

## **PLANNING BOARD CUP APPEAL STAYS**

**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 BY AMENDING CHAPTER 118 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING ARTICLE I, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING SECTION 118-9, ENTITLED "REHEARING AND APPEAL PROCEDURES," TO ALLOW THE ISSUANCE OF A BUILDING PERMIT TO AN APPLICANT WHOSE PLANNING BOARD CONDITIONAL USE APPROVAL APPLICATION IS ON APPEAL, ALLOWING AN EXCEPTION TO THE CITY'S RULE THAT REQUIRES FINAL RESOLUTION OF ALL ADMINISTRATIVE AND COURT PROCEEDINGS, SO LONG AS THE CERTAIN CONDITIONS CONTAINED IN 118-9 ARE COMPLIED WITH, AND PROVIDED THE APPLICANT EXECUTES A WRITTEN AGREEMENT HOLDING THE CITY HARMLESS AND INDEMNIFYING THE CITY FROM ANY LIABILITY OR LOSS SHOULD THE COURT PROCEEDINGS NOT END FAVORABLY TO THE APPLICANT; AND PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City's Land Development Regulations, at Chapter 118, Article IV, establish a process to determine if certain uses, referred to as conditional uses, should be permitted, given a particular location; and

**WHEREAS**, the Land Development Regulations grant the Planning Board the power and duty to consider conditional use permit applications; and

**WHEREAS**, conditional use permit application hearings are public, quasi-judicial hearings for which notice is provided to neighboring properties; and

**WHEREAS**, the Planning Board may approve conditional use permit applications in accordance with the procedures and standards set forth in the Land Development Regulations; and

**WHEREAS**, the purpose of a Planning Board hearing on a conditional use permit application is to analyze the facts particular to the application, and weigh all pertinent factors to determine the impacts of the proposed use on neighboring properties; and

**WHEREAS**, the Land Development Regulations set forth the regulations through which the approval of a conditional use permit may be appealed; and

**WHEREAS**, pursuant to City Code Section 118-9(c)(5), "[a]n appeal of a board order stays all work on the premises and all proceedings in furtherance of the action appealed from," unless one of two exceptions applies; and

**WHEREAS**, accordingly, the Land Development Regulations do not permit the issuance of a building permit, certificate of occupancy, or a business tax receipt during the pendency of an appeal (to Circuit Court) of a conditional use permit; and

**WHEREAS**, pursuant to the Florida Rules of Appellate Procedure, Planning Board orders on applications for conditional use permits may be reviewed by petition for writ of certiorari, which must be filed in Circuit Court; and

**WHEREAS**, appeals to Circuit Court can delay the development of a project and render the finalization of a project financially impracticable; and

**WHEREAS**, this Ordinance creates a very limited exception to the automatic stay provisions in City Code Section 118-9(c)(5), in order to allow an applicant to be issued a building permit, pending an appeal of an order granting a conditional use permit. However, the applicant would only be eligible for this exception to the automatic stay provisions if strict conditions are met; and

**WHEREAS**, in order to invoke the provisions of this Ordinance, the applicant would be required to assume all risks associated with the pending appeal, including the possibility that the applicant would be required to restore the property to its original condition, in the event that the conditional use permit is reversed; 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 118 is hereby amended as follows:

**CHAPTER 118  
ADMINISTRATION AND REVIEW PROCEDURES**

\* \* \*

**ARTICLE I. IN GENERAL**

\* \* \*

**Sec. 118-9. – Rehearing and appeal procedures.**

The following requirements shall apply to all rehearings and appeals by land development boards unless otherwise more specifically provided for in these land development regulations, and applicable fees and costs shall be paid to the city as required under section 118-7 and appendix A to the Land Development Regulations. As used herein, "land use board(s)" shall mean the board of adjustment, design review board, historic preservation board and planning board.

\* \* \*

*(c) Appeals of land use board applications:*

(1) Decisions of the following shall be final, and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari:

- A. Planning board.
- B. Board of adjustment.
- C. Design review board, with respect to variance decisions and administrative appeals, only.
- D. Historic preservation board, with respect to variance decisions and administrative appeals, only.
- E. Historic preservation special master.

\* \* \*

(5) Stay of work and proceedings on appeal. An appeal of a board order stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:

(i) A stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board or by a court of competent jurisdiction, upon application for good cause shown; or

~~(ii) If the appeal arises from an application for development review board hearing or other approval requiring a hearing before a land use board, the final order shall contain appropriate conditions to stay its effectiveness until the final resolution of all administrative and court proceedings. No building permit, or certificate of occupancy, or business tax receipt, dependent upon such hearing approval, shall be issued until the final resolution of all administrative and court proceedings as certified by the city attorney. The applicant for such land use board hearing shall hold the city harmless and agree to indemnify the city from any liability or loss resulting from such proceedings. Notice of the final resolution of administrative and court proceedings shall be provided as required for notice of hearings under these land development regulations. Notwithstanding the foregoing, an appeal to the board or court, or other challenge to an administrative official's decision, shall neither stay the issuance of any building permit, full building permit or phased building permit nor stay the running of the required time period set by board order or these land development regulations to obtain a full building permit or phased building permit.~~

(ii) As applicable only to an appeal arising from the planning board's approval of a conditional use permit, the city may accept, for review purposes only, a building permit application during a pending appeal in circuit court. The applicant shall be required to pay all building permit fees, which fees shall be nonrefundable. Despite the foregoing, no building permit shall issue while the circuit court appeal is pending.

Should the decision on the circuit court appeal (petition for certiorari) decision be rendered in favor of the conditional use permit applicant, the applicant may proceed with construction and operations, excluding entertainment operations, pending any further appeals to the Third District Court of Appeal or other appellate proceedings, so long as the following conditions are met:

- a. The building permit may issue and shall remain active until the final resolution of all administrative and court proceedings;
- b. No final certificate of occupancy (CO) or certificate of completion (CC) shall be issued, and no entertainment operations or entertainment business shall commence or take place, until the final resolution of all administrative and court proceedings;
- c. The conditional use permit was appealed by a party other than (i) the city, or (ii) an applicant appealing a denial of a conditional use permit application;
- d. The property subject to the conditional use permit is located within (i) a commercial district, and (ii) a historic district;
- e. The scope of the conditional use permit is limited to modifications to an existing structure;
- f. The applicant shall, prior to the issuance of the building permit, either: (i) place funds in escrow, or (ii) obtain a bond, either of which must be in an amount that is at least equal to or greater than 100 percent of the value of the work proposed under the building permit;
- g. The applicant is not seeking the demolition of any portion of a contributing structure; and
- h. In the event that the conditional use permit is reversed on appeal, the applicant must immediately amend or abandon the building permit or building permit application without any liability to the city, and a CC or CO shall not be issued. Additionally, no BTR for entertainment shall issue.

In order for a building permit to issue pursuant to this subsection (c)(5)(ii), ~~while a second-tiered appeal is pending~~ pending any further appeals to the Third District Court of Appeal or other appellate proceedings, the applicant shall be required to comply with all of the conditions in subsections (c)(5)(ii)(a) through (h), as well as all conditions of the conditional use permit. The applicant shall also be required to execute a written agreement (in a form acceptable to the city attorney) holding the city harmless and indemnifying the city from any liability or loss resulting from the underlying appellate or administrative proceedings, any civil actions relating to the application

of this subsection (c)(5)(ii), and any proceedings resulting from the issuance of a building permit, and the non-issuance of a TCO, TCC, CC, CO or BTR for the property. Such written agreement shall also bind the applicant to all requirements of the conditional use permit, including all enforcement, modification, and revocation provisions; except that the applicant shall be ineligible to apply for any modifications to the conditional use permit or any other land use board order impacting the property, until the final resolution of all administrative and court proceedings as certified by the city attorney. Additionally, the applicant must agree that, in the event that the conditional use permit is reversed, the applicant shall be required to restore the property to its original condition. The city may utilize the bond to ensure compliance with the foregoing provisions.

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## **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 re-numbered or re-lettered 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 \_\_\_\_\_, 2018.

**ATTEST:**

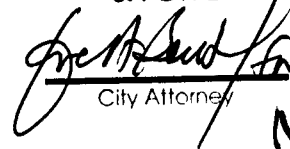
\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

First Reading: January 17, 2018  
Second Reading: February 14, 2018

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

 2-1-18  
\_\_\_\_\_  
City Attorney Date  
NK

Underline denotes additions; ~~strike through~~ denotes deletions; double underline denotes additions made prior to Second Reading; and ~~double strike through~~ denotes deletions made prior to Second Reading.

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