Zoning Ordinance 89-2665 has broad implications beyond the scope of the specific project being appealed. By excluding the contested items from the floor area of the proposed building, or any new building in the City, would effectively grant a significant floor area bonus above that which the Zoning Ordinance and the Comprehensive Plan now allow.

Before proceeding to examine each area being appealed, I believe it would be instructive in comprehending the current definition of floor area the Zoning Ordinance 89-2665. The definition is as follows:

79. **FLOOR AREA:** The sum of the gross horizontal areas of the floors of a Building or Buildings, measured from the Exterior faces of Exterior walls or from the Exterior face of an architectural projection, from the centerline of walls separating two attached Buildings.

However, the Floor Area of a Building shall not include the following unless otherwise provided for in this Ordinance.

- a. Accessory water tanks or cooling towers.
- b. Uncovered steps.
- c. Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet, six inches.
- d. Terraces, breezeways, or open porches.
- e. Floor space used for required accessory Off-Street Parking Spaces. However if the parking garage is the main permitted Use, then the Floor Area of the parking levels shall be included in the calculation of the Floor Area Ratio.
- f. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private Balconies.
- h. Floor Area located below Grade; however, if the ceiling is above Grade, 1/2 of the Floor Area that is below Grade shall be included in the FAR Floor Area Ratio calculation.
- i. Enclosed garbage rooms, enclosed within the Building on the Ground Floor level.

Volumetric Buildings, used for storage, where there are no interior floors, the Floor Area shall be calculated as if there was a floor for every eight (8) feet of height.

When Transfer of Development Rights are involved, see Section 6-29.C for additional regulations that address Floor Area.

Conceptually, the regulation of floor area by creating a floor area ratio is included in this Zoning Ordinance, as in other municipal zoning ordinances, as a mechanism to control the overall exterior mass of a building. That is why the floor area is measured to the exterior faces of exterior walls or from the exterior face of an architectural projection. It is from this total floor area volume that certain areas are excluded, as incentives to development.

Importantly, the current floor area definition is significantly similar to the definition in the prior Miami Beach Zoning Ordinance #1891, with a major exception. That definition reads as follows:

69. **FLOOR AREA:** The sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of a projection, the area of which is included in the floor area calculation or from the centerline of walls separating two attached buildings. Floor area includes space used for:

- a. Elevator shafts or stairwells at each floor.
- b. Mechanical equipment.
- c. Penthouses.
- d. Attic floor space, whether or not a floor has been laid, providing structural headroom of seven feet, six inches or more.
- e. Exterior corridors from which access is gained to dwelling and/or sleeping units.
- f. Interior halls, enclosed balconies or interior mezzanines.
- g. Enclosed porches.
- h. Accessory buildings.
- i. Measured floor area less 180 square feet for a one-car capacity or 360 accessory to a single-family or two-family dwelling.
- j. Any floor space used for residential use, no matter where located within the building.

However, the floor area of a building shall not include the following unless otherwise provided for in this Ordinance.

- a. Accessory water tanks or cooling towers.
- b. Uncovered steps.
- c. Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet, six inches.
- d. Terraces, breezeways, or open porches.
- e. Floor space used for required accessory off-street parking spaces.
- f. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private balconies.

If the major exception is not readily obvious, it is that the prior definition included a listing of those types of areas that are to be included in floor area. When the Miami Beach Zoning Ordinance Review Committee (ZORC) examined this definition as part of the process in creating the new Zoning Ordinance 89-2665, it was decided to remove the "included spaces" since such a listing could not be entirely inclusive and could not possibly anticipate all types of specialized areas within a building. The definition did provide a basis, however, for the interpretation of that Ordinance, and has carried over to the interpretation of the current Zoning Ordinance.

It is interesting to note that most cities generally define floor area in the same manner, as exemplified in the Ordinance excerpts for the City of Miami and the City of Fort Lauderdale (see attached). What differs in these definitions are those specific areas which are either included or excluded from the floor area calculation. For instance, the City of Miami, prior to 1990,

included stairways and elevator shafts in the floor area; after 1990, stairways were excluded. The City of Fort Lauderdale does not include stairways or elevators in its calculation of floor area. The point being made here is that there is no universal definition of what is, or is not, included within a floor area calculation -- each municipality defines the term to meet its own development objectives and needs.

With these introductory findings and observations put forth for consideration, the balance of this report will focus on the three specific areas of contention:

Exterior Corridors/Hallways

The first area of contention is the exterior corridors/hallways. The applicant is contending that these areas of the building "are nothing more than the functional equivalent of a terrace, open porch or breezeway". This argument might be acceptable if it were not for the fact that these exterior corridors offer the only means of egress to the hotel rooms and are a necessary component of the building's pedestrian circulation. Referring back to the prior Zoning Ordinance #1891, exterior corridors have continually been interpreted as areas to be included in the floor area of a building.

The applicant refers to the definition of "terrace" in the American Heritage Dictionary, Second College Edition, as an argument as to why these exterior corridors should be considered as terraces and be excluded from the floor area. Specifically, the definition is quoted as follows: "1a. an open colonnaded platform, as a porch or promenade. b. a platform extending outdoor from the floor of the home or apartment building...".

In rebuttal, I offer the following definitions which clearly describe a terrace as an area generally raised slightly above ground level and not a projecting balcony from a building: "1. a raised level with a vertical or sloping front or rider joined with masonry, turf or the like, esp. one of a series of levels rising one above another" -- Random House Dictionary of the English Language, 1968; or, "a level space raised above the adjoining land, and usually flanked by a building." -- Dictionary of Architecture, Saylor, 1963; or "1. an embankment with level top often paved, planted and adorned for leisure use" - Dictionary of Architecture and Construction, MacGraw Hill, 1993.

In conclusion, the Planning and Zoning Director contends that the exterior corridors/hallways are necessary as a means of building circulation and must be construed as elements of the building which are included in the floor area. Further, these exterior corridors are not the "functional equivalent" of a terrace, as the applicant has argued.

Open Stairwells within the Tower

The second area of contention is the open stairwells within the tower portion of the building. The applicant contends these stairwell areas, because they are open on the exterior side, fall into the category of "uncovered steps" which are excluded by definition in the current Zoning Ordinance. The argument proceeds, further, that because these stairwells are "not protected or concealed" that they are open and unenclosed.

To suggest that stairwells that are open and not concealed from view translates to mean that they are, therefore, "uncovered" is ludicrous. The first and second definitions in the Random House Dictionary are as follows: "1. to place something over or open, as for protection or concealment; 2. to be or serve as a covering for; extend over." Clearly, if the City of Miami Beach wanted to exclude open stairwells from FAR calculations, it would have referred to them as "unenclosed stairwells" or "open stairwells" in the Ordinance. In the opinion of the Planning and Zoning Director, the Zoning Ordinance is clear as to what is meant by the term "uncovered steps." -- these are the steps leading up to a porch, an at grade entrance, an outdoor deck or similar architectural feature and that are open to the sky.

Of important note, referring back to Zoning Ordinance 1891, there was a clear distinction made between stairwells and uncovered steps. Under the definition in that Ordinance, "Elevator shafts or stairwells [emphasis added] at each floor" were areas included in floor area and "uncovered steps" was an area excluded. There was a purposeful distinction between these two very different architectural conditions.

In conclusion, the Planning and Zoning Director has taken the position that open stairwells are not to be construed as uncovered steps and, therefore, are to be included in the floor area of a building.

Stairwells and Elevator Shafts on Each Floor with Parking

The third area of contention is the stairwells and elevator shafts on each floor with parking. The applicant contends that these areas are "a necessary and integral part of the required parking levels." The argument continues that "under the requirements of the South Florida Building Code and the various handicapped accessibility regulations, all off-street parking areas must have both elevator access and at least two fire stairs".

While at first this argument seems to make sense, the fact is that the remainder of the building must also, by Code, have stairwells and elevators and these areas are included -- not excluded -- from the floor area. More importantly, Zoning Ordinance 89-2665 only excludes "floor space used for required accessory Off-street

Parking Spaces". It does not mention vertical circulation which is needed to gain access from these areas to the floors above.

The prior Ordinance 1891 again provides some guidance into the interpretation of the current Ordinance in that under the definition of areas for inclusion in the floor area, "elevator shafts or stairwells at each floor" is listed. Each floor has, therefore, been interpreted to mean every floor in the building, regardless of the use of each floor -- parking levels, like residential and commercial levels, have consistently been included in the calculation of floor area.

In conclusion, the Planning and Zoning Director contends that the stairwells and elevator shafts on floors which accommodate required parking are to be included in the floor area of a building.

Conclusion

It is important for the Board to understand that these floor area calculation matters are by no means trivial, although they may be presented by the applicant in such a manner. Since each of the areas of contention involve the common circulation spaces within a building, they can represent upwards of 20% of total buildable area. In this specific case, the total permissible floor area for the site is 25,942 square feet. The applicant has presented the preliminary plans for a hotel, showing a total of 25,830 square feet; the exterior corridors, open stairwells and parking level stairwell/elevator shafts have been excluded from this calculation. In fact, these excluded areas represent 4,780 square feet, or 18.5% of the permissible floor area for the site. The Planning and Zoning Director is of the opinion that the areas of contention should be included in the floor area and, therefore, the proposed building is 18.5% larger in square footage than it should be.

These conclusions and the administrative decision of the Planning and Zoning Director in the interpretation of Zoning Ordinance 89-2665 have not been done capriciously or solely with regard to the project at hand. Consultation with City staff, who have been assisting in the administration of both the current Zoning Ordinance and the preceding Ordinance 1891, has confirmed that this interpretation has been consistently applied for at least the past decade -- perhaps longer.

In view of the foregoing, the Planning and Zoning Director urges the Board to uphold his administrative decision, and deny the appeal made by the applicant.

DJG/ljs

cc: Roger M. Carlton, City Manager
John Dellagloria, Chief Deputy City Attorney
Richard Gatti, Public Works Director

Sec. 2012. Definitions and methods of measurement relating to standard LUI ratios; requirements and limitations.

The following definitions and methods of measurement shall be used in the districts and for the uses regulated under the LUI system. Subject to modifications made herein, specifically or in general, where further detail is needed in connection with definitions or methods for measurement in relation to residential uses regulated by the system, reference shall be made to appropriate sections of MPS or MAP. The floor area, open space, livability space, and recreation space ratios shall be applied only to such land area as is allocated for residential uses and accessory uses incidental to and compatible with residential uses.

For nonresidential uses, the floor area, open space, and pedestrian open space ratios shall be applied only to such land as is allocated for nonresidential uses.

2012.1. Reserved.**2012.2. Residential land area.**

Residential land area is land for residential development and related uses, including open space on the lot or tract. Such lands shall be construed to include streets entirely within the residential portion of the development and lands accepted for dedication for public purposes. Residential land area shall not be construed to include lands not beneficial to residential use due to location or character, or areas used predominantly for commercial or other nonresidential purposes.

As a further guide, where floor area of a building is predominantly in residential use, the building site shall be included in residential land area (as, for example, in the case of a multifamily structure with ten (10) percent of its floor area in accessory commercial and service uses).

2012.3. Floor area defined; inclusions and exclusions; maximum limitations.**2012.3.1. Residential floor area defined; inclusions and exclusions; maximum limitations.**

Residential floor area is the sum of areas for residential use on all floors of buildings, measured from the outside faces to the exterior walls or windows, including interior and exterior halls, lobbies, stairways, elevator shafts, mechanical rooms, enclosed porches and private enclosed balconies, and floor areas below Plane 1 (as defined in section 2016.1) used for habitation and residential access.

Not countable as residential floor area are:

- (a) Open terraces, patios, atriums, or balconies;
- (b) Carports, garages, breezeways, tool sheds;
- (c) Special purpose areas for common use of occupants, such as recreation rooms or social halls;
- (d) Staff space for therapy or examination in group care housing;
- (e) Basement space not used for living accommodations; or
- (f) Any commercial or other nonresidential space.

Maximum residential floor area shall not exceed the number of square feet derived by multiplying gross residential land area by the floor area ratio (FAR) applying.

2012.3.2. Nonresidential floor area defined; inclusions and exclusions; maximum limitations. Nonresidential floor area is the sum of areas for nonresidential use on all floors of buildings, measured from the outside faces of the exterior walls or windows, including interior and exterior halls, lobbies, stairways, elevator shafts, mechanical rooms, enclosed porches and balconies, and floor areas below Plane 1 (as defined in section 2016.1) used for nonresidential uses.

Not countable as nonresidential floor area are:

- (a) Parking and loading areas within buildings;
- (b) Open terraces, patios, atriums or balconies; or
- (c) Floor areas specifically excluded from floor area limitations by special provisions of these regulations.

Maximum floor area shall not exceed the number of square feet derived by multiplying gross residential land area by the floor area ratio (FAR) applying.

2012.4. *Open space.*

2012.4.1. *Open space definitions, residential and nonresidential*

2012.4.1.1. *Open space.* Open space is the total horizontal area of uncovered open space plus half the total horizontal area of covered open space subject to limitations set forth below.

2012.4.1.2. *Uncovered open space; residential and nonresidential*

- (a) For residential uses, uncovered open space is total gross residential land area not covered by buildings, plus open exterior balconies and roof area improved as livability space.
- (b) For nonresidential uses, uncovered open space is total gross nonresidential land area not covered by buildings, plus open exterior balconies and roof areas improved as pedestrian open space.

2012.4.1.3. *Covered open space.* Covered open space is open space closed to the sky, designed for use as livability (residential) or pedestrian open space (nonresidential). Such space shall have not less than twenty (20) percent of its perimeter open or partially open. "Partially open" is to be construed as being unenclosed by grillwork, railings, glass or the like for at least fifty (50) percent of its surface area. Examples of covered open space are covered balconies, covered portions of roof area, or spaces under buildings supported by posts, columns, or cantilevers. The square feet countable as covered open space shall not exceed the square footage of the open or partially open sides.

2012.4.2. *Minimum open space requirements; residential and nonresidential*

- (a) Residential open space required shall be not less than the number of square feet derived by multiplying gross residential land area by the residential open space ratio (OSR) applying.

City of Miami Z.O.
1990-1993

ZONING

§ 2502

Floor area, nonresidential. Nonresidential floor area is the sum of areas for nonresidential use on all floors of buildings, measured from the outside faces of the exterior walls, including interior and exterior halls, lobbies, enclosed porches and balconies used for nonresidential uses.

Not countable as nonresidential floor area are:

- (a) Parking and loading areas within buildings;
- (b) Open terraces, patios, atriums or balconies;
- (c) Stairways, elevator shafts, mechanical rooms; or
- (d) Floor areas specifically excluded from floor area limitations by special provisions of these regulations.

Floor area, residential. The sum of areas for residential use on all floors of buildings, measured from the outside faces of the exterior walls or windows, including interior and exterior halls, lobbies, enclosed porches and private enclosed balconies and floor areas below floodplain.

Not countable as residential floor area are:

- (a) Open terraces, patios, atriums, or balconies;
- (b) Carports, garages, breezeways, tool sheds;
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- (d) Staff space for therapy or examination in group care housing;
- (e) Basement space not used for living accommodations;
- (f) Stairways, elevator shafts or mechanical rooms; or
- (g) Any commercial or other nonresidential space.

Florists. See Retail.

Food processing. A commercial establishment in which food is prepared or otherwise processed for human consumption but is not consumed on premises and is generally sold to a distributor.

Food establishment—take-out only. An establishment serving prepared food, not for consumption on the premises, from which tables, chairs, eating counters and stools are excluded. Such establishments shall not encompass waiting areas totalling over one hundred (100) square feet in size.

Fortuneteller. See Astrologists.

Fraternity; sorority; student center. The terms "fraternity," "sorority" or "student center" refer to buildings or portions of buildings constructed and reserved primarily for fraternity, sorority, or student center purposes. Application of the regulations herein set out is intended

Dwelling, multiple-family. See "Apartment."

Dwelling, one-family. A "one-family dwelling" is a detached building designed for or occupied exclusively by one family.

Family. A "family" is one or more persons living together as a single housekeeping unit, supplied with a kitchen or facilities for doing their cooking on the premises.

Fence. A fabricated vertical physical barrier extending above grade and anchored below it, but not constructed as a wall.

Floor area. The gross floor area measured from the exterior faces of the exterior walls, the exterior faces of supporting exterior columns for any floor not enclosed by exterior walls, the centerline of any party wall separating two (2) buildings, or as measured from the exterior face of a projection, the area of which is included in this definition. Floor area does include:

- (1) Exterior corridor space from which access is gained to dwelling units or hotel rooms.
- (2) Floor space in penthouses.
- (3) Floor space in accessory buildings.
- (4) Floor space in interior balconies or mezzanines.

Floor area does not include:

- (1) Covered or enclosed parking areas.
- (2) Exterior unenclosed private balconies.
- (3) Floor space used for mechanical equipment for the building.
- (4) Elevator shafts and stairwells at each floor.

Fowl. "Fowl" is any guineas, peafowl, pigeons, pheasants or poultry.

Garage apartment. A "garage apartment" is a detached building that is erected as an accessory building and, where permitted, contains living quarters for not more than two (2) families in addition to the garage space. Unless garage space for more than two (2) automobiles is provided, living quarters for more than one family shall not be provided in the building, and the building must conform with all requirements for accessory buildings, and with the lot area and floor area of apartment buildings in the zone wherein located.

Supp. No. 81-1

Garage, mechanical. A "mechanical garage" is ~~is~~ **except** those described as a private or storage **where** automotive vehicles are mechanically repaired or reconstructed.

Garage, private. A "private garage" is a garage for business, service or industry connected directly or with motor vehicles is carried on.

Garage, public. A "public garage" is a building for public use for the storage and repair of automotive vehicles.

Garage, storage. A "storage garage" is a building ~~those~~ described as a private garage, used for the storage of automotive vehicles.

Gasoline and oil filling stations. "Gasoline and oil filling stations" are structures or places where gasoline and greases are supplied and dispensed to the motor vehicle where only minor repair work is performed.

Grade. The natural elevation of the ground, whether at abutting properties, or the grade established at a floor elevation by the flood insurance map published by the U.S. Department of Housing and Urban Development.

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Not countable as residential floor area are:

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- (c) Special purpose areas for common use of occupants, such as recreation rooms or social halls;
- (d) Staff space for therapy or examination in group care housing;
- (e) Basement space not used for living accommodations; or
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City of Miami Z.O.
1990-1993

ZONING

§ 2502

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Garage apartment. A "garage apartment" is a detached building that is erected as an accessory building and, where permitted, contains living quarters for not more than two (2) families in addition to the garage space. Unless garage space for more than two (2) automobiles is provided, living quarters for more than one family shall not be provided in the building, and the building must conform with all requirements for accessory buildings, and with the lot area and floor area of apartment buildings in the zone wherein located.

Garage, mechanical. A "mechanical garage" is any building except those described as a private or storage garage where automotive vehicles are mechanically repaired or reconstructed.

Garage, private. A "private garage" is a garage in any business, service or industry connected directly or indirectly with motor vehicles is carried on.

Garage, public. A "public garage" is a building used for public use for the storage and repair of automotive vehicles.

Garage, storage. A "storage garage" is a building other than those described as a private garage, used for the storage of automotive vehicles.

Gasoline and oil filling stations. "Gasoline and oil filling stations" are structures or places where gasoline and oil greases are supplied and dispensed to the motor vehicle where only minor repair work is performed.

Grade. The natural elevation of the ground, when not abutting properties, or the grade established as the floor elevation by the flood insurance map published by the U.S. Department of Housing and Urban Development.

Exhibit I

**BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA**

MEETING DATE: May 6, 1994
File No. 2377

APPLICANT: USA EXPRESS, INC.
407 LINCOLN ROAD, SUITE 10-C
MIAMI BEACH, FL 33139

PROPERTY AFFECTED: Street Address: 940 17th Street, Miami Beach,
FL, 33139

Legal Address: Lots 14 & 15, Block 37; Palm
View Subdivision; PB 6/29;
Dade County, Florida.

Zoning Classification: CD-3 (Commercial, High
Intensity)

SUBJECT: Appeal from an Administrative Decision of the Planning
and Zoning Director.

ACTION TAKEN BY THE BOARD: Appeal is denied and the decision of
the Planning and Zoning Director is upheld.

O R D E R

The Applicant submitted to the Planning, Design and Historic Preservation Division preliminary plans for a 44-unit hotel project to be developed on the above property. On March 16, 1994, the Planning and Zoning Director rendered an Administrative Decision finding that the following items should be included in the Floor Area for purposes of calculating the Floor Area Ratio (FAR), thereby further finding that the project exceeded the allowable FAR for the zoning classification:

1. Exterior Corridors/Hallways
2. Open Stairwells in the Tower
3. Stairwells and Elevator Shafts in the Parking Levels.

On March 18, 1994, the Applicant filed a timely appeal of the Administrative Decision. As required by law, due notice was

FILE NO. 2377
USE EXPRESS, INC.

published and mailed to property owners within 375 feet of the exterior limits of the property on which the application was made.

A public hearing was held on May 6, 1994, before the Board of Adjustment. The Board found in respect to each item, that:

- 1) The Exterior Corridors/Hallways, as rendered by the preliminary plans and the drawings submitted at the hearing, are to be included in the calculation of Floor Area for the building and are not "terraces," "breezeways" or "open porches" to be excluded, as per Zoning Ordinance 89-2665, Subsection 3-2A.80.d. The vote was 0 in favor and 5 against sustaining the appeal as to this item.
- 2) The Open Stairwells in the Tower, as rendered by the preliminary plans and the drawings submitted at the hearing, are to be included in the calculation of Floor Area for the building and are not "uncovered steps" to be excluded as per Zoning Ordinance 89-2665, Subsection 3-2A.80.b. The vote was 1 in favor and 4 against sustaining the appeal as to this item.
- 3) The Stairwells and Elevator Shafts in the Parking Levels, as rendered by the preliminary plans and the drawings submitted at the hearing, are to be included in the calculation of Floor Area and are not "floor space used for required accessory off-street parking spaces" to be excluded as per Zoning Ordinance 89-2665, Subsection 3-2A.80.e. The vote was 1 in favor and 4 against sustaining the appeal as to this item.

The Board concurs with and adopts the Staff Report and findings of the Planning and Zoning Director.

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH FLORIDA 33139



PLANNING, DESIGN & HISTORIC PRESERVATION DIVISION

673-7550

August 10, 1994

Mr. Micky Biss
USA Express, Inc.
407 Lincoln Road, Suite 10-C
Miami Beach, FL 33139

Re: Zoning Board of Adjustment File No. 2377
USA Express, Inc.
940-17th Street
Miami Beach, FL

Dear Mr. Biss:

I am enclosing the original order which has been executed by the Chairman of the Board of Adjustment of the City of Miami Beach denying the appeal which you requested.

Please be advised that it is the responsibility of the applicant to have the original order recorded in the Public Records of Dade County, Florida (44 W. Flagler Street, 8th Floor, Miami) and to furnish the original recorded order to this Department with a copy to the City Attorney's Office.

If you have any questions, please do not hesitate to contact me.

Sincerely,

April Hirsch
Secretary to the Zoning Board
of Adjustment

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Exhibit J

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH FLORIDA 33139



PLANNING, DESIGN & HISTORIC PRESERVATION DIVISION

673-7550

November 29, 1994

Mr. Micky Biss
407 Lincoln Road Suite 10C
Miami Beach, Florida 33139

**Re: 120-130 Ocean Drive
Miami Beach, Florida**

Dear Mr. Biss:

We have reviewed the plans for the subject property as prepared by Architectonica and dated July 19, 1993. The purpose of this review has been to determine whether or not the proposed structure meets the Floor Area Ratio (F.A.R.) requirements of the R-PS4 zoning district in which it is located. This district permits a maximum F.A.R. of 2.25 and the project is located on a lot with an area of 19,500 square feet. Therefore, the maximum permissible gross building area for a structure on this site would be 43,875 square feet (2.25 x 19,500).

A detailed calculation of the floor area for this project is not possible; there are two levels of units that are not reflected on the floor plans. However, based on our preliminary calculation of the floor area for the project, we have determined that the building exceeds the maximum permitted F.A.R.

This determination has been supplemented by certain information that you and your architect have supplied to this Division. Specifically, you have stated that the following areas have not been included in the floor area computation:

1. The elevator shaft at every level.
2. The stairwell at every level.
3. The plumbing and mechanical chases at every level.
4. The open common corridors/hallways at the apartment levels.
5. That portion of the balconies which are not projecting from the main face of the building and which are not open on two sides.

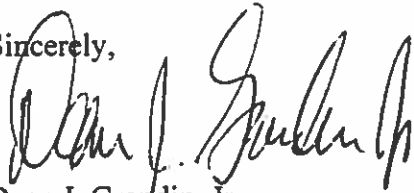
These areas are not specifically excluded in the definition of floor area, as defined in Zoning Ordinance 89-2665. The said areas have always been included by this Division in the calculation

of floor area for all development projects. As such, the areas in question represent approximately 20% of the total floor area of the building.

Based on the determination that the five areas in question have not been included in the computation of the floor area it is my Administrative Decision that the project as designed is over F.A.R. It should be noted that a part of this decision is consistent with the Administrative Decision rendered with regard to the project at 940 17th Street. As you will recall, the Board of Adjustment upheld that decision (File # 2377) at its meeting of May 6, 1994.

If you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean J. Grandin, Jr.", written in a cursive style.

Dean J. Grandin, Jr.
Planning and Zoning Director

DJG/JGG
C:\WP\2404ADM DEC

Exhibit K

BEFORE THE BOARD OF ADJUSTMENT
OF THE CITY OF MIAMI BEACH, FLORIDA

MEETING DATE: OCTOBER 1, 1999
FILE NO. 2404

IN RE: The application of
MICKY BISS/USA EXPRESS, INC.
120, 126, 130 Ocean Drive
Miami Beach, Florida
Lots 4, 5 and 6 LESS EAST 15 FT. FOR R/W
BLOCK 2; OCEAN BEACH FL. SUBDIVISION
PLAT BOOK 2 - PAGE 38

ORDER

The Applicant, Micky Biss/USA Express, Inc. is appealing an administrative decision rendered by the Planning and Zoning Director on November 29, 1994 which appeal hearing has been continued several times. The appeal raises the question of whether the following five areas should be included in the Floor Area Ratio (F.A.R.) of the Biss Tower project at 120, 126 and 130 Ocean Drive: (1) The elevator shaft at every level; (2) the stairwell at every level; (3) the plumbing and mechanical chases at every level; (4) the open common corridors/hallways at the apartment levels; and (5) that portion of the balconies which are not projecting from the main face of the building and which are not open on two sides.

Notice of the request for appeal was given as required by law and mailed to owners of property within a distance of 375 feet of the exterior limits of the property on which application was made.

THE BOARD FINDS that the property in question is currently located in the R-PS3 Zoning District.

THE BOARD FURTHER FINDS based upon evidence, testimony, information, and documentation presented to the Board, and upon the staff report and recommendations, which are incorporated herein by reference, that the floor area of all five areas should be included in the calculation of the Floor Area Ratio and that the Planning and Zoning Director's interpretation set forth in that certain letter dated November 29, 1994 is correct and should be affirmed. The Board also finds that the project has been redesigned to comply with the Planning and Zoning Director's decision and is presently in full compliance with the decision being appealed and that the Applicant and the City accept the findings of the Board set forth herein.

IN RE: The application of
MICKY BISS/USA EXPRESS, INC.
FILE NO. 2404

IT IS THEREFORE ORDERED by the Board that the appeal, as requested and set forth above, be and hereby is, denied and the interpretation of the Planning and Zoning Director is hereby affirmed.

BOARD OF ADJUSTMENT OF
THE CITY OF MIAMI BEACH, FLORIDA

By: Joy Malakoff
Joy Malakoff, Chairperson

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 1st day of October, 1999, by Joy Malakoff, Chairperson of The Board of Adjustment of the City of Miami Beach, Florida. She personally appeared before me and is personally known to me.

[NOTARIAL SEAL]

Notary: Charles A. Taft

Print Name:

Notary Public, State of Florida

My Commission No. CC832790

Commission Expires May 29, 2003

Filed with the Clerk of the Board of Adjustment on this 1st day of October, 1999. AT

Approved As To Form: DT

Legal Department