

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: August 18, 2021

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB21-0460. Multifamily Residential Repairs Exceeding 50%.**

RECOMMENDATION

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

HISTORY

On July 28, 2021, at the request of Commissioner Mickey Steinberg, the City Commission referred the proposed Ordinance to the Planning Board (item R9 K).

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; in particular with the goals, objectives, and policies within the Climate Resiliency and Sustainability Element that encourage adaptation against sea level rise and climate change and increase the resiliency of the City.

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 floor area ratio (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 – The need to facilitate residential building's ability to make repairs for life safety 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, 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 will 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 will not be a deterrent to the improvement or development of properties in the City. It will facilitate the ability for existing buildings to make improvements.

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 increase the resiliency of the City with respect to sea level rise by facilitating the ability for existing residential buildings to make resiliency improvements.

- (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

Recently, the City has undertaken a rigorous review of existing buildings in the City of Miami Beach, especially buildings undergoing a 40-year recertification under the Miami-Dade County Code. Consistent with this endeavor, the purpose of this proposed amendment to the Land Development Regulations is to incentivize the comprehensive repair and rehabilitation of existing, nonconforming residential buildings, provided no new floor area is proposed. The proposed amendment would allow non-conforming multi-family residential buildings to exceed the 50% rule and maintain all existing non-conforming attributes provided the work includes structural, electrical, life-safety and related repairs to comply with and/or exceed the requirements of the Florida Building Code.

Chapter 118 of the Land Development Regulations, at Article IX, entitled "Nonconformances," governs nonconforming uses and buildings. With regard to the repair and rehabilitation of nonconforming buildings, Section 118-395 provides as follows (in pertinent part):

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

* * *

(b) Nonconforming buildings.

* * *

(2) Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official, shall be subject to the following conditions:

* * *

c. The entire building and any new construction shall comply with the current development regulations in the zoning district in which the property is located. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.

* * *

Under Section 118-395 above, if the owner of a multifamily building or a condominium association submits plans to repair or rehabilitate an existing, nonconforming residential building, the Building Official is required to determine the value of the proposed improvements. If the value of the repair or rehabilitation work exceeds 50 percent of the value of the building, the entire building and any new construction is required to comply with the current development regulations (including the current maximum FAR) for the underlying zoning district.

The proposed amendment would provide an incentivize for building owners and condo associations to implement repairs by allowing a building's legal nonconforming status to remain (including nonconforming FAR, height, setbacks, open space, minimum and average unit size, and parking credits) even if the work exceeds 50 percent of the value of the building. To ensure compliance, the amendment requires the following:

1. All portions of the entire building shall remain fully intact and retained.
2. The building shall meet or exceed the minimum structural, life-safety and electrical requirements of the Florida Building Code.
3. Increases in the size of exterior window and door openings shall not be permitted unless required by the Florida Building Code.

As the amendment would only apply to repair/rehabilitation work where no new FAR is proposed, both the Planning Department and City Attorney's Office have determined that City Charter Section 1.03(c) is not implicated.

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.

Nonconforming Residential Buildings – Repairs Exceeding 50%

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 AMEND THE REGULATIONS APPLICABLE TO THE REPAIR AND/OR REHABILITATION OF EXISTING NON-CONFORMING RESIDENTIAL BUILDINGS; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of the City that the nonconforming building regulations (as well as all related regulations) be amended to address the long term safety of residential buildings city wide; and

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 maintenance and improvement of existing nonconforming structures and,

WHEREAS, The City of Miami Beach desires to refine, clarify, expand and enhance existing procedures and requirements for improvements to existing non-conforming residential structures in order to ensure any such structure is retained in a safe and secure manner; 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.

- (1) Nonconforming buildings which are repaired or rehabilitated by less than fifty (50) percent of the value of the building as determined by the building official shall be subject to the following conditions:

a. The building shall have previously been issued a certificate of use, certificate of completion, certificate of occupancy or occupational license by the city to reflect its current use.

b. Such repairs or rehabilitation shall meet the requirements of the city property maintenance standards, the applicable Florida Building Code, and the Fire Safety Code.

c. If located within a designated historic district, or an historic site, the repairs or rehabilitations shall comply substantially with the Secretary of Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures, as amended, as well as the certificate of appropriateness criteria in article X of these land development regulations. If the repair or rehabilitation of a contributing structure conflicts with any of these regulations, the property owner shall seek relief from the applicable building or fire safety code.

d. Any new construction shall comply with the existing development regulations in the zoning district in which the property is located, provided, however, that open private balconies, including projecting balconies and balconies supported by columns, not to exceed a depth of 30 feet from an existing building wall, may be permitted as a height exception. The addition of balconies may be permitted up to the height of the highest habitable floor for a building nonconforming in height, provided such balconies meet applicable FAR and setback regulations. Any addition of a balcony in a nonconforming building shall be subject to the review and approval of the design review board or historic preservation board, as may be applicable.

(2) Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official, shall be subject to the following conditions:

a. All residential and hotel units shall meet the minimum and average unit size requirements for rehabilitated buildings as set forth in the zoning district in which the property is located.

b. The entire building and any new construction shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.

c. The entire building and any new construction shall comply with the current development regulations in the zoning district in which the property is located. No new floor area may be added if the floor area ratio is presently at maximum or exceeded. Notwithstanding the foregoing, for multi-family residential structures, the existing floor area, height, setbacks, minimum and average unit size, open space, as well as any parking credits, may remain, in accordance with the following:

1. All portions of the entire building shall remain fully intact and retained.

2. The building shall meet or exceed the minimum structural, life-safety and electrical requirements of the Florida Building Code.

3. Increases in the size of exterior window and door openings shall not be permitted unless required by the Florida Building Code.

d. Development regulations for buildings located within a designated historic district or for an historic site:

1. The existing structure's floor area, height, setbacks and any existing parking credits may remain, if the following portions of the building remain substantially intact, and are retained, preserved and restored:

i. At least 75 percent of the front and street side walls, exclusive of window openings;

ii. For structures that are set back two or more feet from interior side property lines, at least 66 percent of the remaining interior side walls, exclusive of window openings; and

- iii. All architecturally significant public interiors.
 2. For the replication or restoration of contributing buildings, but not for noncontributing buildings, the historic preservation board may, at their discretion, waive the requirements of subsection (b)(2)d.1. above, and allow for the retention of the existing structure's floor area, height, setbacks or parking credits, if at least one of the following criteria is satisfied, as determined by the historic preservation board:
 - i. The structure is architecturally significant in terms of design, scale, or massing;
 - ii. The structure embodies a distinctive style that is unique to Miami Beach or the historic district in which it is located;
 - iii. The structure is associated with the life or events of significant persons in the city;
 - iv. The structure represents the outstanding work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;
 - v. The structure has yielded or is likely to yield information important in prehistory or history; or
 - vi. The structure is listed in the National Register of Historic Places.
- Notwithstanding the above, for buildings over three stories in height, at least 75 percent of the front facade and 75 percent of any architecturally significant portions of the street side facades shall be retained and preserved, in order to retain any nonconforming floor area, height, setbacks or parking credits. If the historic preservation board does not waive the requirements of subsection (b)(2)d.1. above for any reason, including the inability of a reconstructed building to meet the requirements of the applicable building code, any new structure shall be required to meet all current development regulations for the zoning district in which the property is located.
3. The building shall comply substantially with the secretary of interior standards for rehabilitation and guidelines for rehabilitating historic structures, as amended, as well as the certificate of appropriateness criteria in article X of these land development regulations.
 4. If the repair or rehabilitation of a contributing structure or historic site conflicts with any of the requirements (as amended) in the applicable Florida Building Code or the Life Safety Code, the property owner shall seek relief from such code.
 5. Regardless of its classification on the Miami Beach Historic Properties database, a building may be re-classified as contributing by the historic preservation board if it meets the relevant criteria set forth in the City Code.
 6. Contributing structures shall be subject to all requirements in section 118-503 of these land development regulations.
 7. Existing non-contributing structures in a designated historic district or site shall be subject to the sustainability and resiliency requirements for new construction in chapter 133.

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 _____, 2021.

Dan Gelber, Mayor

ATTEST:

CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

City Attorney Date

First Reading: September 17, 2021

Second Reading: October 13, 2021

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

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