

# MIAMI BEACH

## PLANNING DEPARTMENT

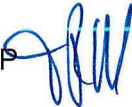
### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: Dec 18, 2018

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB18-0248. CD-2 Height and existing nonconforming buildings.**

#### **REQUEST**

**PB 18-0248. CD-2 Height and existing nonconforming buildings.** AN OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS", DIVISION 5, ENTITLED "CD-2, COMMERCIAL, MEDIUM-INTENSITY DISTRICT," AT SECTION 142-306, ENTITLED "DEVELOPMENT REGULATIONS," BY AMENDING THE MAXIMUM PERMITTED HEIGHT FOR SITES WITH PREVIOUSLY EXISTING NONCONFORMING BUILDINGS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY, AND AN EFFECTIVE DATE.

#### **RECOMMENDATION**

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

#### **HISTORY**

On November 14, 2018, at the request of Commissioner John Elizabeth Aleman, the City Commission referred the item to the Land Use and Development Committee and the Planning Board (Item R5B).

On November 28, 2018 the Land Use Committee discussed the item and recommended that the Planning Board transmit the attached Ordinance to the City Commission with a favorable recommendation.

#### **BACKGROUND**

On October 26, 2016, the Land Use and Development Committee discussed this item under a separate referral and transmitted it to the City Commission with no recommendation. On December 20, 2016, the Planning Board transmitted a similar version of the proposed Ordinance Amendment to the City Commission, with a favorable recommendation. The ordinance transmitted by the Planning Board included the following recommendations, which were proposed by the property owner at 600 Alton Road:

1. A physical limit (2.25 times the footprint of the existing building) on the footprint of any new building, as noted above; and

2. A requirement for the Planning Board to review and approve the proposed increase in height above the maximum permitted in the underlying zoning district.

The subject Ordinance was withdrawn by the sponsor in April of 2018 and was never adopted.

On November 28, 2018 the Land use and Development Committee by acclamation referred the Ordinance allowing the retention of the existing nonconforming building height and footprint area anywhere on the site, and not including expansion of the non-conforming building footprint.

#### **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.**

**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.**

The proposed ordinance amendment is not out of scale with the surrounding 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.

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 proposed ordinance is necessary to allow sites outside of historic districts that contain existing building with nonconforming height to be redeveloped with new construction at the same nonconforming height as the existing nonconforming building.

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.**

**Partially Consistent** – The proposed change could reduce light and air to adjacent areas depending on the siting of any replacement structure.

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

**Partially 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 Consistent** – There are no substantial reasons why the property cannot be used in accordance with existing zoning.

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** – The proposed amendment does not affect permitted uses in the district.

#### **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.

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

**Consistent** – The proposal will not affect 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 does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

**ANALYSIS**

The proposed ordinance provides that CD-2 zoned sites outside of historic districts that contain existing buildings with nonconforming height as of January 1, 2019 may be redeveloped with new construction at the same nonconforming height as the existing nonconforming building. The proposal does not allow any new construction to exceed current FAR limitations.

Currently, the CD-2 district has a height limit 5 stories and 50 feet, or 60 feet on the west side of Alton Road from 6th Street to Collins Canal for mixed-use and commercial buildings that include structured parking. An analysis of existing building heights on CD-2 zoned sites that are not in historic districts, per data from the Property Appraiser, indicates that there is only one site containing a building that exceeds the current maximum number of stories. This analysis does not consider the actual height of buildings and the current height limit that is between 50 and 60 feet for the affected areas; however, it provides a good indicator of where non-conforming height exists. The site identified is that of the former South Shore Hospital (600 Alton Road), located on Alton Road and 6th Street, which is ten (10) stories, and approximately 125 feet in height.

The proposed Ordinance would not (and cannot) increase maximum FAR, and would only permit a redistribution of allowable FAR. Additionally, it would place a physical limit on the footprint of any new building that may be eligible for a building height in excess of 60 feet. The proposed limit, as drafted is for the footprint of the existing building that already exceeds the maximum building height.

Footprint limits will play an important role in ensuring that any future development project does not negatively impact the surrounding area. In this regard, however, it will also be critical for the Design Review Board (DRB) to carefully review any future application, particularly as it pertains to the distribution of allowable scale, mass and height.

The owner of the South Shore Hospital building has indicated a willingness to demolish the existing non-conforming structure in advance of an approved development permit for the proposed unified site containing a residential tower and public park. In order to allow for a safety valve in the event that the development agreement for the unified site should come apart at a future date, the ability to reconstruct the footprint of the non-conforming building at the same non-conforming height is not unreasonable. Staff recommends that such reconstruction, should it occur in the future, be limited to the footprint of the existing nonconforming building, as indicated in the attached Ordinance.

**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.

## CD-2 HEIGHT AND EXISTING NONCONFORMING BUILDINGS

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

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS", DIVISION 5, ENTITLED "CD-2, COMMERCIAL, MEDIUM-INTENSITY DISTRICT," AT SECTION 142-306, ENTITLED "DEVELOPMENT REGULATIONS," BY AMENDING THE MAXIMUM PERMITTED HEIGHT FOR SITES WITH PREVIOUSLY EXISTING NONCONFORMING BUILDINGS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY, AND AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Beach recognizes the unique issues created by the difficulty of renovating nonconforming commercial buildings outside of the City's historic district and sites;

**WHEREAS**, while nonconforming buildings may be prohibitively expensive to renovate, they often are developed at heights exceeding current code requirements, making their replacement often economically impossible;

**WHEREAS**, the City Commission seeks to encourage the redevelopment of sites with nonconforming buildings outside of historic districts by permitting property owners to retain existing nonconforming heights in new construction; and

**WHEREAS** the Planning Board, at its meeting dated December 18, 2018 by a vote of \_\_\_\_\_ recommended in favor of the Ordinance; 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 142, "Zoning Districts And Regulations," Article II, "District Regulations", Division 5, "CD-2, Commercial, Medium-Intensity District," Section 142-306, "Development Regulations," is hereby amended as follows:

\* \* \*

### **Sec. 142-306. - Development regulations.**

The development regulations in the CD-2 commercial, medium intensity district are as follows:

| Maximum Floor Area | Minimum Lot Area (Square | Minimum Lot Width | Minimum Apartment Unit Size | Average Apartment Unit Size | Maximum Building Height | Maximum Number |
|--------------------|--------------------------|-------------------|-----------------------------|-----------------------------|-------------------------|----------------|
|--------------------|--------------------------|-------------------|-----------------------------|-----------------------------|-------------------------|----------------|

| Ratio | Feet)                                | (Feet)                            | (Square Feet)   | (Square Feet)   | (Feet)   | of Stories   |
|-------|--------------------------------------|-----------------------------------|---|---|--|--|
| 1.5   | Commercial—None<br>Residential—7,000 | Commercial—None<br>Residential—50 | Commercial—N/A<br>New construction—550<br>Rehabilitated buildings—400<br>Non-elderly and elderly low and moderate income housing: See section 142-1183<br>Hotel unit: 15%: 300—335<br>85%: 335+<br>For contributing hotel structures, located within a local historic district or a national register district, which are being renovated in accordance with the Secretary of the Interior Standards and Guidelines for the | Commercial—N/A<br>New construction—800<br>Rehabilitated buildings—550<br>Non-elderly and elderly low and moderate income housing: See section 142-1183<br>Hotel units—N/A | 50 (except as provided in section 142-1161). Self-storage warehouse - 40 feet, except that the building height shall be limited to 25 feet within 50 feet from the rear property line for lots abutting an alley; and within 60 feet from a residential district for blocks with no alley; Mixed-Use Buildings that include structured parking for properties located on the west side of Alton Road from 6 <sup>th</sup> Street to Collins Canal - 60 feet. | 5 (except as provided in section 142-1161) Self-storage warehouse: 4 |

|  |  |  |   |  |  |  |
|--|--|--|---|--|--|--|
|  |  |  | Rehabilitati<br>on of<br>Historic<br>Structures<br>as<br>amended,<br>retaining<br>the existing<br>room<br>configuratio<br>n shall be<br>permitted,<br>provided all<br>rooms are a<br>minimum of<br>200 square<br>feet.<br>Additionally,<br>existing<br>room<br>configuratio<br>ns for the<br>above<br>described<br>hotel<br>structures<br>may be<br>modified to<br>address<br>applicable<br>life-safety<br>and<br>accessibility<br>regulations,<br>provided<br>the 200<br>square feet<br>minimum<br>unit size is<br>maintained. |  |  |  |
|--|--|--|---|--|--|--|

Notwithstanding the above regulations, the maximum floor area ratio (FAR) for self-storage warehouses shall be 1.5. The floor area ratio provision for mixed use buildings in section 142-307(d)(2) shall not apply to self-storage warehouse development.

Subject to conditional use approval from the planning board, existing sites as of January 1, 2019, which are located outside of historic districts and are greater than 50,000 square feet in area that currently contain or previously contained a single building that remains standing as of

January 1, 2019, and that is nonconforming as to height, may be redeveloped with a building not to exceed the existing or previously existing nonconforming height as long as:

(1) The portion of a single building or a building that exceed 60 feet in height cannot exceed the footprint area of the existing or demolished building that is non-conforming in terms of building height.

(2) The portion of a building or a single building that exceed 60 feet in height cannot exceed the FAR above 60 feet of the existing or demolished building that is nonconforming in terms of building height.

(3) The portion of a building or a single building that exceed 60 feet in height can be located anywhere on the site.

(4) The redevelopment of the site does not exceed the maximum floor area ratio permitted under these 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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor

**ATTEST:**

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



APPROVED AS TO

FORM AND LANGUAGE  
& FOR EXECUTION

First Reading: \_\_\_\_\_, 2019  
Second Reading: \_\_\_\_\_, 2019

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

\_\_\_\_\_  
Date

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