

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: July 25, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB23-0617. Fencing Requirements for Vacant and Abandoned Lots.**

RECOMMENDATION

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

HISTORY

On November 16, 2022, at the request of Commissioner Kristen Rosen Gonzalez, the City Commission referred discussion (C4 AE) pertaining to minimum fencing requirements on vacant lots to the Land Use and Sustainability Committee (LUSC). On May 10, 2023, the LUSC recommended that the City Commission refer an ordinance amendment to the Planning Board based upon the options identified in the LUSC memo.

On June 28, 2023, the City Commission referred the proposed ordinance to the Planning Board (Item C4 J).

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 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.

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 ensure that vacant properties remain safe in light of security concerns and don't detract from the aesthetics of the surrounding community 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.

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

The City Code currently requires fencing for vacant and abandoned lots pursuant to the regulations set forth in the Land Development Regulations (LDR’s) of the City Code. These regulations govern size (i.e., height), materials, location, construction requirements, and access.

ANALYSIS

The following is a summary of current code requirements for securing and fencing vacant and abandoned properties, as well as the proposed amendments in the attached draft ordinance:

Current Code Requirements:

- *Height.* There is no minimum height requirement for fences in single-family districts (maximum height of 7 feet and 5 feet along the water side). In all other districts the minimum and maximum fence height is 7 feet, except for portions of a site fronting a waterway, in which case the maximum height is 5 feet. If a property contains a building that is setback less than

5 feet from a property line, or there is an existing CBS wall that is at least 5 feet in height, the planning director, or designee, may waive the minimum fence requirements along those property lines, provided that the property is secure from trespassing. In the event that an abutting property has an existing fence along an interior side and/or rear property line, and such fence provides adequate securing of the property, the planning director, or designee, may waive the requirement for a fence along such property lines. Within single family, townhome, and all other residential districts, the fence shall be set back 4 feet from front and side street property lines.

- *Materials.* Along the front, street side and any waterway portions of the property line (including all required front yards, side street yards, and rear yards facing a street or waterway, an aluminum picket fence is required. Along interior property lines, as well as rear property lines not facing a waterway or street, black or green vinyl coated chain-link fencing, of permanent-quality construction, may be permitted, provided such fencing is not located within a required front yard, street side yard, or rear yard facing a waterfront.
- *Construction requirements.* All fences must be of permanent-quality construction.
- *Access.* Wherever there is a driveway approach to enter a lot, vehicular access onto the lot shall be required for maintenance purposes, with a locked gate.

Proposed Modified and Additional Requirements:

- *Height.* In single family districts, a new minimum height requirement of 4 feet would be established, with a maximum height of 7 feet, except for those sides of the property facing a waterway, in which case the maximum height would be 5 feet. In all other zoning districts, a minimum and maximum 7-foot high fence would be required along all property lines, except those facing a waterway, in which case the minimum and maximum height shall be 5 feet.
- *Height Exception.* For non-single family districts, the planning director may approve a fence height not to exceed 10 feet in height along all sides of the property, if the property owner can substantiate security and trespassing issues.
- *Materials.* Along all property lines, including all required yards, an aluminum picket fence would be required. There would no longer be an option for a vinyl coated chain link fence along interior side and non-waterfront rear yards.
- *Site conditions and landscape.* The entire site shall be raised to sidewalk grade and sodded, in a manner to be approved by the Planning Director. Additionally, a landscape plan that includes shrubs and palm trees shall be required, subject to the approval of the Planning Director. Such landscape plan shall allow unimpeded visibility into the site at all times. All landscaping required herein shall be installed and maintained as required by the permit and the city's landscaping code, until such time as new construction is authorized and commences.

Aluminum picket is considered the gold standard for perimeter fencing, as it allows for a high level of visibility into the vacant site and consists of a very high quality and durable material.

Additionally, the proposed minimum landscape and site requirements will help address any long-term drainage and water retention issues, as well as improve the aesthetics of the vacant site.

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.

Fencing Requirements for Vacant and Abandoned Lots

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 “MIAMI BEACH RESILIENCY CODE,” CHAPTER 7, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” SECTION 7.5.1.6, ENTITLED “VACANT AND ABANDONED PROPERTIES AND CONSTRUCTION SITES”, BY AMENDING AND EXPANDING EXISTING REGULATIONS FOR MINIMUM FENCE AND SCREENING REQUIREMENTS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, there is a desire to amend and enhance the current requirements in the City Code pertaining to securing vacant lots and abandoned buildings; and

WHEREAS, a vacant lot that is not secured can become a dumping ground and/or public nuisance, the impacts of which can be difficult to control; and

WHEREAS, fences surrounding vacant lots and construction sites can negatively impact the visual character of neighborhoods and quality of life for surrounding residents and businesses; and

WHEREAS, the City of Miami Beach (“City”) desires to implement increased standards for construction fences and for fences surrounding vacant/abandoned properties; and

WHEREAS, the regulations set forth herein will promote the general health, safety and welfare of the residents of the City; 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 7 of the Miami Beach Resiliency Code, entitled “Zoning Districts and Regulations,” is hereby amended as follows:

7.5.1.6 Vacant and abandoned properties and construction sites.

a. *Vacant and abandoned properties in all districts.* The following minimum fence requirements shall apply to all vacant lots, lots containing a structure that is subject to a permit that has been abandoned or that has expired (for more than 30 days) and which structure is unfit for human habitation, and lots containing buildings unfit for human habitation.

i. *Applicability.* With the exception of single-family districts, fencing shall be required for all vacant and abandoned lots, as identified more specifically in subsection a above.

ii. *Height.* ~~There shall be no~~ The minimum height requirement for fences in single-family districts shall be 4 feet and ; however, the maximum height in single-family districts shall not exceed 7 feet, except for those portions of the lot facing a waterway, in which case the maximum height

shall be 5 feet. In all other zoning districts, a minimum 7-foot high fence shall be constructed along all property lines, except those facing a waterway, in which case the minimum and maximum height shall be 5 feet. Within non-single family districts, the planning director may approve a fence height not to exceed 10 feet in height, if the property owner can substantiate security and trespassing issues. If a property contains a building that is setback less than 5 feet from a property line, or there is an existing CBS wall that is at least 5 feet in height, the planning director, or designee, may waive the minimum fence requirements along those property lines, provided that the property is secure from trespassing. In the event that an abutting property has an existing fence along an interior side and/or rear property line, and such fence provides adequate securing of the property, the planning director, or designee, may waive the requirement for a fence along such property lines. Within single family, townhome, and all other residential districts, the fence shall be set back 4 feet from front and side street property lines.

iii. *Materials.* ~~Along the front, street side and any waterway portions of the all property lines, including all required front yards, interior side yards, side street yards, and rear yards facing a street or waterway, an aluminum picket fence (or equivalent standard) with permanent quality construction shall be required. Along interior property lines, as well as rear property lines not facing a waterway or street, black or green vinyl coated chain-link fencing, of permanent quality construction, may be permitted, provided such fencing is not located within a required front yard, street side yard, or rear yard facing a waterfront.~~

iv. *Construction requirements.* All fences required herein shall be of permanent-quality construction, including ~~concrete~~ foundations.

v. *Access.* Wherever there is a driveway approach to enter a lot, vehicular access onto the lot shall be required for maintenance purposes, with a locked gate.

vi. *Site conditions and landscape.* The entire site shall be raised to sidewalk grade and sodded, in a manner to be approved by the Planning Director. Additionally, a landscape plan that includes shrubs and palm trees shall be required, subject to the approval of the Planning Director. Such landscape plan shall allow unimpeded visibility into the site at all times. All landscaping required herein shall be installed and maintained as required by the permit and the city's landscaping code, until such time as new construction is authorized and commences.

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" 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 _____, 2023.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

First Reading: _____
Second Reading: _____

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

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