

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 22, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **Discussion: Floor Area Ratio (FAR) citywide.**

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 Petition for Writ of Certiorari in Circuit Court. Pursuant to City Code section 118-9, the filing of this appeal operates to stay the BOA order and all "work on the premises and all proceedings in furtherance of the action appealed from."

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

On December 17, 2019, the Planning Board held a public hearing and transmitted the ordinance to the City Commission with a favorable recommendation by a vote of seven to zero (7-0). As part of the discussion this item, it was requested that a discussion item be scheduled regarding potential citywide FAR modifications. The proposed ordinance was subsequently adopted by the City Commission.

On August 25, 2020, the Planning Board continued the item to the September 22, 2020 meeting.

BACKGROUND

The maximum square footage (intensity) of a building is regulated by the Floor Area Ratio (FAR), which applies to all zoning districts except for single-family districts. Floor area ratio (FAR) is a defined term in Section 114-1 of the Land Development Regulations (LDRs) and is essentially a multiplier used to regulate the maximum size of a building based on the lot size. For example, a 10,000 square foot lot with an FAR of 2.0 would be allowed to build up to a 20,000 square foot building.

Floor area is also a defined term in Section 114-1 of the LDRs and provides the specific requirements for the calculation of floor area. Under section 114-1, floor area consists of the gross horizontal areas of the floors of a building, unless such areas are specifically exempted. The only exceptions to the definition of floor area are expressly listed in Section 114-1.

The purpose of the regulation of floor area, including FAR, both in the City of Miami Beach and in other municipalities, is to provide a quantifiable mechanism to control both the size and intensity, as well as the overall exterior mass, of a building. That is why floor area is measured to the exterior face of exterior walls or from the exterior face of an architectural projection. Under the Miami Beach City Code, it is from this total floor area volume that certain areas are excluded.

The current requirements for FAR and floor area have been in place since 1989 (Ordinance 89-2665), and the only amendments subsequent to 1989 have been to the exceptions from floor area. The current list of exemptions is as follows:

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.

Pursuant to the City Charter, a code modification that increases the floor area of a building must be approved in a referendum. On July 29, 2020, the City Commission approved placing three items on the November general election ballot related to FAR. The three items are as follows:

1. Include four additions to the list of exceptions as follows:
 - Stairwells and elevators located above the main roof deck.
 - Transformer vault rooms.
 - Fire control rooms and related command centers for life-safety purposes.
 - Bicycle parking (secured).
2. Increase in the FAR for the Wolfsonian Arts District from 1.5 to 3.25.
3. The third item is to authorize the Historic Preservation Board (HPB) to approve the reconstruction of original, interior floor plates, that were removed prior to June 4, 1997, as part of the restoration of a contributing building.

ANALYSIS

Any increase in FAR, either through a bonus/incentive provision, percent increase, or additional exclusions, must be effectuated in a deliberate and thoughtful manner, and needs to be supported by a thorough planning analysis. This will promote thoughtful development incentives, prevent unintended consequences related to FAR increases, as well as ensure the continuation of a predictable method of plan review.

The definition of floor area in the City Code, as well as the application of FAR regulations in general, has not been evaluated comprehensively since 1989. In this regard, staff believes that the subject discussion is warranted.

On July 29, 2020, the City Commission authorized the Administration to proceed with the creation of a new Resiliency Code/Land Development Regulations. FAR will be a major component of this process, as it is a tool that can be utilized to increase the resiliency of the City, as well as addressing other needs.

As part of the FAR discussion regarding additional exemptions from the definition of FAR, additional items were discussed by the Land Use and Sustainability Committee and the full City Commission, but not recommended to move forward at this time. Below is the list items that were considered but that did not move forward to the ballot. In order to provide structure and organization for this FAR analysis, the administration has divided the discussion into five separate categories:

1. Bonus FAR/incentives related to resiliency and other defined policy benchmarks.
2. Strategic FAR increases within specific zoning districts.
3. The creation of Transfer of Development Rights (TDR) Programs in specified areas of the City.
4. Removing all exemptions, counting everything including parking, and increasing the FAR

across the City.

Some of these categories include FAR increases that are fairly minor and easy for voters to understand, either as individual amendments, or as part of a more comprehensive amendment. Others will require more study before a fully developed proposal can be presented. They will also require additional time for education purposes.

The following is a detailed analysis of each category, along with a specific recommendation as to when the proposal should move forward. Staff has recommended prioritizing FAR increases that are easier to understand as part of a ballot question:

1. Bonus FAR/incentives related to resiliency and other defined policy benchmarks.

- a. **Exclusions for the conversion of non-required enclosed parking spaces facing a waterway.** The City has many non-conforming parking areas facing a waterway, including the ocean. The Code was modified many years ago to require active uses at all levels of a building when facing a waterway. Such existing non-conforming parking areas are typically characterized by blank walls, often several stories high, or open parking structures. Such structures have a significant negative impact on the City's overall character, especially when viewed from the public beach walk or bay walk. Conversion of such spaces would allow active uses with glazing and architectural treatment that would improve the visual character along the waterfront.

The administration should note that a ballot measure including this proposal failed last November. Additional restrictions and protections may need to be contemplated to limit the area and depth of non-conforming parking to be converted.

A potential ballot question could allow for the conversion of a fixed number of non-required parking spaces to active retail or back of house spaces, within oceanfront parking structures in local historic districts that expand public access to the beach or baywalk.

- b. **Resiliency and adaptation bonuses.** This would apply to all zoning districts, and the actual bonus number would be conditioned upon tangible improvements that substantially increase and improve the sustainability of new and existing structures. These improvements would go above and beyond minimum code requirements and the bonuses are intended to incentivize such improvements. The actual bonus points would be added to the maximum FAR permitted on the property and would be capped at a fixed number. For example, an RM-2 property, which has a maximum FAR of 2.0, would be able to increase the overall FAR to a maximum of 2.5 with resiliency bonus points.

A potential ballot question could provide for an amendment to create FAR bonus points, not to exceed .5 for all zoning districts, in accordance with the following schedule:

- i. Elevating the first floor of an existing structure to a minimum of BFE + 1 foot: .25 points (note, this bonus only applies to existing structures, not new construction).
- ii. Improving a seawall and raising the height to a minimum of 5.7 feet NAVD: .10 points (note: this bonus only applies to new permit applications).

- iii. Self-sustaining electrical and surplus stormwater retention and reuse. This shall include stormwater retention that is over and above the minimum requirements in order to accommodate offsite stormwater, including the reuse of such stormwater through purple pipes throughout the building. Additionally, the entire building shall be fully self-contained in terms of electrical power using solar panels and similar electricity generating devices: .25 points
 - iv. Provide active recreation facilities that are available to the general public, and serve a recreational need for the immediate area, in consultation with and subject to the approval of the city's parks and recreation department: .10 points.
 - v. Achieve LEED platinum certification, in accordance with the requirements of chapter 133 of the City Code: .15 points.
 - vi. Provide onsite adaptation areas, which are fully accessible from the public right of way and provide tangible drainage, stormwater retention and related resiliency and sustainability benefits: .10 -.35 points depending upon the overall size and level of improvement.
- c. **First level interior transitional access for non-residential buildings.** This would include stairs, ramps, and lifts required to get from the sidewalk level up to a higher finished first floor level. This would encourage commercial properties to elevate their first floor to be more resilient to flooding, while still providing a transparent, active storefront at the sidewalk level.

A potential ballot question could provide for an amendment to allow for interior stairs, ramps, and lifts at the first level of a non-residential building, which are required to get from the sidewalk level up to a higher finished first floor level.

- d. **New floor area within volumetric buildings such as historic theatres.** In this regard, there are historic theatres in the City that need adaptive re-purposing, such as a conversion to retail or food & dining establishments. However, if the building is legal non-conforming as to maximum FAR, there is no opportunity under the code to add additional floor plates within the structure, even though they will not be visible.

This would require additional study to identify all eligible structures, as well as determine a fixed cap on the amount of additional FAR that may be added. It is further recommended that any potential amendment be limited to the introduction of new floor plates within contributing structures in local historic districts, as well as designated historic sites, that are legal non-conforming in terms of FAR and were originally constructed as theatres.

- e. **Exempting the floor area of existing contributing buildings which are elevated.** Although any demolition is subject to a Certificate of Appropriateness from the Historic Preservation Board, such exemption could encourage elevating such structures to ensure their long-term viability, as the added square footage could help offset the costs to elevate these buildings.

This would require additional study in order to identify all eligible structures, as well as determine a fixed cap on the amount of FAR that would be exempt. It is further

recommended that the amendment be informed by the forthcoming resiliency code, as well as the historic and adaptation guidelines developed for the City's historic districts.

- f. **Bonus for providing affordable and/or workforce housing, as defined in the City Code.** The Comprehensive Plan already has increased density allowances for affordable and workforce housing. As such, an FAR bonus for providing such types of units should not require modifying the density limitations of the Comprehensive Plan. This should be limited to rental housing to ensure that the constructed units are available for the long-term.

Additional study would be needed in order to identify applicable areas of the City, as well as determine the potential impact on density.

- g. **Bonus for providing Transit Oriented Development (TOD) along defined corridors in the City.** TOD's are an excellent tool for promoting development that minimizes the impact of single car vehicles. As TOD's are located adjacent to or abutting dedicated transit lines, as well as multiple transit modes, they are ideal for end users who do not own or rely on a single motor vehicle. In order to encourage these types of uses, additional FAR in the form of a bonus or TDR is ideal.

RECOMMENDATION: In order to identify defined transit corridors in the City, as well as better assess the expected operational dates of the beach corridor, it is recommended that this proposal move forward after 2021.

2. **Strategic FAR increases within specific zoning districts.** Existing low intensity districts, such as RM-1, low intensity residential districts, and CD-1, commercial low intensity districts, currently have very low maximum FAR and face challenges with regard to meeting minimum building and life safety code requirements. In the administration's prior analysis, the areas of stair and elevators consume, on average, about 8% of a building's available FAR. For an RM-1 zoned property, an increase of 8% would result in an FAR of 1.35, vs the typical maximum of 1.25. For an 8,000 SF lot, the resulting FAR of 1.35 would result in an area of 10,800 SF, vs the current maximum of 1.25 or 10,000 SF.

A potential ballot question could provide for an amendment to increase the maximum FAR in RM-1 districts to 1.35 and in CD-1 districts to 1.25.

3. **The creation of Transfer of Development Rights (TDR) Programs in specified areas of the City.** Allowing properties, within defined transfer and receiver districts, to transfer some or all their development rights to another property has two significant benefits. First, it does not result in an overall increase in intensity within the larger area. Second, it provides a vehicle for vulnerable and at-risk properties to become adaptation areas.

A process to manage a TDR program would need to be developed, and transfer and receiving districts would need to be established. Transfer districts could, potentially, be limited to lower-density zoning districts such as RM-1, as well as more vulnerable areas on the west side of the City. Receiving districts should be areas with higher intensity and higher density zoning, such as the CD-2 and CD-3 Commercial Districts, and RM-3 high intensity residential district. Additionally, receiving districts should be located within defined transportation corridors.

A cap on the maximum percentage beyond the FAR of the underlying zoning district would

also need to be established, as well as a review of potential height increases to go along with an increased FAR.

Additional study would be necessary in order to identify applicable areas for a TDR program.

- 4. Removing all exemptions, counting everything within a building envelope, including parking, and increasing the FAR across the City.** This would incentivize less parking and more efficient circulation. However, the actual increases in FAR would need to be evaluated on a district basis. It would also provide a more predictable measure of the maximum volume of a building.

Additional study would be necessary in order to properly analyze this concept. It is further recommended that the proposal, if recommended, be informed by the forthcoming resiliency code.

Although increases in FAR will increase the bulk and mass of buildings, as well as the intensity, the existing density limitations in the City's Comprehensive Plan will ensure that residential density would not be increased. Any increase in density would require an amendment to the Comprehensive Plan and review from state agencies. Additionally, changes pertaining the calculation of FAR will have no impact on single family home regulations or single-family districts, as they are regulated by unit size and lot coverage, as separately defined in Section 142-105.

CITY CHARTER

In order to amend the Land Development Regulations of the City Code to allow an increase in zoned floor area, pursuant to City Charter Section 1.03(c), approval of the City's voters will be required. The following is the language in Section 1.03(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, 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.

An increase in zoned FAR includes, but is not limited to, modifications of the definition of floor area, amendments to the exclusions of floor area and a direct increase in the FAR number. All of the potential options identified above would require a ballot question for an amendment that would allow a property to add FAR, as they would result in an increase in zoned FAR "by zoning, transfer, or any other means" pursuant to City Charter Section 1.03(c).

As the deadline to place questions on the November ballot has passed, it is unlikely that any additional FAR questions could be placed on a ballot this year.

RECOMMENDATION

Staff recommends that the Planning Board discuss the item.