

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 25, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0559. Reform and Updating of Rehearing and Appeal Provisions.**

RECOMMENDATION

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

HISTORY

On May 4, 2022, the City Commission referred the subject Ordinance to the Land Use and Sustainability Committee (LUSC) and the Planning Board (C4Y). The sponsor of the proposal is Mayor Dan Gelber.

On June 6, 2022, the LUSC discussed a comprehensive draft Ordinance prepared by the Administration. The LUSC recommended that the Planning Board transmit a more limited version of the Ordinance to the City Commission with a favorable recommendation. The remaining portions of the proposed Ordinance regarding broader reforms was continued to the September 28, 2022, LUSC meeting.

On June 21, 2022, the Planning Board transmitted the limited version of the Ordinance to the City Commission with a favorable recommendation. The Ordinance transmitted by the Planning Board was adopted by the City Commission on July 20, 2022.

On September 28, 2022, the LUSC recommended that the attached Ordinance be moved to the Planning Board for review, with an additional recommendation for option 1 regarding notice provisions, providing for a 10-day published notice requirement for appeals.

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:

- 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, therefore, the proposal is not out of scale with the needs of the neighborhood or the city.

4. Whether the proposed change would tax the existing load on public facilities and infrastructure.

Consistent – The proposed ordinance does not modify allowable densities or intensities for new development, and therefore does not change the potential loads on public facilities and infrastructure.

5. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

Not Applicable –District boundaries are not proposed to be modified.

6. Whether changed or changing conditions make the passage of the proposed change necessary.

Consistent – The need to better define stay provisions when a project is appealed 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 – Since the City is now a transportation concurrency exception area, the proposed change will not create or increase traffic congestion beyond the levels of service set forth in the Comprehensive Plan, or otherwise affect public safety. Additionally, the proposal does not increase the development potential beyond what currently exists.

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

Consistent – The proposed amendment does not modify the scale of development and as such will not reduce light and air to adjacent areas beyond what is currently permitted.

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 impact 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.

BACKGROUND

Section 118-9 of the City's Land Development Regulations regulates the re-hearing and appeal process for all land use boards, including stays of work on the premises. The item sponsor requested that the Administration and the City Attorney's Office provide recommendations to the LUSC regarding amendments to Section 118-9, in order to reform provisions governing the automatic stay pending appeal, as well as related amendments to the City's rules of appellate procedure, to promote efficiency and safeguard due process.

PLANNING ANALYSIS

Currently, an automatic stay provision exists for all rehearing requests and appeals of Design Review Board (DRB) and Historic Preservation Board (HPB) decisions, including appeals to circuit and appellate courts. The reason this automatic stay provision was originally drafted so broadly is to ensure that buildings are not demolished, constructed or altered unless and until the appellate process has been exhausted. The intent of the proposed Ordinance is to reform the rehearing and appeal process related to land use boards, and better address those appeals filed to delay a project or result in the project not moving forward.

The Ordinance adopted by the City Commission on July 20, 2022 consisted of more limited modifications to Sec. 118-9 of the LDR's, as recommended by the LUSC, pertaining to the automatic stay provision for appeals. The original proposed Ordinance presented to the LUSC on June 6, 2022, contained a broader set of amendments, which were intended to substantially reform the rehearing and appeal process related to land use boards, and better address those appeals filed to delay a project or result in the project not moving forward. In addition to these substantive reforms, a number of non-substantive adjustments and updates were contained in the proposed draft Ordinance.

The following is a summary of the key provisions of the broader reform amendments proposed, which were presented at the September 28, 2022, LUSC meeting:

Rehearing timeframe

A timeframe for rehearing's is proposed, and contains the following new provisions:

- Only one rehearing request, per eligible party, and per development order, will be permitted.
- The rehearing must take place at the next available meeting of the applicable land use board and shall be acted on by the board at that meeting; exceptions to this would be a lack of quorum.
- The failure of the applicable land use board to act upon the rehearing at the next available land use board meeting would render the request denied unless all affected parties agree to a continuance of the rehearing.

These revisions do not impede the ability of an applicant or an affected person to avail themselves of the rehearing process. They simply expedite the process, so that it cannot be used to create undue delays.

Notice requirements

The notice requirements for appeals of DRB and HPB decisions are proposed to be modified from the current 30-day notice (including posting, published and mail notice) to a ten (10) day published notice either in a newspaper of general circulation or on the City's website. The appeal applicant petitioner would still be responsible for all associated costs and fees.

This is recommended since the appeal hearing for DRB and HPB decisions is based solely on the record of the proceedings and is not a public hearing. The current notice requirements are excessive and add to undue delays in the appeal process; by streamlining the notice requirements, appeals of DRB and HPB matters will be able to be considered more quickly.

Updates and Clarifications

A number of non-substantive updates and clarifications, pertaining to appellate rules and procedures, as well as board procedures, are proposed.

The attached draft Ordinance contains the limited amendments adopted by the City Commission on July 20, 2022. The additional reform measures proposed by the Administration are denoted in underscore.

SUMMARY

As noted previously, The Administration and the City Attorney's Office believe that the proposal herein, as well as the Ordinance adopted on July 20, 2022, represent an objective and balanced approach to ensuring a just appellate process, while not causing undue delays for project applicants. Should an appellant or an affected party desire to extend the stay beyond first tier review (City Commission or Historic Preservation Special Magistrate) a separate action can always be filed in circuit or appellate court. Ultimately, the risk involved in proceeding with permitting and construction of a development project would be borne by the project applicant, who can best evaluate the potential risks associated with proceeding prior to the conclusion of all appeals.

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.

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**

* * *

ARTICLE I. IN GENERAL

* * *

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.

* * *

(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.

* * *

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

* * *

- (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:

* * *

- 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.

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.

* * *

(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.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

City Attorney

Date

First Reading: December ____, 2022

Second Reading: January ____, 2023

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

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