

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: April 25, 2023

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB23-0587. CD-3 Zoning Regulations to Permit Convenience Stores on Lincoln Road, East of Washington Avenue.**

### **RECOMMENDATION**

Transmit the proposed ordinance amendment to the City Commission with an unfavorable recommendation.

### **HISTORY**

On November 16, 2022, at the request of Commissioner Alex Fernandez, the City Commission referred the subject proposal (C4 Y) to the Land Use and Sustainability Committee (LUSC) and the Planning Board.

The item was placed on the January 25, 2023 LUSC agenda and deferred to the March 1, 2023 LUSC meeting, at the request of the item sponsor. On March 1, 2023, the LUSC recommended a modified proposal be sent to the Planning Board that included a requirement for Conditional Use approval and minimum operational conditions.

### **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 does not modify the scale of development, as such the amendment 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 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.**

**Not applicable** – The proposed amendment does not modify district boundaries.

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

**Partially Consistent** – The desire to occupy existing retail space that has been previously difficult to fill provides a rationale for the proposed ordinance; however, there have not been any changes in conditions along Lincoln Road that would otherwise preclude uses currently permitted.

**7. Whether the proposed change will adversely influence living conditions in the neighborhood.**

**Partially consistent** – The proposed ordinance amendment should not adversely affect living conditions in the neighborhood, as it contains restrictions which minimize the impacts of potential convenience stores; however, the type of retail proposed is not expected to improve the caliber of retail in the affected area. Improving the caliber of retail in the area could improve living conditions in the surrounding 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.

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

**Consistent** – The proposed change 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.**

**Partially Consistent** – The proposed change will likely not be a deterrent to the improvement or development of properties in the City; however, it may limit the improvement of the caliber of retail in the surrounding area.

**12. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

**Partially Consistent** – The applicant has represented that given the existing layout of the space and impacts to retail markets due to e-commerce, other uses are not viable. However, similar sized, and larger spaces along Lincoln Road have complied with existing regulations.

**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 should 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**

Pursuant to the regulations set forth in Sec. 142-335 of the Land Development Regulations (LDRs) of the City Code, convenience stores are a prohibited use on properties fronting Lincoln Road between Collins Avenue and Alton Road.

**PLANNING ANALYSIS**

The proposed amendment to the CD-3 zoning district regulations would allow for convenience stores along Lincoln Road, east of Washington Avenue, with a conditional use permit (CUP) and other specific restrictions. In this regard, a convenience store would only be permitted on Lincoln Road, east of Washington Avenue, if the storefront is located within the interior of the property, and if the entire establishment is set back a minimum of 75 feet from Lincoln Road, as well as Washington and Collins Avenues.

Specifically, the following amendment is proposed (underline denotes new, amended text):

**Sec. 142-333. Conditional uses.**

(a) *The conditional uses in the CD-3 commercial, high intensity district are as follows:*

- (1) *New construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards;*
- (2) *Outdoor entertainment establishment;*
- (3) *Neighborhood impact establishment;*
- (4) *Open air entertainment establishment;*
- (5) *Religious institutions with an occupancy greater than 199 persons;*
- (6) *Video game arcades;*
- (7) *Public and private institutions;*
- (8) *Schools and major cultural dormitory facilities as specified in section 142-1332; and*
- (9) *Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located, except such storage and/or parking of commercial vehicles shall not be permitted on lots with frontage on Lincoln Road, Collins Avenue, 41st Street and 71st Street. See subsection 142-1103(c);*
- (10) *Alcoholic beverage establishments located in the area generally bounded by 40th Street to the south, 42nd Street to the north, Alton Road to the west, and the Indian Creek waterway to the east, shall be subject to the additional requirements set forth in section 142-340; and*
- (11) *When located above the ground floor on properties with a lot size greater than 50,000 square feet and with a lot line adjoining Lincoln Road between Collins Avenue and Alton Road: artisanal retail with off-site sales.*
- (12) *Convenience stores, on properties east of Washington Avenue with a storefront located in the interior of the property and with the entire establishment set back a minimum of 75' from the property lines fronting Lincoln Road, as well as Washington Avenue and Collins Avenue.*

For reference below is the list of prohibited uses in the CD-3 district.

**Sec. 142-335. Prohibited uses.**

(a) *The prohibited uses in the CD-3 commercial, high intensity district are as follows:*

- (1) *Pawnshops;*
- (2) *Secondhand dealers of precious metals/precious metals dealers;*
- (3) *Accessory outdoor bar counter, except as provided in article IV, division 2 of this chapter and in chapter 6;*
- (4) *Tobacco/vape dealers; and*
- (5) *The storage and/or parking of commercial vehicles on lots with frontage on Lincoln Road, Collins Avenue, 41st Street or 71st Street.*

(b) *For properties with a lot line on Lincoln Road, between Alton Road and Collins Avenue, the following additional uses are prohibited:*

- (1) *Check cashing stores;*
- (2) *Medical cannabis dispensaries (medical marijuana dispensaries);*
- (3) *Convenience stores;*
- (4) *Grocery stores;*
- (5) *Occult science establishments;*
- (6) *Pharmacy stores;*
- (7) *Souvenir and t-shirt shops;*
- (8) *Tattoo studios;*
- (9) *Retail establishments larger than 45,000 square feet (except as otherwise provided in section 142-332 and 142-333) (note: no variances shall be granted from the regulations in this subsection (b)(9)); and*
- (10) *Offices on the ground floor on that portion of Lincoln Road which is closed to traffic; notwithstanding the foregoing, this prohibition does not include office uses located in a mezzanine, or set back at least 75 feet back from the storefront.*

The existing code provisions pertaining to conditional and prohibited uses along Lincoln Road are intended to foster a higher caliber of uses and promote the long-term viability of the corridor. One of these prohibited uses is convenience stores. The prohibited uses above were previously identified as not being consistent with the long-term vision for Lincoln Road, and they have been regulated accordingly. As such, staff believes that any proposal to create an exception for convenience store uses should be looked at very carefully.

The proposal herein would allow for the establishment of new convenience stores, within a limited area of Lincoln Road, provided the use does not front directly on Lincoln Road. Although the subject use would be buffered physically from Lincoln Road, as well as Washington and Collins Avenues, staff does have concerns with the potential for a precedent, particularly if a future proposed convenience store use should seek additional exceptions.

Additionally, the area of Lincoln Road east of Washington Avenue still lacks the same level of tenant caliber that exists west of Washington Avenue. As such, relaxing standards for allowable uses could have unintended consequences regarding the upgrading of tenants within the larger 2-block area east of Washington Avenue.

Given the tight restraints proposed in the ordinance amendment, it is unlikely that a single convenience store use, in and of itself, would cause irreparable damage to Lincoln Road, as it would be well setback and insulated from the sidewalk. Additionally, by requiring a CUP, applicable conditions and safeguards would be placed on the use. The requirement for a CUP would also allow for the use to remain under the jurisdiction of the Planning Board and provide for improved enforcement of conditions to ensure that the use does not engage in behavior or activities intended to draw attention to the use and that the surrounding area is well maintained.

The additional requirements for CUP approval, recommended by the LUSC, should address all safety and operational issues that may arise with the proposed use of convenience store. However, as indicated previously, while understanding of the constraints associated with large spaces setback from Lincoln Road, staff cannot conclude that a convenience store is the only potential use for such spaces and does not recommend in favor of the proposed amendment.

**RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed Ordinance amendment to the City Commission with an unfavorable recommendation.

Conditional Use for Convenience Stores in the CD-3 District

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," AT DIVISION 5, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," BY AMENDING SECTION 142-333 "CONDITIONAL USES", TO LIST CONVENIENCE STORES LOCATED ON LINCOLN ROAD BETWEEN WASHINGTON AVENUE AND COLLINS AVENUE AS A CONDITIONAL USE SUBJECT TO STRICT CRITERIA; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (the "City") has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

**WHEREAS**, the City's Land Development Regulations ("LDRs") provide for the regulation of land within the City; and

**WHEREAS**, the City wants to facilitate as a conditional use in limited circumstances convenience stores set back at least 75' from Lincoln Road; and

**WHEREAS**, this Ordinance provides for a convenience stores as a conditional use, located in the CD-3 district, for properties with a lot line on Lincoln Road east of Washington Avenue.

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

**SECTION 1.** Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 6, "CD-3 Commercial, High Intensity District," is hereby amended as follows:

**CHAPTER 142 - ZONING DISTRICTS AND REGULATIONS**

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**ARTICLE II. - DISTRICT REGULATIONS**

\* \* \*

**DIVISION 6. - CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT**

\* \* \*

**Sec. 142-333. Conditional uses.**

- (a) The conditional uses in the CD-3 commercial, high intensity district are as follows:
- (1) New construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards;
  - (2) Outdoor entertainment establishment;
  - (3) Neighborhood impact establishment;
  - (4) Open air entertainment establishment;
  - (5) Religious institutions with an occupancy greater than 199 persons;
  - (6) Video game arcades;
  - (7) Public and private institutions;
  - (8) Schools and major cultural dormitory facilities as specified in section 142-1332; and
  - (9) Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located, except such storage and/or parking of commercial vehicles shall not be permitted on lots with frontage on Lincoln Road, Collins Avenue, 41st Street and 71st Street. See subsection 142-1103(c);
  - (10) Alcoholic beverage establishments located in the area generally bounded by 40th Street to the south, 42nd Street to the north, Alton Road to the west, and the Indian Creek waterway to the east, shall be subject to the additional requirements set forth in section 142-340; and
  - (11) When located above the ground floor on properties with a lot size greater than 50,000 square feet and with a lot line adjoining Lincoln Road between Collins Avenue and Alton Road: artisanal retail with off-site sales.
  - (12) Convenience stores, notwithstanding prohibited uses pursuant to Sec. 142-333, may be permitted as a conditional use for properties with a lot line on Lincoln Road east of Washington Avenue with a storefront located in the interior of the property and with the entire establishment set back a minimum of 75' from the property lines fronting Lincoln Road, as well as setback 75' from Washington Avenue and Collins Avenue.

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**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 renumbered or



relettered to accomplish such intention; and that the word “ordinance” maybe 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 2023.

\_\_\_\_\_  
Dan Gelber, Mayor

ATTEST:

\_\_\_\_\_  
Rafael E. Granado, City Clerk.

APPROVED AS TO FORM AND  
LANGUAGE AND FOR EXECUTION

\_\_\_\_\_  
City Attorney  
Date

First Reading: \_\_\_\_\_, 2023  
Second Reading: \_\_\_\_\_, 2023

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director