

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Commissioner Mark Samuelian
DATE: March 17, 2021

SUBJECT: REFERRAL TO THE LAND USE AND SUSTAINABILITY COMMITTEE TO DISCUSS CLOSING THE LOOPHOLE FOR UN-CALCULATED ROOFTOP HEIGHT AND FLOOR TO AREA RATIO (FAR).

ANALYSIS

In an email (one example attached), residents shared how they believe unusually tall rooftop structures are being used to increase a building's maximum height. This happens because rooftop structures are not included in height calculations therefore creating a potential loophole.

The residents further believe this is not the existing rule's intention, and this item asks the committee to review and propose legislation if appropriate.

SUPPORTING SURVEY DATA

N/A

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

Yes

Does this item utilize G.O. Bond Funds?

No

Legislative Tracking

Commissioner Mark Samuelian

ATTACHMENTS:

Description

- ▣ Resident Email: 120 MacArthur FAR Loophole
- ▣ Resident Email: Proposed Changes to Close Loophole

Attn: Commissioner Mark Samuelian

RE: Rooftop Structure at 120 MacArthur Causeway office building

Would you consider reining in rooftop structures and rooftop activations.

I have noticed recent projects where unusually tall rooftop structures are being snuck which greatly increases the building's height beyond the maximum height restrictions. This is happening because of a loop hole since rooftop structures are not included in the maximum height calculations. Originally, rooftop structures were only to include mechanical rooms but developers are now designing rooftop structures which activate the space. This was not the original intention of the land use rules. This loop hole should be closed.

For example height of 120 Mac Arthur is supposed to be 75 feet. But, the actual height of the building proposed is 110 feet because a 20 foot tall roof is being created over the rooftop restaurant (see attachment).

Also, the rooftop restaurant is not included in the maximum allowable F.A.R. This is another loophole that must be closed. This rooftop space is being used as a business, it generates income, it has a roof, it is contributing to the density and occupancy of the building so it makes perfect sense to include any rooftop structure, (that is not a mechanical roof) in the FAR calculation.

It is in the public interest to close loopholes in the Land Use Regulations. The public should have a clear expectation of what the zoning laws mean, i.e. 75 feet means 75 feet, not 110 feet. Also, it is in the public interest for commercial building to pay their fair share of property tax and that isn't happening because activated rooftops are invisible F.A.R.

Attn: Commissioner Mark Samuelian

I made changes to Municode in red to fix citywide the height and FAR loophole. Sunset Harbour neighborhood Assoc is on board with this because they are making a Master Plan and will incorporate what I am mentioning in their master plan. We cannot have “tricks” built into the municode that allow the public to be deceived.

RE: Draft Height

DIVISION 5. - HEIGHT REGULATIONS

Sec. 142-1161. - Height regulation exceptions.

For all districts, except RS-1, 2, 3 and 4 (single-family residential districts).

(a) The height regulations as prescribed in these land development regulations shall not apply to the following when located on the roof of a structure or attached to the main structure. For exceptions to the single-family residential districts, see subsection [142-105\(e\)](#).

- (1) Air conditioning, ventilation, electrical, plumbing equipment or equipment rooms.
- (2) Chimneys and air vents.
- (3) Decks, not to exceed three feet above the main roofline and not exceeding a combined deck area of 50 percent of the enclosed floor area immediately one floor below.
- (4) Decorative structures used only for ornamental or aesthetic purposes such as spires, domes, belfries, not intended for habitation or to extend interior habitable space or exterior habitable space. Such structures shall not exceed a combined area of 20 percent of the enclosed floor area immediately one floor below.
- (5) Elevator bulkheads or elevator mechanical rooms.
- (6) Flagpoles subject to the provisions of section 138-72.
- (7) Parapet walls, not to exceed three and one-half feet above the main roofline unless otherwise approved by the design review board up to a maximum of 25 feet in height only for the purpose of covering unattractive mechanical equipment.
- (8) Planters, not to exceed three feet in height above the main roofline.
- (9) Radio, television, and cellular telephone towers or antennas, and rooftop wind turbines.
- (10) Stairwell bulkheads.
- (11) Skylights, not to exceed five feet above the main roofline.
- (12) Stage towers or scenery lofts for theaters.
- (13) Swimming pools, whirlpools or similar structures, which shall have a four-foot wide walkway surrounding such structures, not to exceed five feet above the main roofline.
- (14) ~~Trellis, pergolas or similar structures that have an open roof of cross rafters or latticework.~~
- (15) Water towers.
- (16) Bathrooms required by the Florida Building Code, not to exceed the minimum size dimensions required under the Building Code, provided such

bathrooms are not visible when viewed at eye level (five feet, six inches from grade) from the opposite side of the adjacent right-of-way; for corner properties. Such bathrooms shall also not be visible when viewed at eye level (five feet, six inches from grade) from the diagonal corner at the opposite side of the right-of-way and from the opposite side of the side street right-of-way.

(17) Solar panels.

(18) Wind turbines on oceanfront properties.

(19) Sustainable roofing systems.

(b) The height of all allowable items in subsection (a) of this section, unless otherwise specified, shall not exceed ~~25~~ 15 feet above the height of the roofline of the main structure. With the exception of items described in subsection (a)(17) and (a)(18) of this section, when any of the above items are freestanding, they shall follow the height limitations of the underlying zoning district (except flagpoles which are subject to section 138-72).

(c) Notwithstanding other provisions of these regulations, the height of all structures and natural growth shall be limited by the requirements of the Federal Aviation Agency and any airport zoning regulations applicable to structure and natural growth.

(d) Rooftop additions.

(1) Restrictions. There shall be no rooftop additions to existing structures in the following areas: oceanfront lots within the Miami Beach Architectural District in the RM-3 or CD-3 zoning districts; non-oceanfront lots fronting Ocean Drive in the MXE zoning district. No variance from this provision shall be granted.

(2) Additional regulations. Existing structures within an historic district shall only be permitted to have habitable one-story rooftop additions (whether attached or detached), with a maximum floor to ceiling height of 12 feet except as hereinafter provided. No variance from this provision shall be granted. The additions shall not be visible when viewed at eye level (5'—6" from grade) from the opposite side of the adjacent right-of-way; for corner properties, said additions shall also not be visible when viewed at eye level from the diagonal corner at the opposite side of the right-of-way and from the opposite side of the side street right-of-way. Notwithstanding the foregoing, the line-of-sight requirement may be modified as deemed appropriate by the historic preservation board based upon the following criteria: (i) the addition enhances the architectural contextual balance of the surrounding area; (ii) the addition is appropriate to the scale and architecture of the existing building; (iii) the addition maintains the architectural character of the existing building in an appropriate manner; and (iv) the addition minimizes the impact of existing mechanical equipment or other rooftop elements.

(3) Lincoln Road hotel additions. Notwithstanding the foregoing, a multistory rooftop addition, for hotel uses only, may be permitted for properties on Lincoln Road, located between Pennsylvania Avenue and Lenox Avenue, in accordance with the following provisions:

a. For properties on the north side of Lincoln Road, a multistory rooftop addition shall be set back at least 75 feet from Lincoln Road and at least 25 feet from any adjacent side street. Additionally, the multistory addition may be cantilevered over a contributing building.

b. For properties located on the south side of Lincoln Road, a multistory rooftop addition shall be set back at least 65 feet from Lincoln Road.

c. The portion of Lincoln Lane abutting the subject property, as well as the remaining portion of Lincoln Lane from block-end to block-end, shall be fully improved subject to the review and approval of the public works department.

d. Participation in the public benefits program, pursuant to subsection [142-337](#)(d), shall be required in order for a hotel project to avail itself of a multistory rooftop addition.

e. There shall be a limit of 500 hotel units for hotel projects including a multistory rooftop addition that are constructed between Pennsylvania Avenue and Lenox Avenue.

(4) [Placement and manner of attachment.] The placement and manner of attachment of all additions (including those which are adjacent to existing structures) are subject to historic preservation board approval.

(5) Collins Waterfront Historic District and Morris Lapidus/Mid-20th Century Historic District.

Notwithstanding the foregoing provisions of subsection [142-1161](#)(d)(2), certain types of existing structures located within the Collins Waterfront Historic District and Morris Lapidus/Mid-20th Century Historic District may be permitted to have habitable rooftop additions (whether attached or detached) according to the following requirements:

a. Height of rooftop additions permitted for structures of five stories or less:

1. Existing buildings of five or less stories may not have more than a one story rooftop addition, in accordance with the provisions of subsection [142-1161](#)(d)(2).

Additionally, at the discretion of the historic preservation board, pursuant to certificate of appropriateness criteria, the maximum floor to ceiling height may be increased to 15 feet within the Morris Lapidus/Mid-20th Century Historic District.

b. Height of rooftop additions permitted for hotel structures of greater than five stories:

1. For those structures determined to be eligible by the historic preservation board for rooftop additions of greater than one story in height according to the provisions of subsection c. below, one story is allowed per every three stories of the existing building on which the addition is to be placed, to a maximum of four

additional rooftop addition stories, with a maximum floor to floor height of 12 feet, and a maximum floor to roof deck height of 12 feet at the highest new story. The additional stories shall only be placed on the underlying structure creating the eligibility for an addition.

Additionally, at the discretion of the historic preservation board, pursuant to certificate of appropriateness criteria, the maximum floor to ceiling height may be increased to 15 feet within the Morris Lapidus/Mid-20th Century Historic District, for up to two floors of a permitted roof-top addition.

2. Rooftop additions permitted under this subsection, which are greater than one story, shall be for the sole purpose of hotel unit development. A restrictive covenant in a form acceptable to the city attorney committing the property to such hotel use, subject to release by the historic preservation board when such board determines that the restriction is no longer necessary, shall be recorded prior to the issuance of any building permit for a rooftop addition greater than one story.

(6) North Beach Resort Historic District.

Notwithstanding the foregoing provisions of subsection [142-1161\(d\)\(2\)](#), existing structures located within the North Beach Resort historic district may be permitted to have habitable rooftop additions (whether attached or detached) according to the following requirements:

a. Existing buildings of five or less stories may not have more than a one story rooftop addition, in accordance with the provisions of subsection [142-1161\(d\)\(2\)](#).

b. For those structure determined to be eligible by the historic preservation board for rooftop additions of greater than one story in height, according to the provisions of subsection (5) below, existing buildings six or more stories may have a two story rooftop addition with a maximum floor to floor height of 12 feet, and a maximum floor to roof deck height of 12 feet at the highest new story. The additional stories shall only be placed on that portion of the underlying structure creating the eligibility for an addition.

(7) Design and appropriateness guidelines. In determining if existing structures are eligible for rooftop additions, the historic preservation board, in addition to any and all other applicable criteria and guidelines contained in these land development regulations, shall consider whether:

a. The design of an existing structure (or part thereof) to which a new rooftop addition is to be attached is of such nature or style that it does not contain any significant original architectural crown element(s) or other designed composition of significant architectural features, nor does the overall profile of the structure including its rooftop design features have a distinctive quality that contributes to the special character of the historic district, as determined by the historic preservation board. Significant rooftop or upper facade elements or features may include but shall not be limited to towers, domes, crowns, ziggurats, masts, crests, cornices, friezes, finials, clocks, lanterns, original signage and other original architectural features as may be discovered.

b. The proposed rooftop addition shall be designed, placed and attached to an existing structure in a manner that:

1. Does not obscure, detract from, or otherwise adversely impact upon other significant architectural features of the existing structure, inclusive of significant features that are to be, or should be, restored or reconstructed in the future;
2. Maintains the architectural contextual balance of the surrounding area and does not adversely impact upon or detract from the surrounding historic district;
3. Is appropriate to the scale and architecture of the existing building;
4. Maintains the architectural character of the existing building in an appropriate manner;
5. Does not require major demolition and alterations to existing structural systems in such manner as would compromise the architectural character and integrity of the existing structure; and
6. Minimizes the impact of existing mechanical equipment or other rooftop elements.

c. The placement and manner of attachment of additions (including those which are adjacent to existing structures) are subject to the historic preservation board granting a certificate of appropriateness for any demolition that may be required as well as for the new construction.

d. The entire structure shall be substantially rehabilitated.

e. Notwithstanding the foregoing, the overall height of any structure located in the Collins Waterfront Historic District or the North Beach Resort Historic District may not exceed the height limitations of the underlying

zoning district. No additional stories may be added under this section through height variances from the underlying zoning district regulations.

f. No variance from the provisions of subject subsection [142-1161](#)(d) shall be granted.

(Ord. No. 89-2665, § 6-28, eff. 10-1-89; Ord. No. 96-3052, § 3, 9-11-96; Ord. No. 98-3150, § 1, 11-4-98; Ord. No. 2000-3233, § 2, 3-4-00; Ord. No. 2001-3293, § 1, 1-31-01; Ord. No. 2002-3379, § 4, 7-31-02; Ord. No. 2004-3439, § 1, 3-17-04; Ord. No. 2012-3766, § 2, 5-9-12; Ord. No. 2014-3879, § 1, 6-11-14; Ord. No. 2014-3880, § 2, 6-11-14; Ord. No. 2017-4124, § 3, 7-26-17; Ord. No. 2019-4303, § 3, 10-16-19)

RE: Draft FAR

Chapter 114 - GENERAL PROVISIONS

Sec. 114-1. - Definitions.

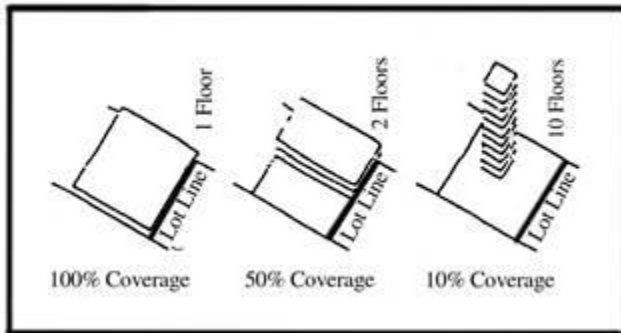
Floor area means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. For the purpose of clarity, floor 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).

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, [trellis](#), or open porches [below the rooftop](#).
- (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.