

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: March 22, 2022

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB22-0494 – ORD – COA Scrivener's Error.**

RECOMMENDATION

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

HISTORY

On February 23, 2022, at the request of the City Attorney's Office, the City Commission referred the proposed Ordinance to the Planning Board for review and recommendation (item R5 B). The sponsor of the Ordinance is Mayor Dan Gelber.

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 affect 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.**

Consistent – 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 ensure consistency within the code 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 amendment will not affect 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.

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.**

Partially Consistent – The proposal will not affect 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

On October 19, 2005, the Mayor and City Commission of the City of Miami Beach adopted Ordinance No. 2005-3495, amending Section 118-503 of the City Code, to expand and enhance the procedure of the Historic Preservation Board regarding after-the-fact Certificates of Appropriateness. Ordinance No. 2005-3495 created subsection 118-503(b) to modify the requirements for an after-the-fact certificate of appropriateness.

Additional edits were made after First Reading, as denoted by double-underline additions and double-strikethrough deletions throughout Ordinance No. 2005-3495 (attached as Exhibit A). Inadvertently, paragraph references to subsection 118-503(c), governing exemptions, were not updated and a few intended words were omitted.

The attached Ordinance is limited to correcting the previous scrivener's error and is required for uniformity and consistency throughout Section 118-503. No substantive change to the Ordinance is proposed.

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.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 118 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE X, ENTITLED "HISTORIC PRESERVATION," DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 118-503 THEREOF, ENTITLED "SCOPE, POLICIES, AND EXEMPTIONS," TO CORRECT A SCRIVENER'S ERROR; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, on October 19, 2005, the Mayor and City Commission of the City of Miami Beach adopted Ordinance No. 2005-3495, amending Section 118-503 of the City Code to expand and enhance the procedure of the Historic Preservation Board regarding after-the-fact Certificates of Appropriateness; and

WHEREAS, Ordinance No. 2005-3495 created subsection 118-503(b) to modify the requirements for an after-the-fact certificate of appropriateness; and

WHEREAS, additional edits were made after First Reading, as denoted by double-underline additions and double-strikethrough deletions throughout Ordinance No. 2005-3495, but, inadvertently, paragraph references to subsection 118-503(c), governing exemptions, were not updated and a few intended words were omitted; and

WHEREAS, a correction to the scrivener's error is required for uniformity and consistency throughout Section 118-503; and

WHEREAS, no substantive change to the Ordinance is intended.

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

SECTION 1. That Section 118-503, entitled "Scope, policies, and exemptions," of Article X, of Chapter 118, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 118
ADMINISTRATION AND REVIEW PROCEDURES**

* * *

**ARTICLE X. HISTORIC PRESERVATION
DIVISION 1. – GENERALLY**

* * *

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

- (a) *Scope.* Unless expressly exempted by subsection ~~(b)~~ (c) of this section, no building permits shall be issued for new construction, demolition, alteration, rehabilitation, signage or any other physical modification of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with sections 118-591, 118-592 and

118-593, or located within an historic district, nor shall any construction, demolition, alteration, rehabilitation, signage or any other exterior or public interior physical modification, whether temporary or permanent, without a permit, be undertaken, without the prior issuance of a certificate of appropriateness or certificate to dig by the historic preservation board, or the planning director or his designee, in accordance with the procedures specified in this section. For purposes of this article, "alteration" or "modification" shall be defined as any change affecting the external appearance and internal structural system including columns, beams, load bearing walls and floor plates and roof plates of a structure or other features of the site including, but not limited to, landscaping and relationship to other structures, by additions, reconstruction, remodeling, or maintenance involving a change in color, form, texture, signage or materials, or any such changes in the appearance of public interior spaces. The foregoing shall exclude the placement of objects in or on the exterior or public interior of a structure or site, not materially affecting its appearance or architectural integrity.

(b) *Policies.*

- (1) *After-the-fact certificates of appropriateness for demolition.* In the event any demolition as described above or in subsection (b) (c) 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) *Replacement of existing structures.* 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 floor area ratio (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.
- (3) *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. 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.
- (c) *Exemptions.* The following permits are exempt from the regulations of ~~this section~~ subsection (a):
- (1) All permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment not located on exteriors or within public interior spaces, and not visible from the public right-of-way.
 - (2) Any permit necessary for compliance with a lawful order of the building official, county unsafe structures board, fire marshal, or public works director when issuance of such permit on an immediate basis is necessary for the public health or safety or to prevent injury to life, limb or property. In the event that compliance includes full or partial demolition of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with sections 118-591, 118-592 and 118-593, or located within an historic district an emergency meeting of the historic preservation board shall be called prior to the demolition being authorized, unless the work is of an emergency nature and must be done before a meeting could be convened. The historic preservation board may offer alternative suggestions regarding the need for manner and scope of demolition; these suggestions shall be taken into consideration by the official issuing the final determination regarding demolition. However, the final determination regarding demolition shall be made by the official issuing the order. In the event that the historic preservation board does not hold the meeting prior to the scheduled demolition, the demolition may take place as scheduled.
 - (3) Any permit issued for an existing structure in a designated historic district which has been specifically excluded from the district.

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 _____, 2022.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

(Sponsored by Mayor Dan Gelber)

Underline denotes additions

~~Strikethrough~~ denotes deletions

Double Underline denotes additions made at First Reading

~~Double Strikethrough~~ denotes deletions made at First Reading