

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: December 17, 2019

FROM: Thomas R. Mooney, AICP  
Planning Director *MB For TRM*

SUBJECT: **PB 19-0332. Floor Area Clarification.**

### **REQUEST**

**PB 19-0332. FLOOR AREA CLARIFICATION. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SUBPART B OF THE CITY CODE, ENTITLED "LAND DEVELOPMENT REGULATIONS," CHAPTER 114, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, ENTITLED "DEFINITIONS," TO MODIFY FOR CLARIFICATION PURPOSES THE DEFINITION OF "FLOOR AREA"; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

### **RECOMMENDATION**

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

### **HISTORY**

On July 10, 2019, the Planning Director issued a determination pertaining to the definition of 'floor area' in chapter 114 of the Land Development Regulations of the City Code. The determination reaffirmed that the following elements are included within the definition of floor area: (1) voids in floors to accommodate elevator shafts; (2) voids in floors to accommodate mechanical/ventilation/trash shafts; and (3) stairwells, including stairwells within accessory garages.

On November 1, 2019, the Board of Adjustment, by a 5-2 vote, reversed the Planning Director's July 10, 2019 determination. On December 4, 2019, the Planning Director and the City, through outside counsel, appealed the decision of the BOA by filing a writ of certiorari in circuit court. The appeal operates to stay the BOA order and all matters related to it.

On December 11, 2019, at the request of Mayor Dan Gelber, Commissioner Mark Samuelian, and Commissioner Michael Góngora, the City Commission referred the proposed ordinance amendment to the Planning Board for review and recommendation (item C4K).

### **REVIEW CRITERIA**

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

- 1. Whether the proposed change is consistent and compatible with the**

**comprehensive plan and any applicable neighborhood or redevelopment plans.**

**Consistent** – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

**Not applicable** – The proposed amendment does not modify district boundaries.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

**Consistent** - The proposed ordinance amendment is not out of scale with the surrounding neighborhood.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

**Consistent** – The proposed ordinance will not affect the load on public facilities and infrastructure.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

**Not applicable.** – The proposed amendment does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

**Consistent** – The need to provide clarifications for the definition of floor area makes passage of the proposed change necessary.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

**Consistent** – The proposed ordinance amendment will not adversely affect living conditions in the neighborhood.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

**Consistent** – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**

**Consistent** – The proposed change will not seriously reduce light and air to adjacent areas.

10. **Whether the proposed change will adversely affect property values in the adjacent**

**area.**

**Consistent** – The proposed change should not adversely affect property values in the adjacent areas.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

**Consistent** – The proposed change should not be a deterrent to the improvement or development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

**Not applicable.**

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

**Not applicable.**

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

**Partially Consistent** – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

**Consistent** – The proposal will not affect the resiliency of the City with respect to sea level rise.

- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

**Consistent** – The proposal does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

#### **ANALYSIS**

The maximum square footage (intensity) of a building is regulated by the Floor Area Ratio (FAR), and applies to all zoning districts except for single-family districts. The maximum floor area for a property is determined by multiplying the lot size by the FAR of the zoning district.

Covered stairwells, elevator shafts, and mechanical chutes have been treated as floor area in the City of Miami Beach since 1971. In this regard, under ordinance 1891, from 1971 to 1989, the definition of floor area specified which areas of the floors of a building are included in the calculation of FAR. These included, expressly, stairwells and elevator shafts, as well as any other

residential area.

Beginning in 1988 the Zoning Ordinance Review Committee (ZORC) performed a comprehensive review of ordinance 1891 and recommended that the definition of floor area be rearranged and consolidated to include all areas of the floor, without listing specific inclusions, and that only a list of 'exclusions' would apply. Ordinance 89-2665, adopted in 1989, amended the definition of floor area, in accordance with the stylistic recommendation of ZORC. This definition, except for the addition of new explicitly defined exclusions without changing the meaning of the term, has remained in place up until today.

Section 114-1 of the Land Development Regulations (LDRs), which was adopted in 1989, defines Floor Area Floor as follows:

*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.*

It then provides specific portions of the building that may be excluded from the floor area limitations, which include the following:

- (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.*

On July 10, 2019, the Planning Director issued a determination reaffirming that stairwells, stairways, covered steps, and elevator shafts at every floor count towards the maximum floor area. In addition to reconfirming the plain and unambiguous definition of floor area as noted above, the July 10, 2019 determination was consistent with nearly 50 years of code administration and precedent, including two previous determinations of prior Planning Directors, both of which were previously affirmed by the Board of Adjustment (BOA).

The July 10, 2019 determination was appealed to the BOA, and on November 1, 2019, the BOA

overturned the planning director's determination. The BOA order is not final due to the appeal filed in circuit court. The decision of the BOA, should it go into effect, would have major impacts to the City and overturn nearly 50 years of zoning precedent. Additionally, it would create significant ambiguity and inconsistency in the way development applications are reviewed by staff for compliance with the LDRs. The current definition is free of ambiguity and has allowed for consistent and effective administration and review.

Staff has reviewed the floor area calculations for nine recent development projects (see chart below). If these projects were to exclude stairwells, stairways, covered steps, and elevator shafts from the floor area calculations, the overall square footage and intensity would increase from between 7% and 16%, for an average increase of 9.5%.

Project	Additional SF	Percent Increase	Total SF
Flamingo RM2 Addition	11,518 SF	12%	99K SF
1733-59 Purdy	6,098 SF	9%	67K SF
7140 Collins Avenue	10,769 SF	6%	174K SF
7145 Carlyle	20,275 SF	8%	255K SF
Monad Terrace	16,520 SF	9%	193K SF
57 and Collins	13,208 SF	7%	190K SF
68 and Indian Creek	8,225 SF	9%	95K SF
1344 15th Terrace	771 SF	10%	8K SF
14 Ferrey Lane	932 SF	16%	7K SF

A geographic information systems (GIS) analysis was also performed to estimate which apartment (non-condominium) and commercial buildings have available floor area in the City. This GIS analysis utilized the Miami-Dade County Property Appraiser's data on building size. While the building size calculations from the Property Appraiser may not be identical to the City's floor area calculations, they provide a good estimate of the impact that an across the board increase in floor area would have city wide. Additionally, the analysis does not consider unified development sites, which may have additional impacts on the allowable FAR in some zoning districts and the movement of floor area between lots.

Currently there are an estimated 22,979,726 square feet of floor area available within the City within properties containing apartments and commercial buildings. If this were increased by an additional 9.5%, there would be an estimated 27,122,711 square feet of floor area available to properties containing apartments and commercial buildings. This represents a potential estimated increase of 4,142,985 square feet. Such an across the board increase in floor area could have significant impacts on levels of service in the City including water, sanitary sewer, solid waste, storm water sewer, and transportation.

This analysis is important as it quantifies the potential increase in floor area, city wide, resulting from the conversion of currently included areas of a building into excluded areas. It also clearly shows that such increases are not trivial or minimal in any way and underscores the importance of evaluating increases in FAR on a more limited, strategic basis.

The proposed ordinance clarifies the areas of a building that count towards the maximum floor area limitations and reaffirms the definition of floor area that the City has consistently and uniformly applied to every building for nearly 50 years. The ordinance affirms that the definition of floor area includes *stairwells, stairways, covered steps, elevator shafts at every floor (including mezzanine level elevator shafts), and mechanical chutes and chases at every floor (including mezzanine level)*. The proposal is consistent with how floor area ratio (FAR) limitations have been calculated since the adoption of zoning ordinance 89-2665 in 1989, as well as the previous ordinance that was in effect from 1971 to 1989 (ordinance 1891).

Finally, it is important to note the proposed amendment does not affect single family home districts (RS-1, 2, 3, & 4). Single family districts are regulated by unit size limitations, lot coverage, and height limits, and are not subject to FAR restrictions.

**RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

**Definition of Floor Area**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SUBPART B OF THE CITY CODE, ENTITLED "LAND DEVELOPMENT REGULATIONS," CHAPTER 114, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, ENTITLED "DEFINITIONS," TO MODIFY FOR CLARIFICATION PURPOSES THE DEFINITION OF "FLOOR AREA"; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, City Code Section 114-1 sets forth explicit definitions of the technical terms "floor area" and "floor area ratio," and provides specific requirements for the measurement and calculation of floor area; and

**WHEREAS**, the City relies upon the terms "floor area" and "floor area ratio" as objective intensity standards for the control of population densities, building intensities, and for comprehensively planning the necessary public infrastructure to support orderly growth and development; and

**WHEREAS**, one purpose of the City's regulation of a property's maximum floor area and/or floor area ratio ("FAR") is to provide a quantifiable and objective mechanism to control both the size and intensity, as well as the overall mass, of a building; and

**WHEREAS**, pursuant to City Code Section 114-1, the term "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"; and

**WHEREAS**, Section 114-1 enumerates ten elements of a building that are excluded from the definition of "floor area"; and

**WHEREAS**, if a building element is not listed as an exclusion from the calculation of "floor area," then the element is deemed to be included in the calculation of "floor area"; and

**WHEREAS**, the City has consistently counted elevator shafts, stairwells, and mechanical chutes and chases as "floor area" for more than 48 years; and

**WHEREAS**, on two prior occasions in 1994, the Planning Director was formally asked to determine whether the definition of floor area includes voids in floors to accommodate elevator shafts, voids in floors to accommodate mechanical/ventilation/trash shafts, and stairwells; and

**WHEREAS**, on both occasions, the Planning Director concluded that voids in floors to accommodate elevator shafts, voids in floors to accommodate mechanical/ventilation/trash shafts, and stairwells were included in the definition of floor area; and

**WHEREAS**, on both occasions, the Board of Adjustment affirmed the administrative determinations of the Planning Director; and

**WHEREAS**, on July 10, 2019, the Planning Director issued a determination concluding that the following elements are included within the definition of floor area: (1) voids in floors to accommodate elevator shafts; (2) voids in floors to accommodate mechanical/ventilation/trash shafts; and (3) voids in floors to accommodate stairwells, including voids to accommodate stairwells within accessory garages; and

**WHEREAS**, in a clear departure from its limited quasi-judicial authority, the Board of Adjustment voted on November 1, 2019, to reverse the July 10, 2019 determination, and effectively amend the Land Development Regulations—without the authority to do so—to create a new exclusion from the definition of Floor Area for the elements identified in the immediately preceding recital; and

**WHEREAS**, the Board of Adjustment's decision is not consistent with the plain text of the definition of Floor Area, not consistent with the legislative intent of the City Commission, and not consistent with the intent and purpose of the land development regulations; and

**WHEREAS**, the Mayor and City Commission now desire to codify and re-affirm the Planning Director's longstanding interpretation and declare that no exception to the definition of Floor Area exists other than those exceptions explicitly defined in the Land Development Regulations. For the avoidance of doubt, the following building elements are – and always have been -- included in the calculation of floor area: (1) covered steps, stairways and stairwells; (2) elevator shafts at every floor and mezzanine level; and (3) mechanical chutes and chases at every floor and mezzanine level.

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

**Section 1.** Chapter 114 of the City Code, entitled "General Provisions," is hereby amended as follows:

#### **CHAPTER 114 – GENERAL PROVISIONS**

##### **Sec. 114-1.-Definitions**

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

*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. For the purpose of clarity, floor area includes, but is not limited to, stairwells, stairways, covered steps, elevator shafts at every floor (including mezzanine level elevator shafts), and mechanical chutes and chases at every floor (including mezzanine level).

~~However, the floor area of a building shall not include the following~~ For the avoidance of doubt, unless otherwise provided for in these land development regulations, floor area excludes only the spaces expressly identified below:

- (1) Accessory water tanks or cooling towers.

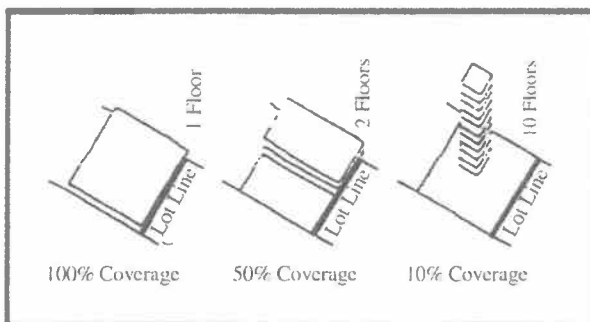


- (2) Uncovered steps.
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- (4) Terraces, breezeways, or open porches.
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of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

*Floor area ratio* means 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.

\* \* \*

**SECTION 2. Repealer.**

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

**SECTION 3. Codification.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

**SECTION 4. Severability.**

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

**SECTION 5. Effective Date.**

This Ordinance shall take effect ten days following adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Dan Geiber, Mayor

ATTEST:

\_\_\_\_\_  
Rafael E. Granado, City Clerk

APPROVED AS TO FORM  
AND LANGUAGE  
AND FOR EXECUTION

*Paul Casati* 12-3-19  
\_\_\_\_\_  
City Attorney Date

NK

First Reading: \_\_\_\_\_, 2020.

Second Reading: \_\_\_\_\_, 2020

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director