

Reform and Updating of Rehearing and Appeal Provisions

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH BY AMENDING CHAPTER 118 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING ARTICLE I, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING SECTION 118-9, ENTITLED "REHEARING AND APPEAL PROCEDURES," TO AMEND THE CITY'S RULES OF PROCEDURE REGARDING REHEARINGS AND APPEALS INCLUDING TIMEFRAMES FOR CONSIDERING REHEARINGS AND APPEALS AND AMENDMENTS TO THE AUTOMATIC STAY PROVISIONS THAT REQUIRES FINAL RESOLUTION OF ALL ADMINISTRATIVE AND COURT PROCEEDINGS, SO LONG AS THE CERTAIN CONDITIONS CONTAINED IN SECTION 118-9 ARE COMPLIED WITH, AND PROVIDED THE APPLICANT EXECUTES A WRITTEN AGREEMENT HOLDING THE CITY HARMLESS AND INDEMNIFYING THE CITY FROM ANY LIABILITY OR LOSS SHOULD THE COURT PROCEEDINGS NOT END FAVORABLY TO THE APPLICANT; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations authorize the Design Review Board (DRB) to grant design review approval, and the Historic Preservation Board (HPB) to grant certificates of appropriateness; and

WHEREAS, quasi-judicial hearings on individual DRB and HPB applications require public notice to neighboring property owners; and

WHEREAS, the City's Land Development Regulations, at Chapter 118, Article IV, establish rules of procedure for rehearings and appeals of decisions of the DRB and HPB; and

WHEREAS, pursuant to City Code Section 118-9(c)(5), "[a]n appeal of a board order stays all work on the premises and all proceedings in furtherance of the action appealed from," unless one of two exceptions applies; and

WHEREAS, accordingly, the Land Development Regulations do not permit the issuance of a building permit, certificate of occupancy, or a business tax receipt while an appeal of a land use board order is pending; and

WHEREAS, certain re-hearings and appeals can delay the development of a project that has obtained board approval and that otherwise complies with the Code, potentially rendering the project financially impracticable; and

WHEREAS, the Mayor and City Commission now desire to amend the City's rules of appellate procedure, to promote efficiency, safeguard procedural due process, and guard against abuse; and

WHEREAS, these amendments do not affect the right of an appellant with a meritorious claim to seek an injunction, stay, or other relief from a court of competent jurisdiction, as may be permitted by Florida law; 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. Chapter 118 is hereby amended as follows:

**CHAPTER 118
ADMINISTRATION AND REVIEW PROCEDURES**

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ARTICLE I. IN GENERAL

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Sec. 118-9. Rehearing and appeal procedures.

The following requirements shall apply to all rehearings and appeals to or from the city's land use boards unless otherwise more specifically provided for in these land development regulations, and applicable fees and costs shall be paid to the city as required under section 118-7 and appendix A to the City Code. As used herein, "land use board" shall mean the board of adjustment, design review board, historic preservation board and planning board.

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(a) Rehearings.

(1) The following types of land use board decisions are eligible for a rehearing ~~are as follows:~~

- A. *Historic preservation board.* ~~Historic preservation board order relating to the issuance of a~~ Any final order granting or denying a certificate of appropriateness, certificate of appropriateness to dig, or certificate of appropriateness for demolition. Petitions for rehearing under the Bert J. Harris, Jr., Private Property Rights Protection Act, Fla. Stat. §70.001, *et seq.*, rehearing is are separately addressed at subsection (a)(6), below.
- B. *Design review board.* Any final order of the Design Review Board ~~final order relating to granting or denying~~ design review approval, only.
- C. Except as delineated above, ~~Rehearings~~ Rehearings are not available for any other application, or for any other land use board action without a final order.
- D. There shall only be allowed one rehearing for each final order arising from an application, although multiple persons may participate in or request the rehearing.

- (2) ~~Eligible~~ A petition for rehearing applications shall be filed in accordance with the process as outlined in subsections A through ~~D~~ E below:
- A. *Timeframe to file.* A petition for rehearing shall be submitted to the planning director on or before the 15th day after the rendition of the board order. Rendition shall be the date upon which a signed written order is executed by the board's clerk.
 - B. *Eligible parties.* Parties eligible to file an ~~application~~ petition for rehearing are limited to:
 - (i) Original applicant(s);
 - (ii) The city manager on behalf of the city administration;
 - (iii) An affected person, which for purposes of this section shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project;
 - (iv) Miami Design Preservation League;
 - (v) Dade Heritage Trust.
 - C. *Application requirements.* The petition to the board shall be in a writing that contains all facts, law and argument, by or on behalf of an eligible party, and demonstrate the following:
 - (i) Newly discovered evidence which is likely to be relevant to the decision of the board, or
 - (ii) The board has overlooked or failed to consider something which renders the decision issued erroneous.
 - D. *Notice requirements.* All land use board applications eligible to request a rehearing are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8, "Notice Procedures for Quasi-Judicial Land Use Board Actions and for Administrative Decisions Requiring Notice". The rehearing applicant shall be responsible for all associated costs and fees.
 - E. *Rehearing timeframe.* Only one rehearing request, per eligible party, and per development order, shall be permitted. The rehearing shall take place at the next available meeting of the applicable land use board and shall be acted on by the board at such meeting, unless a lack of quorum requires the rehearing to be continued. Failure to act upon the rehearing at the next available land use board meeting shall render the request denied, unless all affected parties agree to a continuance of the rehearing.

- (3) Outside counsel to the planning department. In the event of a rehearing to the applicable land use board, the planning director may engage the services of an attorney, or utilize a separate, independent, attorney from the city attorney's office, for the purpose of representing the administrative officer and planning staff during the rehearing.
- (4) Actions by the applicable land use board. After the rehearing request is heard, the applicable land use board may take the actions outlined in subsections (i) through (v) below:
 - (i) Rehear or not rehear a case,
 - (ii) If the decision is to rehear the application, the board may take additional testimony,
 - (iii) Reaffirm their previous decision,
 - (iv) Issue a new decision, and/or
 - (v) Reverse or modify the previous decision.
- (5) *Stay of work.* A petition for rehearing application to the applicable land use board stays all work on the premises and all proceedings in furtherance of the board action; however, nothing herein shall prevent the issuance of building permits or partial building permits necessary to prevent imminent peril to life, health or property, as determined by the building official.
- (6) *Tolling.* See tolling provision under (c)(6).
- (7) *Rehearings pursuant to a claim under the Bert J. Harris, Jr., Private Property Rights Protection Act.* A petition for rehearing pursuant to a Harris Act claim, the petition shall include the following documentation which shall be submitted no later than 15 days after the submission of the petition for rehearing:
 - A. A bona fide, valid appraisal supporting the claim of inordinate burden and demonstrating the loss, or expected loss, in fair market value to the real property as a result of the board's action;
 - B. All factual data described in subsection 118-564(c), "Decisions on certificates of appropriateness"; provided, however, in the event all or any portion of the factual data was available to the applicant prior to the conclusion of the public hearing before the historic preservation or joint design review board/historic preservation board and the applicant failed to furnish same to the board's staff as specified in subsection 118-564(c), "Decisions on certificates of appropriateness" then, the board may, in its discretion, deny the applicant's request to introduce such factual data;
 - C. A report prepared by a licensed architect or engineer analyzing the financial implications of the requirements, conditions or restrictions imposed by the

board on the property or development proposed by the applicant with respect to which the applicant is requesting a rehearing;

- D. A report prepared by a licensed architect or engineer analyzing alternative uses for the real property, if any;
- E. A report prepared by a licensed architect or engineer determining whether, as a result of the board action, the owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable; and
- F. A report prepared by a licensed architect or engineer addressing the feasibility, or lack of feasibility, of effectuating the board's requirements, conditions or restrictions and the impact of same on the existing use of the real property or a vested right to a specific use of the real property.

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(c) *Appeals of land use board decisions.*

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- (3) Eligible appeals of the design review board or historic preservation board shall be filed in accordance with the process as outlined in subsections A through ~~D~~ E below:

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- A. Timeframe to file. A petition ~~for an appeal~~ for review of an order of the Historic Preservation Board or Design Review Board shall be ~~submitted to~~ filed with the city clerk on or before the 20th day after the rendition of the board order. The date of Rendition of an order shall be the date upon which ~~a signed written~~ the order is executed by the ~~board's clerk~~ to the applicable board.
- B. Eligible parties. Eligible parties to file ~~an application for an appeal~~ a petition under this subsection (c) are limited to the following:
 - (i) The Original applicant for the subject Historic Preservation Board or Design Review Board approval;
 - (ii) The city manager on behalf of the city administration;
 - (iii) An affected person, which for purposes of this subsection (c) shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board ~~(directly or represented by counsel)~~ and whose appearance is confirmed in the record ~~of the board's public hearing(s) for such project;~~
 - (iv) Miami Design Preservation League;

(v) Dade Heritage Trust.

C. *Application requirements:*

- (i) The ~~appeal~~ petition shall be in writing, and shall include all record evidence, facts, law and arguments ~~necessary for in support of the appeal petition~~ (this appellate document shall be called the "brief"); and
- (ii) ~~Shall include~~ be accompanied by all applicable fees, as provided in appendix A; and
- (iii) Shall be filed by or on behalf of a named appellant(s); and
- (iv) Shall state the factual bases and legal argument in support of the appeal; and
- (v) Sufficient copies of the entire record before the board, including Aa full verbatim transcript of all proceedings which are the subject of the appeal, shall be provided by the party filing the petition, along with a written statement identifying those specific portions of the transcript upon which the party filing it will rely for purposes of the appeal. The verbatim transcript and written statement shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal. Sufficient copies of the record before the board shall be filed at the same time as the petition.

D. *Notice requirements.* ~~All applications for an Oral argument on an appeal of the design review board or historic preservation board shall require a ten (10) day published notice either in a newspaper of general circulation or on the City's website. are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8, "Notice Procedures for Quasi-Judicial Land Use Board Actions and for Administrative Decisions Requiring Notice."~~ The appeal applicant petitioner shall be responsible for all associated costs and fees.

OR

Notice requirements. ~~All applications for an Oral argument on an appeal of the design review board or historic preservation board are~~ shall be subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8, "Notice Procedures for Quasi-Judicial Land Use Board Actions and for Administrative Decisions Requiring Notice." The ~~appeal applicant~~ petitioner shall be responsible for all associated costs and fees, and oral argument of the appeal shall be fully noticed within 60 days of the filing of the petition.

E. *Deadlines.* Oral argument for a design review board or historic preservation board appeal shall take place within 90 days of the date the appeal is filed,

unless a lack of quorum of the city commission, or the availability of the special magistrate, requires the oral argument to be continued to a later date.

- (i) *Answer brief.* The respondent may serve an answer brief within 30 days of the City's written acceptance of the petition.
- (ii) *Reply brief.* The petitioner may serve a reply brief within 15 days of the filing of the answer brief.
- (iii) *Oral argument.* Oral argument shall occur within 90 days of the City's acceptance of the petition, except that oral argument may be continued to a future date due to lack of quorum of the City Commission or the unavailability of the special magistrate.
- (iv) *Decision.* A decision of the city commission or special magistrate shall be rendered within 120 days of the date the appeal is filed.

These deadlines may be modified by consent of the parties to the appeal.

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(5) *Stay of work and proceedings on appeal.* An appeal of a land use board order stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:

- (i) *Imminent peril to life or property.* A stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board or by a court of competent jurisdiction, upon application for good cause shown;
- (ii) *Specified appeals from the Planning Board.* As applicable only to an appeal arising from the planning board's approval of a conditional use permit, the city may accept, for review purposes only, a building permit application during a pending appeal in circuit court. The applicant shall be required to pay all building permit fees, which fees shall be nonrefundable. Despite the foregoing, no building permit shall issue while the circuit court appeal is pending. Should the decision on the circuit court appeal (petition for certiorari) decision be rendered in favor of the conditional use permit applicant, the applicant may proceed with construction and operations, excluding entertainment operations, pending any further appeals to the Third District Court of Appeal or other appellate proceedings, so long as the following conditions are met:
 - a. The building permit may issue and shall remain active until the final resolution of all administrative and court proceedings;
 - b. No final certificate of occupancy (CO) or certificate of completion (CC) shall be issued, and no entertainment operations or entertainment business shall commence or take place, until the final resolution of all administrative and court proceedings;

- c. The conditional use permit was appealed by a party other than (i) the city, or (ii) an applicant appealing a denial of a conditional use permit application;
- d. The property subject to the conditional use permit is located within (i) a commercial district, and (ii) a historic district;
- e. The scope of the conditional use permit is limited to modifications to an existing structure;
- f. The applicant shall prior to the issuance of the building permit, either: (i) place funds in escrow, or (ii) obtain a bond, either of which must be in an amount that is at least equal to or greater than 100 percent of the value of the work proposed under the building permit;
- g. The applicant is not seeking the demolition of any portion of a contributing structure; and
- h. In the event that the conditional use permit is reversed on appeal, the applicant must immediately amend or abandon the building permit or building permit application without any liability to the city, and a CC or CO shall not be issued. Additionally, no BTR for entertainment shall issue.

In order for a building permit to issue pursuant to this subsection (c)(5)(ii), pending any further appeals to the Third District Court of Appeal or other appellate proceedings, the applicant shall be required to comply with all of the conditions in subsections (c)(5)(ii) a. through h., as well as all conditions of the conditional use permit. The applicant shall also be required to execute a written agreement (in a form acceptable to the city attorney) holding the city harmless and indemnifying the city from any liability or loss resulting from the underlying appellate or administrative proceedings, any civil actions relating to the application of this subsection (c)(5)(ii), and any proceedings resulting from the issuance of a building permit, and the non-issuance of a TCO, TCC, CC, CO or BTR for the property. Such written agreement shall also bind the applicant to all requirements of the conditional use permit, including all enforcement, modification, and revocation provisions; except that the applicant shall be ineligible to apply for any modifications to the conditional use permit or any other land use board order impacting the property, until the final resolution of all administrative and court proceedings as certified by the city attorney. Additionally, the applicant must agree that in the event that the conditional use permit is reversed, the applicant shall be required to restore the property to its original condition. The city may utilize the bond to ensure compliance with the foregoing provisions.

- (iii) *Other appeals from land use board decisions.* Except for appeals arising from the planning board's approval of a conditional use permit, which are governed by subsection (ii) above, the appeal of any land use board order for a property located outside the RS-1, RS-2, RS-3, or RS-4 single-family zoning districts, if timely and properly filed subject to the requirements of this section or the Florida Rules of Appellate Procedure (as applicable), shall stay all work on

the premises and all proceedings in furtherance of the action appealed from for a period of 120 days from the date the appeal is filed or until such time as the applicant obtains a favorable ruling by the body or court with jurisdiction at the first level of appeal (whether the special magistrate, for appeals from the historic preservation board; the city commission, for appeals from the design review board; or the circuit court, for appeals of decisions on variances and appeals from other land use boards), whichever occurs first. Notwithstanding the foregoing, and only as applicable to appeals before the city commission or special magistrate, in the event that a decision is not rendered within 120 days due to a lack of quorum of the city commission or the unavailability of the special magistrate, the stay shall remain in place until such time as the appeal is ruled on by the city commission or special magistrate. The provisions of this paragraph shall not be applicable to appeals filed by the city manager or the applicant for the land use board approval. In order to lift the automatic stay under this subsection (c)(5)(iii), an applicant shall first be required to satisfy the following requirements:

- a. The applicant shall execute a written agreement (in a form acceptable to the city attorney) to hold harmless and indemnify the city from any claim, liability, or loss resulting from the approval of the application, the underlying appellate proceedings, the application of this subsection (c)(5)(iii), the issuance of a building permit, and/or the non-issuance of a final certificate of completion (CC) or a final certificate of occupancy (CO) for the property.
- b. The written agreement shall bind the applicant to all requirements of the conditions of the applicable order of the respective land use board, including all enforcement, modification, and revocation provisions; except that the applicant shall be ineligible to apply for any modifications to the board order that are subject to the appeal, until the final resolution of all administrative and court proceedings as certified by the city attorney. Notwithstanding the foregoing, an applicant shall be eligible to apply for modifications that, as determined by the planning director and the city attorney, (i) are minor, (ii) do not affect the portions of the project that are challenged in the appeal, or (iii) are necessary to effectuate a settlement.
- c. The applicant shall agree that in the event that the decision of the board is reversed, the applicant shall be required to restore the property to its previous condition, except that portions of the project that are not affected by the final order or resolution on the appeal, as determined by the planning director and city attorney, may remain, unless subsequent modifications are approved by the respective land use board.
- d. No final certificate of occupancy (CO) or final certificate of completion (CC), shall be issued until the final resolution of the appeal (including all judicial proceedings), as determined by the city attorney.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith 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 _____, 2022.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

City Attorney

Date

First Reading: _____, 2022

Second Reading: _____, 2022

Verified By: _____

Thomas R. Mooney, AICP
Planning Director