

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: **PB23-0612. Review of Future FAR Policy.**

RECOMMENDATION

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

HISTORY

On May 17, 2023, at the request of Commissioner Alex Fernandez, the City Commission referred a proposal pertaining to an enhanced process for future FAR increases (C4 B) to the Land Use and Sustainability Committee (LUSC) and the Planning Board. The LUSC is scheduled to discuss a draft ordinance related to this proposal on July 19, 2023 meeting. Staff will update the Planning Board as to the recommendations of the LUSC.

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 – Changes in state law limiting the referendum provisions of the City Charter provides a basis for the proposed ordinance amendment.

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 in accordance with existing regulations.

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; however, it may slow the City’s ability to make changes in the future.

- (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

On May 2, 2023, the Florida Legislature passed Senate Bill (SB) 718, which prohibits local governments from requiring an initiative or referendum process for amendments to land development regulations. On June 28, 2023, the bill was signed into law by the Governor and became effective on July 1, 2023. The law pre-empts certain provisions in the City Charter that currently require voter approval before increasing a property’s floor area ratio (FAR).

ANALYSIS

An increase in FAR requires an amendment to the Land Development Regulations of the City Code (LDRs). Currently, an LDR amendment can be sponsored by the Mayor or any member(s) of the City Commission, but requires a 4/7ths vote for referral to the Planning Board. Also, a private applicant may file an application directly to the Planning Board.

In addition to the review and recommendation of the Planning Board, all LDR amendments require two (2) separate readings before the City Commission, and at least one these readings must be a public hearing. Also, a 5/7ths vote of the City Commission is required to adopt any LDR amendment.

The following is a summary of the proposed process for future FAR increases included in the draft ordinance, as requested by the item sponsor:

Eligible Applicants:

- For FAR increases specific to private properties, the property owner would file an application directly to the Planning Board.
NOTE: Subsequent to the filing of a private application, a copy of the application and all exhibits shall be sent to any affected registered neighborhood association(s). Additionally, for applications located within a local historic district, a copy of the application and exhibits shall be sent to the Miami Design Preservation League (MDPL).
- For FAR increases that are intended to apply more broadly (e.g. citywide or within defined overlays), as well as modifications to FAR exceptions or creating FAR incentives, the amendment to the LDRs would need to be initiated by the City Commission. Such FAR increases would also require a 5/7th vote of the City Commission to refer a proposed ordinance to the Planning Board.

Planning Board Review

The proposed FAR increase or modification to an exception to the definition of floor area would require a 3-step process before the Planning Board, as follows:

Step One – Planning Board Preliminary Review:

The Planning Board, at a duly noticed public hearing, shall perform an initial review of the proposed LDR amendment pertaining to a FAR increase or modification to an FAR exception. Notice for the Planning Board preliminary review hearing shall be in accordance with the applicable provisions in the LDRs. The notice requirements for the preliminary Planning Board review of a private application filed by a property owner shall also include a minimum 30-day mail and published notice if the proposed amendment involves less than ten (10) contiguous acres.

Prior to the LDR amendment being considered by the Planning Board at the preliminary review stage, the Administration, either internally or with the assistance of an outside consultant, would perform an impact analysis of the proposed FAR change; such impact analysis would include, but not be limited to, the following:

1. Calculating the actual square footage increase for affected properties such as, for example, the maximum allowable square footage for residential, office, retail, hotel or other uses resulting from the FAR increase.
2. An infrastructure analysis regarding potential impacts on traffic/mobility, parking, water, sewer, resiliency, parks and open space, as well as any other area of concern identified by the City Commission or the Administration.
3. Massing studies, which illustrate the volume and location of the area associated with the proposed increase in FAR.

The findings of this impact analysis will be presented to the Planning Board at the preliminary review stage.

Step Two – Community Outreach Meeting:

Subsequent to the preliminary review meeting at the Planning Board, the City shall facilitate an advertised public meeting for all affected stakeholders, in order to solicit additional input and feedback, as well as for city staff to address any outstanding issues or questions. Such meeting shall be advertised in accordance with community meeting notice protocol.

Step Three – Planning Board Transmittal:

At a second duly noticed public hearing, which is separate and apart from the preliminary review hearing, the Planning Board shall consider and transmit the proposed LDR amendment pertaining to an FAR increase or modification to an FAR exception to the City Commission with a recommendation. Notice for the planning board transmittal hearing shall be in accordance with the applicable provisions in the LDRs.

City Commission Review

The proposed FAR increase or modification to an exception to the definition of floor area would require a 3-step process before the City Commission, as follows:

Step One – First Reading Public Hearing:

After transmittal of the amendment by the planning board, the City Commission shall hold a first reading public hearing. Notice for first reading shall be in accordance with the applicable provisions in the LDRs. Additionally, the notice for first reading public hearing of a private application filed by a property owner shall also include a minimum 30-day mail and published notice.

Step Two – Community Workshop:

Subsequent to the approval of the amendment at first reading, and prior to second reading, at least one additional community workshop, which is separate and apart from the first reading public hearing, shall be held. This additional community workshop shall be considered a courtesy meeting, and open for participation by all affected stakeholders, including any adjacent areas, neighborhoods and properties that may be affected by the proposed FAR increase, as determined by the City Commission. Such community workshops may consist of virtual, in-person or hybrid formats, at the discretion of the City Commission, and shall be noticed in a manner to be determined by the City Commission.

Step Three – Second Reading / Adoption Public Hearing:

After the community workshop described above, the City Commission shall hold a second reading public hearing to consider final adoption of the proposed amendment. Notice for second reading shall be in accordance with the applicable provisions in the LDRs.

SUMMARY

The current process for considering an LDR amendment is robust, as it requires planning board review at a public hearing, as well as two (2) readings before the City Commission, at least one

(1) of which must be a public hearing. Also, the City Commission already has the authority to seek supplementary review from the planning board, and to require applicable impact analysis and community outreach in the form of courtesy meetings and workshops.

Codifying a more elaborate process as proposed herein would create a longer process for future LDR amendments that pertain to FAR. However, the proposal herein would likely entail a shorter process than a voter referendum.

The process proposed herein could also have potential staffing and budget implications, depending on the number of requests for FAR increases, and the extent of public outreach that may be required. Community workshops require a significant amount of staff resources in terms of advertising, identifying locations, setting up AV equipment, preparing workshop materials, and staffing the workshop.

Finally, some proposals to increase FAR may have significant public policy benefits (e.g., workforce housing and historic preservation) or may be more minor in nature (e.g., amending an exception to the definition of floor area). A lengthier process could make minor and well-intended amendments to modify FAR more challenging. As such, should this proposal move forward, staff recommends adding a waiver provision to provide the City Commission with discretion to implement a more streamlined amendment process, consistent with the typical ordinance amendment process.

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. Additionally, staff recommends that the Planning Board transmit a recommendation to the City Commission that the ordinance include a waiver provision.

Process for Future Increases in FAR

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE RESILIENCY CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 7, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” ARTICLE I, ENTITLED “GENERAL TO ALL ZONING DISTRICTS,” BY CREATING SECTION 7.1.10, ENTITLED “PROCEDEURES FOR INCREASING ALLOWABLE FLOOR AREA AND FLOOR AREA RATIO (FAR),” TO ESTABLISH POLICIES, PROCEDURES AND REQUIREMENTS FOR THE INCREASE IN FLOOR AREA AND FLOOR AREA RATIO (FAR) CITYWIDE; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (“City”) recognizes that a more thorough and transparent process for increasing floor area and floor area ratio (FAR) is needed; and

WHEREAS, the City Land Development Regulations sets forth the maximum allowable FAR for all zoning districts in the City; and

WHEREAS, the City has the authority to enact laws which promote the public health, safety, general welfare, and morals of its citizens; 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, AS FOLLOWS:

SECTION 1. Chapter 7, entitled “Zoning Districts and Regulations,” Article I, entitled “General to All Zoning Districts,” is hereby amended in the Resiliency Code of the City of Miami Beach, Florida as follows:

7.1.10 PROCEDEURES FOR INCREASING ALLOWABLE FLOOR AREA AND FLOOR AREA RATIO (FAR)

7.1.10.1 INTENT

The regulations setforth under 7.1.10 shall be in addition to the regulations in setforth under Chapter 2, Article IV of these LDR’s. In the event of a conflict, the provisions setforth in Section 7.1.10 shall control.

7.1.10.2 ELIGIBLE APPLICANTS

a. Private applications. For FAR increases specific to private properties, the property owner shall be required to file an application directly to the planning board. Subsequent to the filing of an application to the planning board, a copy of the application and all exhibits shall be sent to any affected registered neighborhood association(s). Additionally, for applications located within a local historic district, a copy of the application and exhibits shall be sent to the Miami Design Preservation League (MDPL).

b. City Commission referrals. For FAR increases that apply more broadly (e.g. citywide or within defined overlays), as well as modifications to floor area exceptions or creating FAR incentives, an amendment to the LDRs shall be initiated by the City Commission. Such FAR increases would require a 5/7th vote of the City Commission to refer a proposed LDR amendment to the Planning Board.

7.1.10.3 PLANNING BOARD REVIEW

The proposed FAR increase or modification to an exception to the definition of floor area shall require a 3-step process before the Planning Board, as follows:

a. Step One – Planning Board Preliminary Review.

The Planning Board, at a duly noticed public hearing, shall perform an initial review of the proposed LDR amendment pertaining to a proposed FAR increase or modification to a floor area exception. Notice for the Planning Board preliminary review hearing shall be in accordance with the applicable provisions in Chapter 2, Article IV of the Land Development Regulations. The notice requirements for the preliminary Planning Board review of a private application filed by a property owner shall include a minimum 30-day mail and published notice if the proposed amendment involves less than ten (10) contiguous acres.

Prior to the LDR amendment being considered by the Planning Board at the preliminary review stage, the Administration, either internally or with the assistance of an outside consultant, would perform an impact analysis of the proposed FAR change; such impact analysis shall include, but not be limited to, the following:

1. Calculating the actual square footage increase for affected properties such as, for example, the maximum allowable square footage for residential, office, retail, hotel or other uses resulting from the FAR increase.
2. An infrastructure analysis regarding potential impacts on traffic/mobility, parking, water, sewer, resiliency, parks and open space, as well as any other area of concern identified by the City Commission or the Administration.
3. Massing studies, which illustrate the volume and location of the are associated with the proposed increase in FAR.

For private applications, the applicant shall be required to provide all data and exhibits related to the above noted impact analysis as part of the application submission. The findings of this impact analysis shall be presented to the Planning Board at the preliminary review stage.

b. Step Two – Community Outreach Meeting:

Subsequent to the preliminary review meeting at the Planning Board, the City shall facilitate an advertised public meeting for all affected stakeholders, in order to solicit additional input and feedback, as well as for city staff to address any outstanding issues or questions. Such meeting shall be advertised in accordance with community meeting notice protocol.

c. Step Three – Planning Board Transmittal:

At a second duly noticed public hearing, which is separate and apart from the preliminary review hearing, the Planning Board shall consider and transmit the proposed LDR amendment pertaining to an FAR increase or modification to a floor area exception to the City Commission with a

recommendation. Notice for the planning board transmittal hearing shall be in accordance with the applicable provisions in Chapter 2, Article IV of the Land Development Regulations.

7.1.10.4 CITY COMMISSION REVIEW

The proposed FAR increase or modification to a floor area exception shall require a 3-step process before the City Commission, as follows:

a. Step One – First Reading Public Hearing:

After transmittal of the amendment by the planning board, the City Commission shall hold a first reading public hearing. Notice for first reading shall be in accordance with the applicable provisions in Chapter 2, Article IV of the Land Development Regulations. Additionally, the notice for first reading public hearing of a private application filed by a property owner shall also include a minimum 30-day mail and published notice if the proposed amendment involves less than ten (10) contiguous acres.

b. Step Two – Community Workshop:

Subsequent to the approval of the amendment at first reading, and prior to second reading, at least one additional community workshop, which is separate and apart from the first reading public hearing, shall be held. This additional community workshop shall be considered a courtesy meeting, and open for participation by all affected stakeholders, including any adjacent areas, neighborhoods and properties that may be affected by the proposed FAR increase or modification to a floor area exception, as determined by the City Commission. Such community workshops may consist of virtual, in-person or hybrid formats, at the discretion of the City Commission, and shall be noticed in a manner to be determined by the City Commission.

c. Step Three – Second Reading / Adoption Public Hearing:

After the community workshop described above, the City Commission shall hold a second reading public hearing to consider final adoption of the proposed amendment. Notice for second reading shall be in accordance with the applicable provisions in Chapter 2, Article IV of the Land Development Regulations.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same 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

Dan Gelber, Mayor

ATTEST:

Rafael E. Granada, City Clerk.

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

City Attorney

Date

First Reading: September 13, 2023

Second Reading: October 18, 2023

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

F:\PLAN\SPLB\2023\07-25-23\PB23-0612 - ORD - Review of Future FAR Policy\PB23-0602 - Review of Future FAR Policy - PB ORD
- 7-25-2023.docx