

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 22, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB21-0450 - West Avenue Bay Front Overlay – Bed & Breakfast Prohibition.**

RECOMMENDATION

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

HISTORY

On March 17, 2021, at the request of Commissioner Mark Samuelian, the City Commission referred a discussion item to the Land Use and Sustainability Committee (LUSC) pertaining to the prohibition of Bed and Breakfast establishments in the West Avenue Overlay (Item C4 E).

On April 29, 2021, the LUSC recommended that the attached Ordinance be referred to the Planning Board.

On May 12, 2021, the City Commission referred the attached Ordinance to the Planning Board (Item C4 F).

BACKGROUND

The West Avenue Bayfront Overlay District is comprised of RM-1, residential multifamily low intensity and RM-2, residential multifamily medium intensity zoning districts (see attached map). There are no historic districts or individually designated historic sites with the overlay district.

The City Commission adopted the Overlay District on June 19th, 2002, (Ord. No. 2002-3374). The primary reason for the creation of the overlay was to preserve the character and quality of the neighborhoods surrounding West Avenue, which was being impacted by infill development that did not reflect the cohesive low scale character of the area. The subject overlay, by expanding the list of main permitted uses for existing low-scale buildings in the neighborhood to include offices, suite hotels and bed and breakfast inns, created incentives to retain and adaptively re-use existing single family and/or multifamily buildings that are no more than three (3) stories in height. Additionally, the parking regulations were modified to include the allowance for a limited number of parking spaces within required front yards.

On October 16, 2013, the City Commission adopted Ordinance No. 2013-3820, prohibiting hotel uses within the West Avenue area. This applies to the properties zoned RM-2 and RM-3. Elsewhere in the City, hotels are a main permitted use within RM-2 and RM-3 zoning districts.

Separate from the West Avenue Overlay District there are citywide regulations pertaining to bed and breakfast inns. When the West Avenue Overlay District was created in 2002, more specific regulations for Bed and Breakfast Inns were included, which were tailored for the neighborhood.

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.**

Consistent – The proposed amendment does not create an isolated district unrelated to adjacent or nearby districts.

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

Consistent - The proposed ordinance amendment does not modify the scale of development.

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 as the maximum FAR is not modified.

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 associated with tourism and the impact on surrounding residents makes passage of the proposed change necessary to minimize the potential for future conflicts.

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, as the FAR is not being modified by this ordinance and the intensity of uses is not proposed to be increased.

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

Consistent – The proposed change would not 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.**

Consistent – Existing restrictions would not allow for the appropriate reuse of existing large commercial spaces in the event that the existing use becomes obsolete.

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 would increase 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 is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

Prior to the creation of the West Avenue Overlay District, hotels, apartment-hotels, and suite hotels were permitted uses in the RM-2 and RM-3 zoning districts in the neighborhood. In the RM-1 zoning district before the overlay, and within the subject area, only single-family homes, townhomes, apartments and bed and breakfast inns were permitted. In 2002, the creation of the West Avenue Overlay District expanded the list of main permitted uses within the RM-1 zoning district to include suite hotels and offices consistent with the regulations for the RO, residential office zoning district.

On October 14, 2020, the City Commission adopted Ordinance No. 2020-4364, which removed suite hotels as an allowable use within the overlay. Currently, office and bed & breakfast (single family homes) may be introduced as part of the renovation of existing structures in the overlay. The April 29, 2021, discussion before the LUSC pertained to bed and breakfast inns within the overlay, and concerns expressed by area residents regarding the number of guests staying at these establishments. The LUSC endorsed the attached draft Ordinance that would prohibit any future bed and breakfast inns within the overlay.

Removing bed and breakfast inns from the list of incentives for the adaptive re-use of existing single-family homes in the neighborhood could result in more demolition of such structures and the replacement with larger buildings, up to the maximum FAR allowed in the underlying zoning district. For the RM-1 zoned properties, a maximum FAR of 1.25 is permitted, with a maximum height of up to 55 feet, and for the RM-2 zoned properties, a maximum FAR of 2.0 is permitted with a maximum height of 65 feet.

Staff does not have an objection to the prohibition of future bed and breakfast inns, as the transient nature of the use has created issues and concerns for area residents. Additionally, all of the eligible properties, which consist of a limited number of existing single-family homes, are already vulnerable to flooding and will likely be replaced in the future.

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.

WEST AVENUE BAYFRONT OVERLAY



West Avenue Bay Front Overlay – Bed & Breakfast Prohibition

ORDINANCE NO. 2021-_____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED “LAND DEVELOPMENT REGULATIONS,” BY AMENDING CHAPTER 142, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” ARTICLE III, ENTITLED “OVERLAY DISTRICTS,” DIVISION 5, ENTITLED “WEST AVENUE BAY FRONT OVERLAY,” TO REMOVE BED AND BREAKFAST INNS AS ALLOWABLE USES IN THE WEST AVENUE BAY FRONT OVERLAY; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the West Avenue neighborhood is primarily comprised of residential uses; and

WHEREAS, Objective RLU 1.3, entitled “Land Use Compatibility,” of the Resilient Land Use and Development Element of the City’s 2040 Comprehensive Plan provides that “[l]and development regulations will be used to address the location, type, size, and intensity of land uses and to ensure adequate land use compatibility between residential and non-residential land uses”; and

WHEREAS, the Mayor and City Commission desire to encourage uses that are compatible with the low-scale character of the West Avenue neighborhood; and

WHEREAS, Division 5 of Article III of Chapter 142 of the City Code sets forth overlay zoning regulations for the West Avenue Bay Front Overlay; and

WHEREAS, under certain conditions, suite hotels are currently allowable uses in the West Ave Bay Front overlay district; however, hotels, suite hotels and apartment hotels are prohibited; and

WHEREAS, transient uses, like bed and breakfast inns, hotels, apartment hotels and suite hotels are incompatible with low scale residential neighborhoods; and

WHEREAS, bed and breakfast inns are transient uses, like hotels, suite hotels and apartment hotels and are therefore incompatible with low-scale residential neighborhoods; and

WHEREAS, the amendment set forth below is necessary to accomplish the above objectives.

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

SECTION 1. Chapter 142, entitled “Zoning Districts and Regulations” is amended, as follows:

CHAPTER 142 – ZONING DISTRICTS AND REGULATIONS

ARTICLE III. - OVERLAY DISTRICTS

DIVISION 5. - WEST AVENUE BAY FRONT OVERLAY

Sec. 142-842. - Location and purpose.

- (d) The overlay regulations of this division relating to residential offices ~~or bed and breakfast inns~~ shall only apply to existing low scale properties, which were designed and constructed to be no more than three stories in height and are located in the subject overlay district.

Sec. 142-843. - Compliance with regulations.

- (a) The following overlay regulations shall apply to those areas of the subject district which have an underlying zoning designation of (RM-1) Residential Multifamily Low Intensity and (RM-2) Residential Multifamily Medium Intensity. In particular, the overlay regulations shall allow the additional main permitted uses specified in this division, in the RM-1 and RM-2 of the subject area only if all the required criteria herein have been satisfied.
- (b) As specified in chapter 118, article VI, design review regulations, applications for a building permit shall be reviewed and approved in accordance with design review procedures.
- (c) ~~The residential offices or bed and breakfast inn~~ may only be permitted in structures that have been rehabilitated in general accordance with the U.S. Secretary of the Interior's standards for rehabilitation of historic buildings as determined by the planning director or his designee, or in buildings that have been substantially rehabilitated or where a request for a building permit will result in the building being substantially rehabilitated.
- (d) All development regulations and setback requirements in the underlying land-use zoning district shall remain. However, a residential office ~~or bed and breakfast inn~~ may only be established where:
- (1) Demolition to the original building envelope does not exceed ten percent of the area of the original building lot coverage. At-grade additions that demolish or conceal primary facades (i.e., main entry porticoes and facades facing a street) shall not be permitted.
 - (2) The area of rooftop additions to existing multi-family structures does not exceed 50 percent of the area of the original floor immediately below. Such rooftop additions shall be set back a minimum of 15 feet from the facade of the existing building fronting a primary public-right-of-way with an established street wall.
 - (3) The area of rooftop additions to existing single-family structures does not exceed 50 percent of the area of the original lot coverage of the structure. The maximum height of the altered main structure shall not exceed ½ the original lot width up to a maximum of 33 feet.
 - (4) On sites where unity of title has combined two or more lots, the original rear setbacks for the main structure shall conform to the underlying zoning regulations. However, building additions may encroach into side setbacks which have become internal to the parcel. In addition to the allowable encroachments as outlined in section 142-1132, loggias (covered walkways), gazebo structures and pools may encroach into original rear and/or side setbacks that have become internal to the assembled lot.

*

*

*

Sec. 142-845. - ~~Bed and Breakfast Inn Overlay Area.~~ Legal Non-Conforming and Other Transient Uses.

- (a) Bed and breakfast inns, suite hotels and hostels shall be prohibited in the subject overlay area.
- (b) Existing, legal non-conforming suite hotels and bed and breakfast inns, located within the overlay, shall not be permitted to expand the existing structure, operation or building footprint, in any way. Additionally, such legal non-conforming uses shall adhere to the following:
 - (1) Accessory uses, including, but not limited to, dining halls, restaurants, cafes, retail, personal service, alcoholic beverage establishments, dance halls, entertainment establishments, neighborhood impact establishments, outdoor entertainment establishments or open air entertainment establishments, shall be prohibited.

~~The Bed and Breakfast Inn Overlay Area is designed to accommodate the adaptive reuse of existing single-family residential structures as of (the effective date of this ordinance) to allow for lodging and guest amenities as main permitted uses.~~

- ~~(1) Bed breakfast inns in the Overlay Area shall not be permitted to have dance halls, entertainment establishments, neighborhood impact establishments, outdoor entertainment establishments or open air entertainment establishments.~~
- ~~(2) The building identification sign for a bed and breakfast inn shall be the same as allowed for an apartment building in the underlying zoning district in which it is located.~~
- ~~(3) The building(s) shall have central air conditioning or flush-mounted wall units; however no air conditioning equipment may face a street or the Bay.~~
- ~~(4) The maximum amount of time that any person other than the owner may stay in a bed and breakfast inn during a one-year period shall not exceed six months.~~
- (c) ~~Existing, legal non-conforming b~~Bed and breakfast inns are permitted only in existing single-family structures as of (the effective date of this section) and shall be subject to the following conditions:
 - (1) The owner/operator of the bed and breakfast inn shall permanently reside in the structure.
 - (2) The structure shall have originally been constructed as a single-family residence. The structure may have original auxiliary structures such as a detached garage or servant's residence that may or may not be used as part of the inn.
 - (3) The structure shall maintain main public rooms (living room/dining room) for use of the guests.
 - (4) Original auxiliary structures, such as detached garages and servants' residences, may be converted to guestrooms or other appropriate use. New bedrooms constructed shall have a minimum size of 200 square feet and shall have a private bathroom.
 - (5) There shall be no cooking facilities/equipment in guestrooms. One small refrigerator with maximum capacity of five cubic feet shall be permitted in each guestroom. All cooking equipment, which may exist, shall be removed from the structure with the exception of the single main kitchen of the house.
 - (6) The bed and breakfast inn may serve meals to registered guests and their visitors only. Permitted meals may be served in common rooms, guestrooms or on outside terraces (see subsection 142-1401(9)). The meal service is not considered an accessory use and is not entitled to an outside sign.
 - (7) Permitted meals may be served in areas outside of the building under the following conditions:

- a. The area shall be landscaped and reviewed under the design review process. Landscape design shall effectively buffer the outdoor area used for meals from adjacent properties and the street.
- b. All meals served outdoors shall be prepared for service from inside facilities. Except for the use of a barbecue, all outdoor preparation, cooking as well as outdoor refrigeration and storage of food and beverages shall be prohibited.
- ~~(c) Hostels shall be prohibited within the subject overlay area.~~

Sec. 142-846. - Off-street parking regulations.

* * *

- (c) *Parking impact fee program exemption.* Residential offices, ~~and bed and breakfast inns~~ as outlined in sections 142-844 and ~~142-845~~ of this division shall be exempt from the off-street parking requirements as outlined in sections 130-130—130-132.

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

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 _____, 2021.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

First Reading: July __, 2021
Second Reading: September __, 2021

City Attorney Date

Verified By: _____
Thomas R. Mooney, AICP
Planning Director

T:\Agenda\2021\7_May 12\Planning\REF to PB - West Avenue Overlay - Bed and Breakfast Provision - DRAFT REF ORD.docx