

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation Historic Preservation Board

TO: Chairperson and Members
 Historic Preservation Board

DATE: March 8, 2022

FROM: Thomas R. Mooney, AICP
 Planning Director



SUBJECT: Discussion, **After-the-fact COA for demolition procedures.**

A discussion regarding an Amendment to Chapter 118, Article X of the Land Development Regulations to provide that, when a contributing building is demolished without a certificate of appropriateness, the presumption shall be that the building must be replicated, if certain criteria are satisfied.

STAFF RECOMMENDATION

Endorse the proposal and transmit a favorable recommendation to the Planning Board and City Commission.

HISTORY

On February 9, 2022, at the request of Commissioner Alex Fernandez, the City Commission referred the discussion item to the Land Use and Sustainability Committee and Historic Preservation Board (Item C4 A).

The Land Use and Sustainability Committee is scheduled to discuss the proposal at their March 4, 2022 meeting.

ANALYSIS

Chapter 118, Article X, "Historic Preservation," Section 118-503(b)(2), currently includes a presumption that a contributing building demolished without obtaining a Certificate of Appropriateness from the Historic Preservation Board (HPB) shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on site, not to exceed the floor area ratio (FAR) of the demolished structure, and not to exceed the maximum FAR and height provided under the City Code. Further, Section 118-503(b)(3) expressly empowers the HPB to determine, on a case-by-case basis, whether the replication of an original, contributing structure is warranted.

Attached is a proposed amendment to chapter 118, Article X of the Land Development Regulations, to include a presumption that if a contributing structure is demolished, for any reason, including, but not limited to demolition by neglect, without first obtaining a Certificate of Appropriateness from the Historic Preservation Board, that the building must be replicated, if certain criteria are satisfied. The following is the specific draft amendment to section 118-503:

Sec. 118-503. - Scope, policies and exemptions.

*

*

*

(b) Policies.

(1) After-the-fact certificates of appropriateness for demolition. In the event any demolition as described above or in subsection (b) of this section should take place prior to historic preservation board review, the demolition order shall be conditioned to require the property owner to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board, within 15 days of the issuance of the demolition order. No "after-the-fact" fee shall be assessed for such application. The board shall review the demolition and determine whether and how the demolished building, structure, landscape feature or the partially or fully demolished feature of the exterior or public interior space of a structure, shall be replaced. The property owner shall also be required, to the greatest extent possible, to retain, preserve and restore any demolished feature of a structure until such time as the board reviews and acts on the "after-the-fact" application. In the event the property owner fails to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board within 15 days of the issuance of an emergency demolition order, the city may initiate enforcement proceedings including proceedings to revoke the certificate of use, occupational license, any active building permit(s) or certificate of occupancy of the subject site, whichever is appropriate. Additionally, this article may be enforced and violations may be punished as provided in section 114-8 of this Code; or by enforcement procedures as set forth in the Charter and penalties as provided in section 1-14 of this Code.

(2) Replication of demolished contributing structures. The historic preservation board shall determine, on a case-by-case basis, whether the replication of an original, contributing structure is warranted. The policy of the City of Miami Beach shall be a presumption that a contributing building demolished without obtaining a certificate of appropriateness from the historic preservation board, shall be replicated.

For purposes of this subsection, replication shall be defined as the physical reconstruction, including all original dimensions in the original location, of a structure in totality, inclusive of the reproduction of primary facade dimensions and public area dimensions with appropriate historic materials whenever possible, original walls, window and door openings, exterior features and finishes, floor slab, floor plates, roofs and public interior spaces. The historic preservation board shall have full discretion as to the exact level of demolition and reconstruction required. If a building to be reconstructed is nonconforming, any such reconstruction shall comply with all of the requirements of chapter 118, article IX, of these land development regulations.

This presumption shall be applicable in the event a building permit for new construction or for repair or rehabilitation is issued, and demolition occurs for any reason, including, but not limited to, an order of the building official or the county unsafe structures board. This presumption shall also be applicable to any request for an "after-the-fact" certificate of appropriateness. This presumption may be rebutted, and the historic preservation board may allow for a new design in accordance with subsection (3) below, if it is established to the satisfaction of the historic preservation board that any of the following criteria are satisfied:

- a. A contemporary depiction is not required to understand and interpret a property's historic value (including the re-creation of missing components in a historic district or site);*
- b. Other properties with the same associative value have survived; or*

c. Sufficient historical documentation does not exist to ensure an accurate reproduction.

(3) Replacement of existing structures. In the event the historic preservation board does not require replication as outlined in subsection (2), the policy of the City of Miami Beach shall be a presumption that a contributing building demolished without obtaining a certificate of appropriateness from the historic preservation board, shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on site, not to exceed the FAR of the demolished structure, and not to exceed the maximum FAR and height permitted under the City Code, with no additional square footage added. This presumption shall be applicable in the event a building permit for new construction or for repair or rehabilitation is issued, and demolition occurs for any reason, including, but not limited to, an order of the building official or the county unsafe structures board. This presumption shall also be applicable to any request for an "after-the-fact" certificate of appropriateness. This presumption may be rebutted, and the historic preservation board may allow for the addition of more square footage, where appropriate, not to exceed the maximum permitted under the City Code, if it is established to the satisfaction of the historic preservation board that the following criteria have been satisfied:

- a. The proposed new structure is consistent with the context and character of the immediate area; and*
- b. The property owner made a reasonable effort to regularly inspect and maintain the structure free of structural deficiencies and in compliance with the minimum maintenance standards of this Code.*

Additionally, Section 118-564 is proposed to be revised as follows:

Sec. 118-564. – Decisions on certificate of appropriateness.

*

*

*

(a) A decision on an application for a certificate of appropriateness shall be based upon the following:

- (1) Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable compliance with the following:*
 - a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time; and*
 - b. The Secretary of Interior's Standards for Reconstruction as revised from time to time; and***
 - ~~b.~~ **c.** Other guidelines/policies/plans adopted or approved by resolution or ordinance by the city commission*

The proposal to require a presumption that the building must be replicated would strengthen and build upon the current presumption, which is that the demolished building shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on the site. In the case of an after-the-fact Certificate of Appropriateness (COA) for demolition, presuming replication will place the legal burden on the property owner of a building that was demolished without a COA to demonstrate evidence why the HPB should allow the building to be replaced by something other than the original design of the contributing building.

Under the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties,

reconstruction may be considered as a treatment under the following circumstances:

- when a contemporary depiction is required to understand and interpret a property's historic value (including the re-creation of missing components in a historic district or site);
- when no other property with the same associative value has survived; and
- when sufficient historical documentation exists to ensure an accurate reproduction.

The Standards for Reconstruction review criteria are summarized as follows:

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.
2. Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials, features and spatial relationships.
4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed.

The Administration is supportive of this proposal as it will strengthen the City's demolition by neglect procedures and provide more specific guidance to both property owners and the HPB. Further, the proposal will establish clear and objective criteria consistent with the Secretary of Interior's Standards for the Reconstruction of Historic Buildings, for the Board to evaluate during their review of applications for Certificate of Appropriateness.

CONCLUSION

The Administration recommends that the Historic Preservation Board endorse the proposal and transmit a favorable recommendation to the Planning Board and City Commission.