

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Land Use and Sustainability Committee

FROM: Alina T. Hudak, City Manager

DATE: January 25, 2023

SUBJECT: **Discuss the Creation of a 6th Street Overlay, Between Washington Avenue and Alton Road.**

HISTORY

On July 28, 2021, at the request of Commissioner Steven Meiner, the City Commission referred a discussion item pertaining to the creation of a 6th Street Overlay between Washington Avenue and Alton Road to the Land Use and Sustainability Committee (C4T). On September 14, 2021, the LUSC discussed the item and continued it to October 19, 2021.

On October 19, 2021, the item was deferred to the December 2021 LUSC meeting. The December 2021 LUSC meeting did not take place, as Commission Committees had not been appointed. The item was automatically deferred to the first available meeting of 2022.

On March 4, 2022 the LUSC discussed and continued the item to the May 13, 2022 LUSC meeting with the following direction:

1. Engage in follow-up outreach to the affected stakeholders and provide a summary of the applicable comments and input.
2. Modify the northeast boundary of the overlay to remove Washington Avenue.

On May 13, 2022 the item was deferred to the June 6, 2022 LUSC meeting, with no discussion. On June 6, 2022 the item was deferred to the July 7, 2022 LUSC meeting, with no discussion. On July 7, 2022 the item was deferred to the September 28, 2022 LUSC meeting, with no discussion.

On September 28, 2022 the LUSC discussed and continued the item to the November 18, 2022 LUSC meeting with direction to further explore uses within the proposed overlay, as well as hold a publicly noticed community meeting in the neighborhood. On November 18, 2022, the item was deferred to the January 2023 LUSC meeting, with no discussion.

BACKGROUND

The area between 5th and 6th Street, from Washington Avenue to Alton Road, is currently zoned C-PS2 (Commercial Performance General Mixed-Use). The C-PS2 district permits a range of business, commercial, office and hotel uses, as well as medium density residential development.

As noted on the attached map, the north side of 6th Street between Washington Avenue and Alton Road is comprised of the following zoning districts: RM-2, residential multifamily medium intensity (between Washington Avenue and Pennsylvania Court); GU, government use (between Meridian Avenue and Jefferson Avenue); CD-2, commercial medium intensity (between Lenox Court and Alton Road), with the remainder RM-1, residential multifamily low intensity.

The south side of 6th Street between Washington Avenue and Alton Road is comprised of C-PS2, general mixed-use commercial (between Washington Avenue and Alton Road). The center line of 6th Street between Washington Avenue and Lenox Court serves as the boundary for the Flamingo Park Historic District to the north and the Ocean Beach Historic District to the south.

ANALYSIS

The Flamingo Park Neighborhood Association (FPNA) has raised concerns regarding the lack of a buffer between the 6th Street corridor and the lower scale RM-1 Flamingo Park neighborhood. In order to create a transitional zone between these two areas, FPNA is proposing the creation of an overlay between the north side 5th Street and the south side of 6th Street, from Washington Avenue to Lenox Avenue.

Specifically, FPNA is requesting an overlay district that would include modifications to the Land Development Regulations (LDR's) for all C-PS2 properties within 200 feet of the south side of 6th Street. In August of 2021, a Resolution was approved by the FPNA, outlining their initial recommendations for a zoning overlay district. The following is a general summary of the proposals in this August 2021 Resolution that are specific to properties within 200 feet of the south side of 6th Street:

- Reductions in maximum permitted height.
- Modifications to setback requirements.
- Introduction of lot aggregation and building separation requirements.
- Introduction of additional regulations for properties that contain a Contributing building.
- Limitation on the number and location of curb cuts.
- Modifications to permitted uses including restrictions on restaurant, alcoholic beverage establishments and retail uses.
- Prohibitions on uses related to motorized vehicles including gas stations, car washes, parking garages, and sale, lease or repair of motorized vehicles.
- Prohibitions on transient rentals including hotels, suite hotels, apartment hotels, or short-term rentals.

The low scale residential neighborhood within Flamingo Park is currently buffered from the higher intensity zoning CD-2 district on the west (Washington Avenue) by the RO (Residential Office) zoning district on Pennsylvania and Drexel Avenues. Additionally, in 2014, the Alton Road Historic District Buffer Overlay was created along the east side of Alton Road, in order to create a transition zone between that CD-2 commercial district. Over time, these transition areas have helped to mitigate the impacts of higher intensity commercial uses adjacent to lower intensity residential uses on the east and west sides of the Flamingo Park neighborhood.

Recently there have been several large, high intensity projects approved within the C-PS2 area between 5th and 6th streets, from Alton Road to Meridian Avenue. Most recently, a new hotel with a rooftop amenity deck and accessory outdoor café was approved for the property located at the southeast corner of 6th Street and Lenox Avenue. Given that there are a number of non-contributing properties, including several surface parking lots, in this area, as well as the designation of 5th Street as a major transit corridor, it is likely the City will see an increase in new development proposals in the C-PS2 area.

In order to ensure that future development proposals within the C-PS2 area north of Fifth Street are compatible with and sensitive to the established, low scale area of Flamingo Park north of 6th Street, additional development regulations are warranted. To this end, the Administration is generally supportive of appropriate amendments to the Land Development Regulations (LDR's) for properties and uses that front on or are near the south side of 6th Street. The intention of such regulations, as part of an overlay, would be to foster a more compatible relationship in terms of scale, massing and land uses between the 6th Street corridor and the Flamingo Park residential neighborhood.

The proposal contained in the August 2021 FPNA Resolution was based on current regulations within the Alton Road Historic District Buffer Overlay and the RM-1 district within Flamingo Park. As noted previously, while some of the Alton Road overlay regulations may be applicable to properties along 6th Street, a number of the proposals in the FPNA Reso will need to be studied further. In this regard, the following was noted as part of the September 14, 2021 LUSC memo:

- The draft regulations pertaining to height, setbacks, building separation and lot aggregation will need further study and fine-tuning.
- Consideration of the resiliency and sea level rise criteria will need to be taken into account.
- A number of the uses identified as prohibited in the draft overlay are already prohibited in the area.
- Prohibitions on hotel uses need further study. Additionally, the City is currently pre-empted under Florida law from enacting any restrictions on the short-term rental of apartment units in the C-PS2 districts.

While supportive of an overlay that would create a meaningful buffer along the 6th Street corridor, the Administration did not recommend that the proposal set forth in the August 2021 FPNA Resolution move forward as drafted. To this end, the make-up of existing properties between 5th and 6th Streets is unique and includes variations in overall lot sizes and unified development sites. Also, this area contains a number of less than desirable uses, including surface parking lots, gas stations and other automobile related uses. A future overlay for this area must take into account the ability for multiple lots to be developed in a tangible manner.

UPDATE – March 4, 2022 LUSC

Subsequent to the September 14, 2021 LUSC meeting, Planning Department staff met with various property owners and stakeholders within the boundaries of the proposed overlay. Additionally, Planning Department staff organized a joint meeting with representatives of the FPNA and various property owners within the proposed overlay boundaries on December 29, 2021. While the meeting was amicable and constructive, there did not appear to be a high degree of consensus with regard to the initial parameters of an overlay.

Planning staff has studied the lot aggregation and height limits proposed for the overlay area and has some concerns with regard to placing limits on these components. Attached are maps showing i. existing unified development sites; and ii. properties with buildings classified as 'contributing' in the City's historic properties database. These maps show how dispersed the area between 5th and 6th Street is both from a property ownership and unified site standpoint. Additionally, there is no strong concentration of contributing structures along 5th Street and the mid portions of most blocks.

In light of this, Planning staff would suggest that overlay regulations not create a barrier to establishing desirable unified sites, even if some of the lots within a unified site are close to or fronting 6th Street. Additionally, as Fifth Street is a dedicated transit corridor there is an opportunity to maximize the development potential of the properties fronting 5th Street, including unification efforts with properties immediately north of Fifth Street. Currently there are a number of highly underutilized parcels fronting on and north of Fifth Street, as well as a number of uses that would be better suited elsewhere.

The following is a summary of the overlay regulations discussed by the LUSC on March 4, 2022:

Building Height

After further review and consideration, the Administration does not recommend limiting building height to 28 feet within any portion of the proposed overlay, as it could disproportionately affect smaller lots and development sites that do not have enough area to distribute the maximum allowable FAR. Unlike lower scale districts, such as the RM-1 district that has a maximum FAR of 1.25, the C-PS2 district has a maximum FAR of 2.0 and allows for a wider range of uses. As such, more flexibility in terms of overall building height is needed to allow for adequate architectural latitude in the distribution of this allowable volume.

To address the potential future issues of context along the south side of 6th Street, it is recommended to limit the maximum overall height to 50 feet within the first 2 platted lots on the south side of 6th Street, regardless of use. A maximum height of 50 feet within this portion of the overlay would still allow for an appropriate and sensible distribution of the maximum FAR of 2.0. Additionally, under the certificate of appropriateness criteria in the Code, the Historic Preservation Board has significant latitude in requiring adjustments to overall building height, massing and the distribution of allowable building volume.

The representatives of the FPNA have expressed a desire to explore additional building setbacks above a height of 28 feet. The Administration is open to exploring this further, but only within larger unified development sites. Also, the actual uses themselves may play a role in minimum building setbacks, as residential, office and hotel use generally

incorporate more transparency at the upper levels, while retail uses at the upper level do not.

Alcoholic Beverage and Use Restrictions

The following are additional regulations that would apply to properties located between 5th Street and 6th Street within the C-PS2 district, as well as more specific regulations for the first 2 platted lots south of 6th Street:

- Prohibiting outdoor bar counters within 100 feet of the south side of 6th Street.
- Limiting outdoor restaurant and/or bar seating located above the ground floor to no more than 100 seats when located within 100 feet of the south side of 6th Street. Additionally, such outdoor seating shall only be permitted until 10:00 p.m., if located within 100 feet of the south side of 6th Street. The Planning Board, pursuant to the Conditional Use criteria, could allow an increase in the number of seats, as well as expanded hours of operation, but with a cap.
- Outdoor ambient music and television sets would be prohibited within 100 feet of the south side of 6th Street, unless approved by the Planning Board, pursuant to the Conditional Use criteria.
- Access points to hotels, suite hotels and apartment hotels, as well as food and beverage establishments serving alcohol, would be limited to side streets only, and would not be permitted on 6th Street. Additionally, a minimum setback of 20 feet from the south side of 6th Street, for all public entry points, would be required.
- Adding nuisance uses to a list of prohibited uses for the entire C-PS2 district. Such uses include hostels, convenience stores, smoke/vape stores, package stores and the retail sale of alcohol for off premise consumption. Additional uses may be added, as well.

UPDATE – September 28, 2022 LUSC

Since the March 4, 2022, LUSC meeting, Planning Department staff has met with representatives of the Flamingo Park Neighborhood Association (FPNA), regarding proposed revisions to the overlay. Additionally, Planning staff has reached out to property owners within the proposed overlay, as well as their representatives. To date, there still does not appear to be a high degree of consensus with regard to the framework of the proposed overlay.

Based upon the direction of the LUSC on March 4, 2022, as well as feedback obtained in meetings with the FPNA, Planning staff further developed and revised the attached draft Ordinance for the creation of a 6th Street overlay. The following is a summary of the revised overlay regulations proposed by the Administration:

1. Properties with frontage on Washington Avenue as of January 1, 2022 have been removed from the overlay. However, in the future, if a lot with frontage on Washington Avenue is unified with a lot that does not have frontage on Washington Avenue, such unified site shall therein after be subject to the overlay regulations.

2. The following shall apply to alcoholic beverage establishments within the proposed overlay:
 - a. Operations in outdoor or open-air areas of an alcoholic beverage establishment shall cease no later than 12:00 a.m., except as otherwise provided herein.
 - b. Alcoholic beverage establishments with sidewalk cafe permits shall not be permitted to have outdoor speakers abutting or adjacent to any public sidewalks.
 - c. Outdoor bar counters shall be prohibited within 200 feet of the south side of 6th Street.
 - d. Within 100 feet of the south side of 6th Street, outdoor restaurant and/or bar seating shall not exceed 100 seats, and only when associated with an indoor venue. Additionally, such outdoor seating shall only be permitted until 10:00 p.m. The Planning Board, pursuant to the Conditional Use criteria, may allow an increase in the number of seats, but not to exceed 200 seats.
 - e. Within 200 feet of the south side of 6th Street, outdoor restaurant and/or bar seating located above the ground floor shall not exceed 100 seats, and only when associated with an indoor venue. Additionally, such outdoor seating shall only be permitted until 10:00 p.m. Notwithstanding the foregoing, the Planning Board, pursuant to the Conditional Use criteria, may allow for the following as it pertains to outdoor restaurant and/or bar seating located above the ground floor:
 - i. For outdoor restaurant and/or bar seating located within 100 feet of the south side of 6th Street, the Planning Board may allow for an increase in the number of seats, but not to exceed 200 seats.
 - ii. For outdoor restaurant and/or bar seating that is more than 100 feet from the south side of 6th Street, but less than 200 feet from the south side of 6th Street, the Planning Board may allow for an increase in the number of seats, but not to exceed 300 seats, as well allow for an increase in the permitted hours of operation, not to exceed 12:00 am.
3. Outdoor music, whether amplified or nonamplified, and television sets, shall be prohibited within 100 feet of the south side of 6th Street.
4. For properties with frontage on 6th Street, entry and exit doors, as well as access points (with the exception of required emergency egress) to hotels, apartment hotels and suite hotels, and food and beverage establishments serving alcohol, shall be subject to the following regulations:
 - a. Entry and exit doors, as well as access points, shall not be permitted on 6th Street.
 - b. A minimum setback of 20 feet from the south side of 6th Street, for all such entry and exit doors, as well as access points, shall be required.
 - c. For properties which contain 200 feet or more of frontage along Euclid, Meridian, Jefferson, Michigan or Lennox Avenues, all entry and exit doors, as well as access points shall be setback a minimum setback of 100 feet from the south side of 6th Street.
 - d. Subject to the approval of the Historic Preservation Board, for existing contributing structures the minimum setbacks from the south side of 6th Street may be waived or modified by the Historic Preservation Board, and the location of such entry and exit doors, and access points, may be permitted on 6th Street.
5. For properties with frontage on 6th Street, the storage or parking of vehicles above the ground level shall be setback a minimum of 100 feet from the south side of 6th Street.

6. The following uses shall be prohibited:
 - a. The sale, lease or rental of any motor vehicles, including, but not limited to, automobiles, golf carts, low-speed vehicles, mopeds, motorcycles, motorized bicycles, and motorized scooters.
 - b. Hostels.
 - c. Convenience stores.
 - d. Smoke shops and vape stores.
 - e. Package stores and the retail sale of alcohol for off premise consumption.
7. The maximum permitted height within the first two platted lots south of 6th Street shall not exceed 50 feet, regardless of property use.
8. A minimum setback of five (5') feet shall be required along all front and side facing a street yards, in order to provide a clear pedestrian path that exceeds the width of the abutting sidewalk. This requirement may be waived by the Historic Preservation Board for portions of a property containing a contributing building.
9. If an alley exists, no front or street side curb cut shall be permitted. If no alley exists, any curb-cut required shall not exceed 12 feet in width.
10. Notwithstanding the provisions of section 142-1161 of these land development regulations, roof-top additions shall not exceed the applicable maximum building height set forth in the C-PS2 district.

The FPNA has proposed an alternate set of overlay regulations, as more specifically described in the attached August 29, 2022 FPNA Resolution. The following is a summary of the main differences between the FPNA proposal, and the draft Ordinance prepared by Planning staff:

1. Provisions related to sidewalk cafe permits are not included in the Administration version of the Ordinance, as these regulations have been relocated from the LDR's to the City Code. Any modifications to the sidewalk café regulations would need to be effectuated by a separate amendment to the City Code. However, the current regulations governing sidewalk cafes in Chapter 82 may be consistent with the FPNA proposal.
2. The recommendations of the Administration and FPNA pertaining to outdoor restaurant and/or bar seating in proximity to 6th Street differ. Additionally, the Administration version creates a distinction between seating at ground level and seating above the ground level.
3. The Administration version of the Ordinance recommends that outdoor music, whether amplified or nonamplified, and television sets, be prohibited within 100 feet of the south side of 6th Street, while the FPNA proposal recommends a 200-foot separation from 6th Street.
4. As it pertains to access to transient uses and alcoholic beverage establishments for properties with frontage on 6th Street, the Administration version provides more clarity and would allow the Historic Preservation Board to have slightly more latitude to grant a waiver.

5. The Administration version of the Ordinance does not include the following provisions that are proposed by the FPNA:
 - a. For properties within 200 feet of 6th Street, hotels shall be prohibited and any transient uses or unified projects over 20,000 square feet shall be subject to Conditional Use approval by the Planning Board.
 - b. The maximum permitted height within the first 100 feet south of 6th Street shall not exceed 28 feet, regardless of property use, and the maximum permitted height between 100 feet and 140 feet south of 6th Street shall not exceed 40 feet. This height limit may be waived by the Historic Preservation Board to preserve contributing buildings or for a development whose primary use is affordable, workforce, or senior housing.

UPDATE – January 25, 2023 LUSC

On September 28, 2022, the LUSC discussed the updates for the proposed 6th Street overlay provided by the Administration and the Flamingo Park Neighborhood Association. There have been no changes to the proposed revisions, which are attached and summarized above.

At the direction of the LUSC, on December 19, 2022, the city held an evening public meeting at the Miami Beach Police Department Community Room within the Flamingo Park neighborhood. The hybrid meeting was advertised and well attended by residents and property owners both in person and via Zoom.

After a brief presentation, some residents expressed concerns regarding potential proliferation of transient and commercial uses along the south side of 6th Street across from the Flamingo Park residential neighborhood. More specifically, the members of the public requested that the City explore the following:

- Prohibit the introduction of balconies facing 6th Street or any side street, for transient uses;
- Explore the introduction of zoning incentives that would encourage residential development; and
- Explore the possibility of rezoning the south side of 6th Street to the RM-1 zoning district.

The Administration would not recommend incorporating limits on balconies within new construction based solely on transient uses. The use of a property evolves over time and such a regulation would be difficult to administer. The Administration would also not recommend a rezoning of the area south of 6th Street to residential only, as it would create non-conforming uses and subject the City to potential legal and financial exposure.

With regard to incentivizing residential development, one option would be to consider, on a separate path, an increase in maximum FAR and residential density, for development projects consisting substantially of residential uses. As part of this incentive, there could also be limits placed on transient rentals, as well as the amount and type of accessory uses permitted. Although voter approval would be required, this would be an effective option in terms of incentivizing the development of non-transient residential uses.

Also, an FAR increase within the area bounded by 5th and 6th Street, would be consistent with the City's long term mobility goals, as this area fronts a transit corridor and has been identified for potential future transit-oriented development (TOD) regulations.

SUMMARY

As indicated previously, and noted above, the differences between the Administration recommendation and the FPNA proposal have narrowed. Nevertheless, several property owners within the proposed overlay area still have concerns with the proposal.

The Administration believes that a tailored set of regulations, creating a tangible transition area along 6th Street, would be beneficial. The Ordinance recommended by the Administration achieves a careful balance between protecting the quality of life for residents in the RM-1 district to the north of 6th Street, while allowing for the development and improvement of properties within the overlay south of 6th Street.

If the proposal for a 6th Street overlay is to move forward, a referral from the full City Commission to the Planning Board would still be needed.

CONCLUSION

The Administration recommends that the LUSC discuss the attached draft overlay Ordinance and provide policy direction. If there is consensus, it is further recommended that the version of the overlay amendment prepared by the Administration be moved to the City Commission for referral to the Planning Board.


ATH/RW/TRM