

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 23, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB23-0589. Amendment to Commercial Performance Standard area requirements to clarify treatment of certain below grade areas.**

RECOMMENDATION

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

HISTORY

On February 22, 2023, at the request of Commissioner Laura Dominguez, the City Commission referred the subject proposal (Item C4 B) to the Land Use and Sustainability Committee (LUSC) and the Planning Board. On April 19, 2023 the LUSC endorsed the proposal and recommended that the Planning Board transmit the ordinance to the City Commission with a favorable recommendation.

On April 25, 2023, the Planning Board deferred the item to the May 23, 2023, meeting and was re-noticed due to changes in the title.

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 significantly 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 impact to the floor area ratio (FAR) is minimal.

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.

Consistent – The need to allow for improvements to the block 1 properties makes passage of the proposed change necessary.

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

Consistent – The proposed ordinance amendment will not adversely affect living conditions in the neighborhood.

8. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.

Consistent – The proposed change will not create or increase traffic congestion from what is currently permitted, as the impact to the development capacity is minimal.

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.

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 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

A commercial tenant in the 1 Ocean building, located on the north side of South Pointe Drive, between Ocean Drive and Collins Avenue, is seeking to build out and enclose an open area located behind existing commercial storefronts. According to the original permit plans for the build out of the commercial spaces at the 1 Ocean site, below grade areas were calculated at ½ FAR and such FAR was not utilized.

At the time of the build out of the commercial spaces at the 1 Ocean site in 2012, the definition of floor area in the Land Development Regulations of the City Code (LDRs) contained an exception for areas of a building that were partially below grade. However, this exception for building areas partially below grade was amended in 2015 and limited to contributing structures in historic districts. As such, the commercial space at 1 Ocean is not currently eligible for the partially below grade floor area exception.

ANALYSIS

The attached draft ordinance proposes to amend the list of exceptions to the definition of floor area in Section 114-1 of the LDRs, specific to applicable parcels located within the Block 1 properties in the South of Fifth Street area. For reference, the Block 1 properties, as more specifically defined in Section 142-698 of the LDRs, are located within the block bounded by South Point Drive and First Street, between Collins Avenue and Ocean Drive, and include the 1 Ocean site.

Currently, the definition of 'floor area', in Section 114-1, has a full exception for floor area located below grade when the top of the slab of the ceiling is located at or below grade; generally, grade is defined as sidewalk elevation. However, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, only one-half of the floor area of the corresponding floor that is located below grade is included in the floor area ratio calculation.

The proposal herein would allow structures located within Block 1 Properties, as more specifically defined in section 142-698(a) of the LDRs, to be eligible for this exception pertaining to only one-half of the floor area of the corresponding floor that is located below grade being included in the floor area ratio calculation. Staff is supportive of this proposal as it is limited in scope and consistent with the development regulations in place when the Block 1 parcels were previously developed.

CITY CHARTER ANALYSIS

The proposal to modify FAR exemptions is subject to Section 1.03(c) of the City Charter, which partially states the following:

The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zone floor area ratio as it exists on the date of adoption of this Charter Amendment (November 7, 2001), including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless such increase in zone floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.

The proposal reintroduces an FAR exemption that existed on the date of the of the adoption of the Charter Amendment (November 7, 2001) that was subsequently removed in 2015. As a result, this amendment does not require voter approval and the proposed ordinance can be considered for adoption by the City Commission.

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.

CPS BELOW GRADE FLOOR AREA REQUIREMENTS

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, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 114 OF THE CITY CODE ENTITLED "GENERAL PROVISIONS," BY AMENDING SECTION 114-1, ENTITLED "DEFINITIONS," TO MODIFY FLOOR AREA REQUIREMENTS APPLICABLE TO BELOW GRADE AREAS OF A BUILDING; 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 commercial performance standard area requirements for the PS performance standard district codified in section 142-698 defines certain parcels as the "Block 51 Properties," the "Block 51 Swap Property," the "Block 52 Properties," the "Block 1 Properties," the "Goodman Terrace and Hinson Parcels," and the "Retail Parcel," (the "Defined Parcels"); and

WHEREAS, the Defined Parcels were the subject of certain settlement agreement recognized in a series of Resolutions, including Resolution Nos. 2004-25509, 2004-25649 and 2004-25650 (the "Settlement Resolutions"); and

WHEREAS, the Settlement Resolutions contemplated the preservation and confirmation of certain development rights and restrictions upon the Defined Parcels, many of which are presently codified in the commercial performance standard area requirements; and

WHEREAS, calculation of floor area for below grade areas under the present general land development regulations differs from than that in effect when the Settlement Resolutions and resulting commercial standard area requirements were adopted; and

WHEREAS, Section 1.03 of the City Charter entitled "Powers of the City," provides as follows:

- (c) The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment [November 7, 2001], including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.

WHEREAS, Section 1.03 of the City Charter requires the approval of the City's voters in order to increase the Floor Area Ratio (FAR) of any property or street end by zoning transfer, or any other means, from the FAR allowed as of November 7, 2001; and

WHEREAS, floor area is defined in Section 114-1 of the land development regulations; and

WHEREAS, as of November 7, 2002, the exceptions to the definition of “floor area” in the City’s land development regulations included the following provision:

(9) Floor area located below grade ; however if the ceiling is above grade, one half of the floor area that is below grade shall be included in the floor area calculation; (the “Basement Exception”)

WHEREAS, the on June 11, 2014, the City adopted Ordinance No. 2014-3876, which eliminated the Basement Exception; and

WHEREAS, on September 14, 2016, the City adopted Ordinance No. 2016-4029, which partially reinstated the Basement Exception for existing contributing structures within a local historic district, national register historic district, or local historic site, and

WHEREAS, Ordinance No. 2016-4029 did not require a general referendum because the partial reinstatement of the Basement Exception was equal to or more restrictive than the FAR regulations in effect on November 7, 2001; and

WHEREAS, the Mayor and City Commission desire to clarify how below grade floor area should be calculated with respect to certain properties that were subject to the Settlement Resolutions; and

WHEREAS, like Ordinance No. 2016-4029, the method for calculating below grade floor area set forth in this Ordinance remains equal to or more restrictive than the FAR regulations in effect on November 7, 2001, thus a referendum on this Ordinance is not required; and

WHEREAS, in order to avoid possible uncertainty and ambiguity, the clarification of the treatment of below grade areas for certain Defined Parcels is necessary and desirable, as it will permit use of surplus floor area for enclosure of spaces that are potential sources of noise disturbances or public safety hazards; and

WHEREAS, the amendments set forth below are necessary to clarify that the historic treatment of certain below grade areas under the Settlement Resolutions and the commercial performance standard area requirements will continue in accordance with 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 114, "General Provisions," at Section 114-1, entitled "Definitions," of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Floor area means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. For the purpose of clarity, floor area includes, but is not limited to, stairwells, stairways, covered steps, elevator shafts at every floor (including mezzanine level elevator shafts), and mechanical chutes and chases at every floor (including mezzanine level).

For the avoidance of doubt, unless otherwise provided for in these land development regulations, floor area excludes only the spaces expressly identified below:

- (1) Accessory water tanks or cooling towers.
- (2) Uncovered steps.
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- (4) Terraces, breezeways, or open porches.
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.
- (6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.
- (7) Mechanical equipment rooms located above main roof deck.
- (8) Exterior unenclosed private balconies.
- (9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is below grade shall be included in the floor area ratio calculation. Despite the foregoing, ~~for~~, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation in the following instances:
 - a. Existing contributing structures that are located within a local historic district, national register historic district, or local historic site.
 - b. Structures located within Block 1 Properties as more specifically defined in section 142-698(a).
- (10) Enclosed garbage rooms, enclosed within the building on the ground floor level.
- (11) Stairwells and elevators located above the main roof deck.
- (12) Electrical transformer vault rooms.
- (13) Fire control rooms and related equipment for life-safety purposes.
- (14) Secured bicycle parking.

Volumetric buildings, used for storage, where there are no interior floors, the floor area shall be calculated as if there was a floor for every eight feet of height.

When transfer of development rights are involved, see chapter 118, article V for additional regulations that address floor area.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

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: May 17, 2023

Second Reading: June 28, 2023

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