

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Planning Board

TO: Chairperson and Members  
Planning Board

DATE: November 21, 2017

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB 17-0175. Unified Development Sites and FAR**

#### **REQUEST**

**AN ORDINANCE** OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES" ARTICLE I "IN GENERAL," AT SECTION 118-5, "UNITY OF TITLE; COVENANT IN LIEU THEREOF," TO CLARIFY THE MAXIMUM ALLOWABLE FLOOR AREA RATIO ("FAR") FOR UNIFIED DEVELOPMENT SITES CONTAINING BUILDINGS WITH NONCONFORMING FAR AND PASSAGEWAYS OR CONNECTIONS USED SOLELY FOR PEDESTRIAN CIRCULATION BETWEEN BUILDINGS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

#### **RECOMMENDATION**

Review the Ordinance and Transmit to the City Commission with a favorable recommendation.

#### **HISTORY**

On October 18, 2017, at the request of Commissioner Joy Malakoff (item C4T), the City Commission made a dual referral of the subject amendment to the Land Use and Development Committee and the Planning Board. On October 30, 2017, the Land Use Committee discussed the proposed amendment and gave a positive recommendation. Additionally, Commissioner John Elizabeth Aleman agreed to co-sponsor the proposed ordinance.

#### **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.**

**Partially Consistent** – The proposed ordinance amendment may be inconsistent 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.**

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

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

**Partially Consistent** – Depending on where it may apply, the proposed Ordinance could affect the overall scale of development with an effective increase in allowed floor area.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

**Partially Consistent** – Depending on where it may apply, the proposed Ordinance could increase the level of intensity of development and could affect the load on public facilities.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

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

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

**Consistent** – The ability to connect to existing historic buildings is a changing condition that makes the passage of the proposed change necessary.

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

**Partially Consistent** – Depending on where it may apply, the proposed change may adversely affect living conditions in neighborhoods as a result of an increase in floor area.

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.

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

**Partially Consistent** – The proposed ordinance may reduce light and air to adjacent areas for certain unified development sites.

10. **Whether the proposed change will adversely affect property values in the adjacent area.**

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

**Not Applicable**

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

**Not Applicable**

- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

**Not Applicable**

#### **ANALYSIS**

A property owner that is seeking approval for a unified development site on Ocean Terrace has proposed an amendment that would modify current regulations pertaining to legal non-conforming FAR. Although the change proposed herein is legislative, review for compliance with the City Charter is required, as the proposal involves an increase in zoned FAR.

City Section 1.03(c) of the City of Miami Beach Charter explicitly prohibits the floor area ratio (FAR) of any property from being increased by zoning, transfer, or any other means from its

current zoned floor area ratio as it exists currently, without being approved by a public referendum. This Charter provision does include an exception for the division of lots, "or the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance." The ordinance referred to is Section 118-5 of the Land Development Regulations of the City Code, pertaining to *Unities of Title and Covenants in Lieu of Unity of Title*. This section provides a mechanism for single or multiple buildings proposed for a unified development site consisting of multiple lots, all lots touching and not separated by a lot under different ownership, or a public right of way.

When a development is proposed over multiple lots, or multiple buildings are proposed for single or multiple lots, a Unity of Title or a Covenant in Lieu of Unity of Title must be executed to combine the lots or buildings for zoning purposes. The mere fact that touching lots are under the same ownership may be enough to consider such lots as a unified development site. In this regard, the entire collection of lots is considered one site for zoning purposes, which includes the calculation of a site's Floor Area Ratio (FAR). For example, if a unified site has a maximum FAR of 100,000 SF, and there is an existing building to remain on that site with an area of 20,000 square feet, then the maximum area of added new construction cannot exceed 80,000 square feet, totaling to the maximum FAR for the site of 100,000 SF.

As proposed, the draft Ordinance would modify the regulations pertaining to the retention of legal non-conforming floor area for unified sites located within a locally designated historic district or historic site as follows:

1. *The maximum FAR for a Unified Development Site shall not exceed the aggregate maximum FAR of the multiple lots allowed by the underlying zoning districts, inclusive of bonus FAR. Within a locally designated historic district or locally designated historic site, any platted lot(s) that contain legal-nonconforming FAR and were previously separate and apart from other lots that comprise the Unified Development Site, may retain their existing legal non-conforming FAR, provided no additional FAR is added to such platted lot(s).*
2. *Within a Unified Development Site, passageways or other connections that are an allowable FAR exception may be permitted on lots with legal non-conforming FAR.*

The proposed changes would allow for the retention of legal non-conforming floor area in an existing building, which was previously permitted as a separate site. Such retention of non-conforming floor area would be permissible within a proposed unified development site located within an historic district or individually designated site. For example, under the current code, if an existing 20,000 SF building was located on a site with a current maximum FAR of 10,000 SF, no new floor area could be added to that site. If that site was proposed to be combined with multiple abutting sites, forming a larger, unified development site, the excess legal non-conforming FAR would be required to be distributed over all the sites, such that the overall FAR of the newly created unified development site did not exceed the current maximum FAR.

Under the proposal herein, the legal non-conforming FAR as noted in the aforementioned example would be permitted to be retained, as part of the overall FAR for the unified site. This would result in a net increase of 10,000 SF for the unified development site, as the legal non-conforming FAR would not have to have to be distributed within the proposed unified site.

The proposal herein is practical as it pertains to the operation of existing buildings within unified development sites that may contain legal non-conforming FAR. However, although limited to historic districts and sites, the proposed amendment could have implications across the City, including for lots which were previously unified.

Further, the proposed amendment does not restrict the retention of legal non-conforming FAR to 'contributing' buildings, which is something that staff believes should be considered. Limiting the retention of legal non-conforming FAR to 'contributing' buildings would be consistent with Sec. 118-395 of the City Code, which allows the historic preservation board to approve the retention of legal non-conforming FAR for a 'contributing' building, if the renovation exceeds the 50% rule.

### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board review the Ordinance and Transmit it to the City Commission with a favorable recommendation, including the following modification:

#### **Sec. 118-5. - Unity of title; covenant in lieu thereof.**

\* \* \*

- (d) The maximum FAR for a Unified Development Site shall not exceed the aggregate maximum FAR of the multiple lots allowed by the underlying zoning districts, inclusive of bonus FAR. Within a locally designated historic district or locally designated historic site, any platted lot(s) **with a contributing building(s)** that contain legal-nonconforming FAR and were previously separate and apart from other lots that comprise the Unified Development Site, may retain their existing legal non-conforming FAR, provided no additional FAR is added to such platted lot(s).
- (e) Within a Unified Development Site, passageways or other connections that are an allowable FAR exception may be permitted on lots with legal non-conforming FAR.

TRM/MAB

**UNIFIED DEVELOPMENT SITES – FAR**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES" ARTICLE I "IN GENERAL," TO CLARIFY THE MAXIMUM ALLOWABLE FLOOR AREA RATIO ("FAR") FOR UNIFIED DEVELOPMENT SITES CONTAINING BUILDINGS WITH NONCONFORMING FAR AND PASSAGEWAYS OR CONNECTIONS USED SOLELY FOR PEDESTRIAN CIRCULATION BETWEEN BUILDINGS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

**WHEREAS**, Section 118-5 of the City of Miami Beach Land Development Regulations ("LDRs") defines a "Unified Development Site" as "a site where a development is proposed and consists of multiple lots, all lots touching and not separated by a lot under different ownership, or a public right of way"; and

**WHEREAS**, a Unified Development Site may result from the merger of multiple abutting platted lots, any or all of which may contain nonconforming Floor Area Ratio ("FAR"); and

**WHEREAS**, Section 1.03(c) of the City Charter requires voter approval of certain "increases" to current zoned FAR, but provides that "The provision shall not preclude or otherwise affect the division of lots, or the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance"; and

**WHEREAS**, the City Attorney, in an opinion dated March 21, 2014, recognized that the Section 1.03(c) referendum requirement "includes an exception for," and therefore does not apply to, "the aggregation of development rights on unified abutting parcels"; and

**WHEREAS**, as noted in the City Attorney's March 21, 2014 opinion, the City has historically interpreted the phrase "unified abutting parcels" as being synonymous with the phrase "Unified Development Site"; and

**WHEREAS**, on May 11, 2016, the City adopted Ordinance No. 2016-4011, which amended the LDRs to clarify the procedures for the movement of FAR within Unified Development Sites divided among different zoning districts as a means of providing greater flexibility and improving the quality of development within Unified Development Sites; and

**WHEREAS**, the amendments proposed herein are consistent with the exception for "unified abutting parcels" in Section 1.03(c) of the City Charter and authorize the retention of nonconforming FAR within certain structures as a means of encouraging the preservation of such structures; and

**WHEREAS**, the amendment set forth below is necessary to accomplish all of the above objectives and to ensure that the public health, safety and welfare are preserved.

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

**SECTION 1.** That Chapter 118, Article I entitled "In General" is hereby amended as follows:

**Sec. 118-5. - Unity of title; covenant in lieu thereof.**

The term "Unified Development Site" shall be defined as a site where a development is proposed and consists of multiple lots, all lots touching and not separated by a lot under different ownership, or a public right of way. A "Unified Development Site" does not include any lots separated by a public right-of-way or any non-adjacent, non-contiguous parcels.

Additionally, the following shall apply to any "Unified Development Site":

- (a) All lots need not be in the same zoning district; however: the allowable floor area ratio (FAR) shall be limited to the maximum FAR for each zoning district, inclusive of bonus FAR.
- (b) Only commercial and/or mixed-use entertainment zoning districts may be joined together to create a unified development site, provided the entire unified development site, including each separate zoning district, has the same maximum floor area ratio (FAR), inclusive of bonus FAR. Such unified development site shall only contain commercial and/or mixed-use entertainment districts and shall not include any residential zoning district. The instrument creating the unified development site shall clearly delineate both the maximum FAR, inclusive of bonus FAR, and total square footage permitted.
- (c) In the event a future change in zoning district classification modifies the maximum floor area ratio (FAR), inclusive of bonus FAR, for a district within a unified development site, the maximum floor area square footage recorded for the unified development site shall not be exceeded.
- (d) The maximum FAR for a Unified Development Site shall not exceed the aggregate maximum FAR of the multiple lots allowed by the underlying zoning districts, inclusive of bonus FAR. Within a locally designated historic district or locally designated historic site, any platted lot(s) that contain legal-nonconforming FAR and were previously separate and apart from other lots that comprise the Unified Development Site, may retain their existing legal non-conforming FAR, provided no additional FAR is added to such platted lot(s).
- (e) Within a Unified Development Site, passageways or other connections that are an allowable FAR exception may be permitted on lots with legal non-conforming FAR.

**SECTION 2. 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 Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

**SECTION 3. REPEALER.**

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

**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 \_\_\_\_\_, 2018.

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

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

\_\_\_\_\_  
Date

First Reading: December 13, 2017  
Second Reading: January \_\_\_\_, 2018

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

Underscore denotes new language  
~~Strikethrough~~ denotes removed language

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