

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: July 27, 2020

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB20-0380. Replacement of floor plates in Nonconforming Contributing Buildings.**

**An ordinance** of the Mayor and City Commission of the City of Miami Beach, Florida amending the Land Development Regulations of the Code of the City of Miami Beach, by amending Chapter 118, "Administration and Review procedures," by amending Article IX, "Nonconformances," by amending Section 118-395, entitled "Repair and/or Rehabilitation of Nonconforming Buildings and Uses," to authorize the Historic Preservation Board to approve the reconstruction of original interior floor plates in contributing buildings on lots that are non-conforming as to floor area ratio (FAR), subject to certain specified conditions; providing for repealer, codification, severability and an effective date.

#### **RECOMMENDATION**

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

#### **BACKGROUND**

Under the current regulations of the city code, when an existing building exceeds the current maximum allowable floor area ratio (FAR), the excess FAR is considered legal non-conforming, and no additional FAR may be added. Specifically, under Chapter 118, Article IX of the Land Development Regulations (LDRs) of the City Code, governing nonconformances, a nonconforming building or use cannot be expanded.

In order to amend the code to allow for limited circumstances where non-conforming FAR can be reconstructed, an amendment to Chapter 118, Article IX of the LDRs is required. Pursuant to City Charter Section 1.03(c), such amendment would require the approval of the City's voters.

On July 17, 2019, the City Commission approved the following ballot question, which was placed on the November 5, 2020 election ballot:

*Ordinance authorizing new floor area within interior of historic buildings for adaptive reuse*

*Floor area ratio ("FAR") is the measure the City utilizes to regulate the overall size of a building. Currently, new floor area cannot be added to the interior of historic buildings that*

*have no available floor area, unless the City's voters approve an FAR increase, pursuant to Charter Section 1.03(c).*

*Shall City Commission adopt an Ordinance authorizing the use of new floor area within historic buildings for the adaptive reuse of such buildings?*

The ballot measure failed by a very narrow margin. Out of 9,380 votes cast for this particular ballot measure, 4,592 voted yes (49%) and 4,788 voted no (51%).

On June 24, 2020, at the request of Mayor Dan Gelber, the City Commission referred to attached ordinance to the June 30, 2020 meeting of the Land Use and Sustainability Committee (LUSC), as well as the Planning Board.

On June 30, 2020, the LUSC recommended that the Planning Board transmit the proposal to the City Commission with a favorable recommendation.

### **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 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.**

**Partially Consistent** – The additional load on public facilities and infrastructure would be minimally impacted; however, any development will be reviewed for concurrency as part of the building permit process.

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** – Changes in economics for the restoration and reuse of historic buildings makes passage of the proposed change necessary.

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

**Consistent** – The proposed change should not adversely influence living conditions.

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.**

**Partially Consistent** – If the proposed Ordinance is adopted, traffic Congestion and public safety would be reviewed as part of the land use board process.

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

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

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

**Partially Consistent** – The proposed change will not adversely affect neighboring property values.

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 will 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.**

**Consistent** – Changes in economics and FAR limitations makes the rehabilitation and use of historic buildings more difficult. The proposed change would allow greater flexibility to facilitate the restoration of historic buildings.

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.**

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.**

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.**

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

**ANALYSIS**

The proposed referral pertains to an amendment to Chapter 118, Article IX of the LDR's that would allow the historic preservation board to approve the reconstruction of original, interior floor plates, as part of the restoration of a contributing building. For example, if a contributing building that is legal non-conforming as to FAR sought to reconstruct original interior floors that were previously removed, the HPB could allow for the reconstruction of those floors, as part of a restoration project. This is not possible under the current regulations of the code.

The draft regulations would only apply to existing structures that are classified as 'contributing' in the city's historic properties database, and which are located within a locally designated historic district. Additionally, the reconstruction of the original floor plates would be subject to the review and approval of the HPB and would only be allowable for interior floor plates removed prior to June 4, 1997. The reason for establishing this particular date is so the applicability of the provision would be limited to those floor plates removed prior to the date of approval of the first charter amendment requiring voter approval of increases in FAR.

From a policy standpoint the administration is supportive of this proposal, as it will provide the HPB with the ability to review and authorize the reconstruction of original interior floor plates in nonconforming, contributing buildings. Although a similar ballot measure failed last November, the administration believes that limiting this proposal to the reconstruction of original floors in contributing buildings will make this proposal more acceptable. The previous ballot measure included a much broader application, that would have allowed non-original floor plates to be reconstructed. This likely contributed to the failure of the measure.

As the proposed amendment would result in an increased in zoned FAR, under the City Charter approval from the voters is required. For a ballot question to be placed on the November 3, 2020 ballot, the City Commission would need to approve the ballot language by the end of July.

**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.

**Replacement of Floor Plates in Nonconforming Contributing Buildings**

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING ARTICLE IX, "NONCONFORMANCES," TO AUTHORIZE THE HISTORIC PRESERVATION BOARD TO ALLOW FOR THE REPLACEMENT OF INTERIOR FLOOR PLATES IN CONTRIBUTING BUILDINGS ON LOTS THAT ARE NON-CONFORMING AS TO FLOOR AREA RATIO (FAR); PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach continually seeks to update and clearly define the requirements of the Land Development Regulations of the Code of the City of Miami Beach as they pertain to nonconforming structures; and

**WHEREAS**, the City of Miami Beach has adopted regulations pertaining to the restoration and improvement of existing contributing buildings that are nonconforming; and,

**WHEREAS**, the City of Miami Beach desires to refine, clarify, expand and enhance existing procedures and requirements for improvements to existing contributing buildings that are non-conforming structures in order to ensure that a substantial portion of any such structure is retained and preserved; and,

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives.

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

**SECTION 1.** That Chapter 118, Entitled "Administration and Review Procedures", Article IX, Entitled "Nonconformances", of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

\* \* \*

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

\* \* \*

(b) Nonconforming buildings.

\* \* \*

(3) As applicable to the restoration of a contributing building located within a designated local historic district, the historic preservation board may, at its discretion and subject to the certificate

of appropriateness procedure in chapter 118, article X, of this Code, approve the reconstruction of original internal floors in accordance with historical documentation and/or building permit records if, prior to June 4, 1997, such floors were removed, even if the underlying lot is non-conforming as to floor area ratio (FAR).

**SECTION 2. REPEALER**

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

**SECTION 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 re-numbered or re-lettered 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 \_\_\_\_\_, 2020.**

\_\_\_\_\_  
Dan Gelber, Mayor

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney                      Date

First Reading:            July 29, 2020  
Second Reading:        November / December \_\_\_\_, 2020

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