

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 24, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB23-0631. South Beach Development Regulations.**

RECOMMENDATION

Transmit the proposed ordinance amendment to the City Commission with the following recommendations:

1. Favorable recommendation for portions of the ordinance related to setbacks and lot aggregation.
2. Unfavorable recommendation for portions of the ordinance related to height limits.

HISTORY

On September 13, 2023, at the request of Mayor Gelber and Commissioners Alex Fernandez, Laura Dominguez, and Steven Meiner, the City Commission referred an amendment pertaining to the Live Local Act (the Act) to the Planning Board (C4 R). The purpose of this referral is for staff to draft ordinance amendments to clarify the requirements of the Act within the City's development regulations and to address potential inconsistencies with maximum building height provisions set forth in the Act.

REVIEW CRITERIA

Pursuant to Section 2.4.2 of the Resiliency Code, in reviewing a request for an amendment to these land development regulations (LDRs), 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 will modify the scale of development to make it more compatible with historic development patterns, as such, it is not out of scale with the needs of the neighborhood.

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.

Consistent – The need to ensure that new development is compatible with existing development patterns in the Miami Beach Architectural District and surrounding areas in light of changes to state laws makes the 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 ordinance will not create or increase traffic congestion from what is currently permitted, as the maximum allowable intensity (FAR) in the applicable zoning districts 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 improve light and air on 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 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 may be a deterrent to the improvement or development of certain 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 7.1.2.4 of the LDRs 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.**

Consistent – The proposal will 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

On March 24, 2023, the Florida Legislature adopted Senate Bill 102, known as the “Live Local Act” which, in pertinent part, provides development incentives and overrides certain local zoning regulations for developments that provide 40% workforce housing in commercial, industrial, and mixed-use districts. Specifically, the Live Local Act amends section 166.04151, Florida Statutes, entitled “Affordable Housing,” to add the following text:

(7)(a) A municipality must authorize multifamily and mixed use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily rental development are, for a period of at least 30 years, affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes.

(b) A municipality may not restrict the density of a proposed development authorized under this subsection below the highest allowed density on any land in the municipality where residential development is allowed.

(c) A municipality may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed height for a commercial or residential development located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher.

(d) A proposed development authorized under this subsection must be administratively approved and no further action by the governing body of the municipality is required if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements.

(e) A municipality must consider reducing parking requirements for a proposed development authorized under this subsection if the development is located within one-half mile of a major transit stop, as defined in the municipality's land development code, and the major transit stop is accessible from the development.

(f) A municipality that designates less than 20 percent of the land area within its jurisdiction for commercial or industrial use must authorize a proposed multifamily development as provided in this subsection in areas zoned for commercial or industrial use only if the proposed multifamily development is mixed-use residential.

(g) Except as otherwise provided in this subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations.

For reference, section 420.0004, defines affordable as follows:

“Affordable” means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in subsection (9), subsection (11), subsection (12), or subsection (17).

(9) “Extremely-low-income persons” means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.

(11) “Low-income persons” means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

(12) “Moderate-income persons” means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

(17) “Very-low-income persons” means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

The Live Local Act allows for development to provide housing for “Moderate-income persons,” which is for households with an income that is less than 120 percent of the *median annual adjusted gross income for households within the metropolitan statistical area (MSA)*. This definition is more closely related to the City of Miami Beach’s definition of workforce housing, which allows for incomes up to 140 percent of the median family income.

ANALYSIS

In accordance with the direction of the City Commission, as more expressly provided in the referral memo, an ordinance has been drafted to address the potential impacts of building heights that may be permitted under the Live Local Act (the Act), particularly in relation to the historic districts in South Beach. The Act applies to mixed use and commercial districts, and the districts most

directly impacted in South Beach are the MXE and CD-2 districts.

The proposed ordinance is intended to ensure that new development within and adjacent to the Miami Beach Architectural District (National Register Historic District), which is located south of 23rd Street, is compatible with the historic scale, character, and context of the district. To achieve this, the ordinance amends the regulations of the RM-3, CD-2, and MXE districts as follows (see the attached map of affected areas):

- Amend the RM-3 development regulations to reduce the maximum building height limit from 200 feet to 150 feet south of 23rd Street.
- Amend the CD-2 development regulations for Washington Avenue as follows:
 - Establish a minimum front setback requirement of 110 feet for the portion of new buildings above 75 feet in height.
 - Establish a minimum side facing a street setback requirement of 45 feet for the portion of buildings above 75 feet.
 - Establish a minimum interior side setback requirement of 45 feet for the portion of buildings above 75 feet in height.
- Amend the Alton Road Gateway Area development regulations to reduce the maximum building height limit for main use residential buildings from 519 feet to 150 feet.
- Amend the MXE development regulations as follows:
 - Increase the minimum front tower setback requirement to 110 feet
 - Increase the minimum side facing a street tower setback requirements for lots greater than 100 feet in width from 10% of the lot width plus 5 feet to 25% of the lot width plus 5 feet for non-oceanfront properties.
 - Increase the minimum side facing a street tower setback for lots less than 100 feet in width from 5 feet to 45 feet.
 - Increase the minimum interior side tower setback in the architectural district from 5 feet to 25 feet.
 - Increase the minimum rear tower setback facing an alley from 0 feet to 10 feet.
 - Establish a maximum lot aggregation limit of two (2) contiguous platted lots.

For reference, the tower portion of a building is the portion of a building that exceeds 50 feet in height above the design flood elevation (DFE).

Although the RM-3 district does not fall within the regulatory purview of the Act, it is within a one-mile radius of the Architectural District. As such, amendments to the height regulations in the RM-3 district, as well as the Alton Gateway area, would be necessary to address new development projects in the MXE and CD-2 districts.

The tower setback modifications proposed for the MXE district and the CD-2 district fronting Washington Avenue will ensure that future developments above 50 feet in height will be setback away from street frontages and adjacent properties. This will minimize the potential impact of the tower on adjacent properties, rights of way, public parks, and beaches. The limitation on lot aggregation will ensure that new development is consistent with the historic development pattern

of Ocean Drive, Collins Avenue, and Washington Avenue.

The proposed modifications to the maximum height limits in the RM-3 district south of 23rd Street and the CD-2 Alton Road Gateway District ensure that there is no zoning district south of 23rd Street (generally the northern boundary of the Miami Beach Architectural District) that would allow for development that is taller than 150 feet. Although this reduced height limit may improve the compatibility between new and existing developments, staff has concerns that it could have unintended consequences for redevelopment and renovations of existing structures within the RM-3 district south of 23rd Street. Specifically, some properties within the RM-3 district have a maximum FAR above 2.0 and a significant decrease in allowable building height could impact the distribution of the maximum FAR for the property.

Another concern with regard to reducing maximum building heights in these areas is that it would result in the creation of legal non-conforming structures, as to building height. In light of these concerns, staff does not recommend that the portion of the ordinance pertaining to reductions in maximum building height be transmitted with a favorable recommendation.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with the following recommendation:

1. Favorable recommendation for portions of the ordinance related to setbacks and lot aggregation.
2. Unfavorable recommendation for portions of the ordinance related to height limits.

SOUTH BEACH DEVELOPMENT REGULATIONS

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE MIAMI BEACH RESILIENCY CODE, BY AMENDING CHAPTER 7, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," AT SECTION 7.2.6, ENTITLED "RM-3 RESIDENTIAL MULTIFAMILY, HIGH INTENSITY;" SECTION 7.2.11, ENTITLED "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT;" SECTION 7.2.12, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT;" SECTION 7.2.13, ENTITLED "MXE MIXED USE ENTERTAINMENT DISTRICT;" AND SECTION 7.2.15, ENTITLED "PERFORMANCE STANDARD DISTRICT (PS);" TO MODIFY HEIGHT LIMITS AND SETBACK REQUIREMENTS IN AREAS OF THE CITY LOCATED SOUTH OF 23RD STREET; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Miami Beach Architectural District is a National Register Historic District that was designated in 1979; and

WHEREAS, the Architectural District's boundaries generally span from 6th Street in the South to approximately 23rd Street and Collins Canal in the north, and the Atlantic Ocean on the east and Alton Court on the west.

WHEREAS, the Architectural District holds the largest collection of Art Deco buildings in the world as well as a range of other architectural styles; and

WHEREAS, properties fronting Ocean Drive and Collins Avenue that have a zoning designation of MXE Mixed Use Entertainment are located in the Ocean Drive/Collins Avenue Historic District, as well as the Miami Beach Architectural National Register Historic District; and

WHEREAS, Ocean Drive and Collins Avenue are some of the premier streets in Miami Beach and provide residents and visitors with a unique cultural, retail, and dining experience and are vital to Miami Beach's economy, especially the tourism industry; and

WHEREAS, the Architectural District and the beaches in the South Beach neighborhood are major attractions that of vital importance to the economy of the City; and

WHEREAS, it is in the best interest of the City to ensure that shade on the beaches and oceanfront parks in the South Beach neighborhood is minimized in order to provide the best experience for users; and

WHEREAS, it is in the best interest of the City to ensure that new development within and in the proximity of the Architectural District are compatible with the contributing buildings to the historic district; 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, entitled “Zoning Districts and Regulations, Article II, entitled “District Regulations,” at Section 7.2.6, “RM-3 Residential Multifamily District,” is hereby amended as follows:

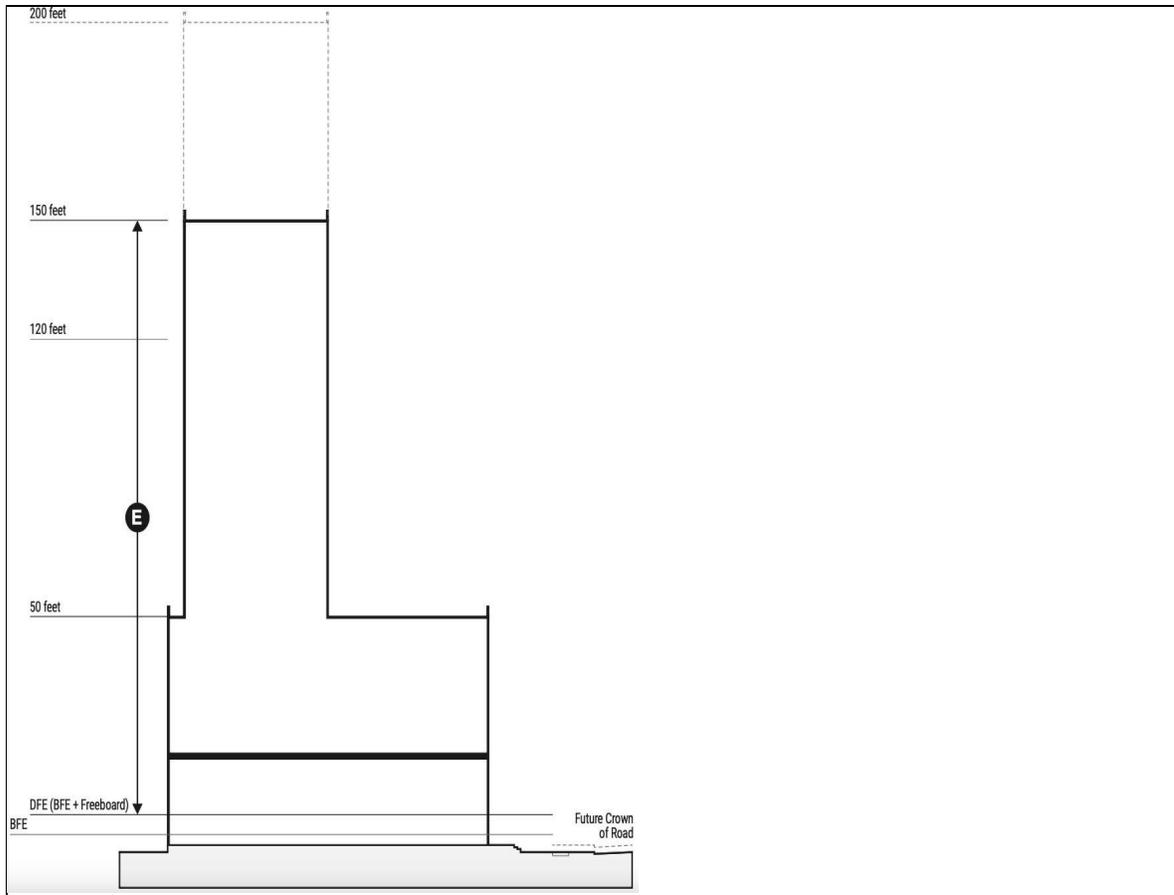
7.2.6 RM-3 RESIDENTIAL MULTIFAMILY, HIGH INTENSITY

* * *

7.2.6.3 Development Regulations (RM-3)

a. The development regulations in the RM-3 residential multifamily, medium intensity district are as follows:

| DEVELOPMENT REGULATIONS TABLE (RM-3) | |
|---|---|
| * * * | |
| BUILDING HEIGHT | |
| Maximum Height® | 150 feet (5) (6) |
| Oceanfront lots | 200 feet <u>north of 23rd Street; 150 feet south of 23rd Street</u> |
| Architectural district, New Construction | 120 feet (5) |
| Ground floor additions (whether attached or detached) to existing structures on oceanfront lots | 50 feet (3) |



- (1) Notwithstanding the above, oceanfront lots in architectural district shall have a maximum FAR of 2.0
- (2) Notwithstanding the above, lots which, as of the effective date of this ordinance (November 14, 1998), are oceanfront lots with a lot area greater than 100,000 square feet with an existing building, shall have a maximum FAR of 3.0; however, additional FAR shall be available for the sole purpose of providing hotel amenities as follows: the lesser of 0.15 FAR or 20,000 square feet.
- (3) Except as provided in section 7.5.2.
- (4) Notwithstanding the foregoing, rooftop additions to contributing structures in a historic district and individually designated historic district buildings may follow existing nonconforming side, interior pedestal setbacks.
- (5) Notwithstanding the above, oceanfront lots located in the Miami Beach Architectural District shall be permitted to construct detached additions at a height not to exceed 25 feet and shall have setback requirements as follows:
 - Side, interior: 5 feet.
 - Side, street: 5 feet.
 - Rear: 10 percent (10%) of lot depth or the western edge of the Oceanfront Overlay, whichever is greater.
- (6) In the Morris Lapidus/Mid-20th Century Historic District the following shall apply:
 - Roof-top additions, whether attached or detached, may follow the established lines of

the interior side setbacks of the existing structure on the site, subject to the review of the historic preservation board.

- (7) Excluding Accessory Building.
- (8) For contributing hotel structures, located within an individual historic site, a local historic district or a national register district, which are renovated in accordance with the Secretary of the Interior Standards and Guidelines for the Rehabilitation of Historic Structures as amended, retaining the existing room configuration and sizes of at least 200 square feet shall be permitted. Additionally, the existing room configurations for the above described hotel structures may be modified to address applicable life-safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained, and provided the maximum occupancy per hotel room does not exceed 4 persons.
- (9) The number of units may not exceed the maximum density set forth in the comprehensive plan.

SECTION 2. Chapter 7, entitled “Zoning Districts and Regulations, Article II, entitled “District Regulations,” at Section 7.2.11, “CD-2 Commercial, Medium Intensity District,” is hereby amended as follows:

7.2.11 CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT

* * *

7.2.11.5 WASHINGTON AVENUE (CD-2)

a. Location and Purpose (Washington Ave – CD-2)

The following regulations shall apply to properties that front Washington Avenue between 6th Street and 16th Street.

b. Development Regulations (Washington Ave – CD-2)

The following regulations shall apply to properties that front Washington Avenue between 6th Street and 15th Street, referred to herein as "South Washington Avenue," and between 15th Street and 16th Street, referred to herein as "North Washington Avenue,"; in the event of a conflict within this division, the regulations below shall apply:

| DEVELOPMENT REGULATIONS TABLE (WASHINGTON AVE - CD-2) | |
|--|--------------------------------|
| Maximum FAR | 1.5 |
| Maximum Density (Dwelling Units Per Acre) | 100 DUA |
| Minimum and minimum average Unit Size (square feet) | See section 7.2.11.3.a |
| Supplemental Minimum Unit Size | See section 7.2.11.5.c. below. |
| LOT OCCUPATION | |

| | |
|--|---|
| Minimum Lot Area (square feet) | None |
| Minimum Lot Width (feet) | None |
| Maximum Lot Coverage (% of lot area) | None |
| BUILDING SETBACKS | Lots with frontage equal or less than 100 feet (Pursuant to section 7.2.11.3.a) |
| BUILDING SETBACKS | Lots with frontage greater than 100 feet |
| Front Setback Ⓐ | |
| Subterranean | 0 feet |
| Ground Level | 0 feet (See section 7.1.2.2) |
| Above the ground level up to 35 feet in height | 5 feet min (for parking garages with liners) |
| | 10 feet min (for parking garages without liners) |
| | 15 feet min (for all other uses) |
| Above 35 feet in height up to 75 feet | 5 feet min (for parking garages with liners) |
| | 10 feet min (for parking garages without liners) |
| | 30 feet min (for all other uses) |
| <u>Above 75 feet in height</u> | <u>110 feet</u> |
| Side, Facing a Street Setback Ⓑ | |
| Subterranean | 0 feet |
| Nonresidential Uses | 0 feet (See section 7.1.2.2) |
| Residential and Hotel Uses | 7.5 feet (See section 7.1.2.2) |
| <u>Above 75 feet in height for all uses</u> | <u>45 feet</u> |
| Side, Interior Setback Ⓒ | |
| Subterranean | 0 feet |
| Nonresidential Uses | 0 feet |
| Residential and Hotel Uses | 7.5 feet or 8% of lot width (whichever is greater, up to 10 feet) |
| | 7.5 feet (when abutting a nonresidential or non-hotel use) |
| <u>Above 75 feet for all uses</u> | <u>45 feet</u> |
| Rear Setback Ⓓ | |
| Subterranean | 0 feet |

| | |
|------------------------|--|
| Ground Level | 0 feet |
| Above the Ground Level | 10 % of lot depth |
| | 0 feet (for parking garage floors above the minimum truck clearance) |

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7.2.11.7 ALTON ROAD GATEWAY AREA (CD-2)

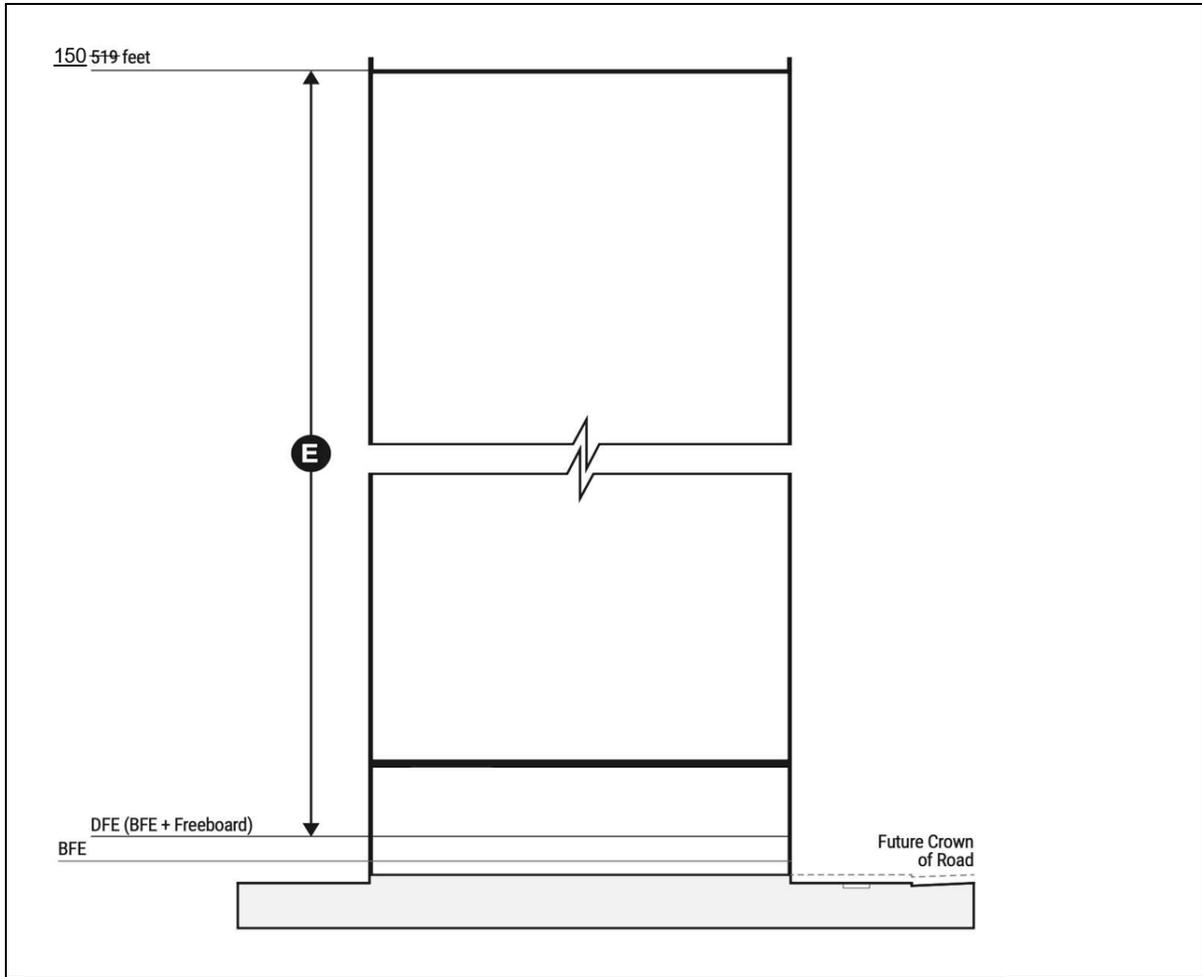
a. Location and Purpose (Alton Road Gateway Area- CD-2)

The Alton Road Gateway Area incorporates the parcels in the area bounded by 8th Street on the north, Alton Road on the east, 5th Street/MacArthur Causeway/SR A1A on the south, and West Avenue on the west; excluding lots 15 through 22 of the Amended Fleetwood Subdivision, according to the plat thereof recorded in Plat Book 28, page 34, of the Public Records of Miami-Dade County, Florida.

b. Development Regulations (Alton Road Gateway Area- CD-2)

The following regulations shall apply to properties in the Alton Road Gateway Area.

| DEVELOPMENT REGULATIONS TABLE (ALTON ROAD GATEWAY AREA- CD-2) | |
|--|-------------------------|
| * * * | |
| BUILDING HEIGHT | |
| Maximum Height | |
| Main Use Residential | 549 <u>150</u> feet (1) |
| Non-Residential | 40 feet (1) |



SECTION 3. Chapter 7, entitled “Zoning Districts and Regulations, Article II, entitled “District Regulations,” at Section 7.2.13, “Mixed Use Entertainment District,” is hereby amended as follows:

7.2.13 MIXED USE ENTERTAINMENT DISTRICT

* * *

7.2.13.3 Development Regulations (MXE)

a. The development regulations in the MXE mixed use entertainment district are as follows:

| DEVELOPMENT REGULATIONS TABLE (MXE) | | |
|-------------------------------------|-------------|----------------|
| * * * | | |
| BUILDING SETBACKS | | |
| Front Setback (A) | Oceanfront | Non-Oceanfront |
| Subterranean | N/A | N/A |
| Pedestal | 50 feet (3) | 10 feet |

| | | |
|--|---------------------------------------|--|
| Lots 100 feet in width or greater | N/A | 20 feet |
| Tower | 50 feet | 50 feet |
| Front Setback (A) <i>Lots 100 ft in width or greater with a ten-foot-deep covered terrace running substantially the full width of the building front.</i> | Oceanfront | Non-Oceanfront |
| Pedestal | N/A | 5 feet (4) <i>Furthermore, the front setback shall be extended to include at least one forecourt, open to the sky, with a minimum width of 10 feet and a minimum area of 3 square feet for every linear foot of lot frontage.</i> |
| Tower | N/A <u>110 feet</u> | 50 <u>110</u> feet (4) |
| Side, Facing a Street Setback (B) | Oceanfront | Non-Oceanfront |
| Subterranean | N/A | N/A |
| Pedestal | 15 % of the lot width + 5 feet (4) | 10 % of the lot width + 5 feet, not to exceed 25 feet. (4) |
| Lots less than 100 feet in width | | 5 feet (4) |
| Tower | | 40 <u>25</u> % of the lot width + 5 feet, not to exceed 25 feet. (4) |
| Lots less than 100 ft in width | | <u>45</u> feet (4) |
| Side, Facing a Street Setback (B) <i>Lots 100 feet in width or greater with a ten foot-deep terrace running substantially the full side length of the building, with a minimum floor- to-ceiling height of 12 feet</i> | Oceanfront | Non-Oceanfront |
| Pedestal | N/A | 5 feet (4) |

| | | |
|--------------------------|---|--|
| | | <p>Furthermore, the setback shall be extended to include at least one forecourt, open to the sky, with a minimum of 1,000 square feet and a minimum average depth of 20 feet. The long edge of the forecourt shall be along the side property line. The area of the forecourt shall be increased by an additional 50 square feet for every one foot of building height above 30 feet as measured from grade.</p> |
| Tower | | 7.5 <u>45</u> feet (4) |
| Side, Interior Setback © | Oceanfront | Non-Oceanfront |
| Subterranean | N/A | N/A |
| Pedestal | 15 % of the lot width (4) | 5 feet (4) |
| Tower | | 7.5 feet (4) 25 feet (Architectural District) (4) |
| Rear Setback ④ | Oceanfront | Non-Oceanfront |
| Subterranean | N/A | N/A |
| Pedestal | 25 percent (25%) of the lot depth or 75 feet minimum from the bulkhead line, whichever is greater (4) | 10 feet (4) |
| Tower | | 10 feet (In Architectural District if abutting and alley) (4) |
| | | |

(1) Rooftop additions.

- **Restrictions.** There shall be no rooftop additions to existing structures in the following areas: non-oceanfront lots fronting Ocean Drive in the MXE zoning district. No variance from this provision shall be granted.

- **Additional regulations.** Existing structures within an historic district shall only be permitted to have habitable one-story rooftop additions (whether attached or detached), with a maximum floor to ceiling height of 12 feet except as hereinafter provided. No variance from this provision shall be granted. The additions shall not be visible when viewed at eye level (5 feet and 6 inches from grade) from the opposite side of the adjacent right-of-way; for corner properties, said additions shall also not be visible when viewed at eye level from the diagonal corner at the opposite side of the right-of-way and from the opposite side of the side street right-of-way. Notwithstanding the foregoing, the line-of-sight requirement may be modified as deemed appropriate by the historic preservation board based upon the following criteria: (i) the addition enhances the architectural contextual balance of the surrounding area; (ii) the addition is appropriate to the scale and architecture of the existing building; (iii) the addition maintains the architectural character of the existing building in an appropriate manner; and (iv) the addition minimizes the impact of existing mechanical equipment or other rooftop elements.

(2) An additional 5 feet of height is allowed if the nonresidential first habitable level is at least 14 feet in height, as measured from DFE, to the top of the second floor slab.

(3) Sculptures, fountains or architectural features when approved by the design review board are permitted in the required front yard.

(4) Existing structures which are being substantially renovated are permitted to retain the existing setback areas; however, the setback area shall not be reduced. When additional floors are constructed, they shall be permitted to retain the same setbacks as the existing floors. The provisions of Section 2.12.19 relating to bulk shall not be applicable to the foregoing setback requirements.

(5) The number of units may not exceed the maximum density set forth in the comprehensive plan.

(6) Developments located in zoning districts that do not prohibit the short-term rental of residential apartment units shall be eligible for an exemption from the average unit size requirements established above, subject to the following conditions:

- **Density.** The development shall not be permitted to exceed the maximum residential density established in the Comprehensive Plan or Land Development Regulations.

- **Minimum Unit Size.** This incentive shall not be construed to permit any unit that is smaller than the minimum allowable unit size for the type of unit being proposed.

- **Covenant.** In order to be eligible for this voluntary average unit size incentive, the property owner, at the owner's sole discretion, shall voluntarily execute a restrictive covenant running with the land, in a form approved by the City Attorney, affirming that in perpetuity no residential units on the property shall be leased or rented for a period of less than six months and one day.

